

2005

SESSION LAWS

OF THE

STATE OF WASHINGTON

REGULAR SESSION
FIFTY-NINTH LEGISLATURE
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WASHINGTON SESSION LAWS

GENERAL INFORMATION

1. EDITIONS AVAILABLE.

(a) *General Information.* The session laws are printed successively in two editions:

(i) a temporary pamphlet edition consisting of a series of one or more paper bound books, which are published as soon as possible following the session, at random dates as accumulated; followed by

(ii) a permanent hardbound edition containing the accumulation of all laws adopted in the legislative session. Both editions contain a subject index and tables indicating Revised Code of Washington sections affected.

(b) *Where and how obtained - price.* Both the temporary and permanent session laws may be ordered from the Statute Law Committee, Pritchard Building, P.O. Box 40552, Olympia, Washington 98504-0552. The temporary pamphlet edition costs \$21.68 per set (\$20.00 plus \$1.68 for state and local sales tax at 8.4%). The permanent edition costs \$37.94 per volume (\$35.00 plus \$2.94 for state and local sales tax at 8.4%). All orders must be accompanied by payment.

2. PRINTING STYLE - INDICATION OF NEW OR DELETED MATTER

Both editions of the session laws present the laws in the form in which they were enacted by the legislature. This style quickly and graphically portrays the current changes to existing law as follows:

(a) In amendatory sections

(i) underlined matter is new matter.

(ii) deleted matter is (~~lined out and bracketed between double parentheses~~).

(b) Complete new sections are prefaced by the words NEW SECTION.

3. PARTIAL VETOES

(a) Vetoed matter is *printed in bold italics*.

(b) Pertinent excerpts of the governor's explanation of partial vetoes are printed at the end of the chapter concerned.

4. EDITORIAL CORRECTIONS.

Words and clauses inserted in the session laws under the authority of RCW 44.20.060 are enclosed in [brackets].

5. EFFECTIVE DATE OF LAWS

(a) The state Constitution provides that unless otherwise qualified, the laws of any session take effect ninety days after adjournment sine die. The Secretary of State has determined the pertinent date for the Laws of the 2005 regular session to be July 24, 2005 (midnight July 23rd).

(b) Laws that carry an emergency clause take effect immediately upon approval by the Governor.

(c) Laws that prescribe an effective date take effect upon that date.

6. INDEX AND TABLES

A cumulative index and tables of all 2005 laws may be found at the back of the final pamphlet edition and the permanent hardbound edition.

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CHAPTER 1

[Initiative 297]

"MIXED" RADIOACTIVE AND NONRADIOACTIVE HAZARDOUS WASTE REGULATIONS

AN ACT Relating to protection of public health, safety, and the environment at sites with wastes composed of radioactive and nonradioactive hazardous substances, including the Hanford Nuclear Reservation; and adding a new chapter to Title 70 RCW.

Be it enacted by the People of the State of Washington:

NEW SECTION. Sec. 1. INTENT. The purpose of this act is to prohibit sites at which mixed radioactive and hazardous wastes have contaminated or threaten to contaminate the environment, such as at the Hanford Nuclear Reservation, from adding more waste that is not generated from the cleanup of the site until such waste on-site has been cleaned up and is stored, treated, or disposed of in compliance with all state and federal environment laws.

NEW SECTION. Sec. 2. DECLARATION OF POLICY. (1) The Hanford Nuclear Reservation, through which the Columbia river flows for fifty miles, is the most contaminated area in North America. Use of Hanford as a national waste dump for radioactive and/or hazardous or toxic wastes will increase contamination and risks.

(2) Cleanup is the state of Washington's top priority at sites with hazardous waste contamination that threatens our rivers, ground water, environment, and health. Adding more waste to contaminated sites undermines the cleanup of those sites. Cleanup is delayed and funds and resources diverted if facilities needed to treat or clean up existing waste are used for imported waste, and if larger facilities must be built to accommodate off-site wastes.

(3) The fundamental and inalienable right of each person residing in Washington state to a healthy environment has been jeopardized by pollution of air and water spreading from Hanford.

(4) The economy of Washington state, from agriculture to tourism, to fisheries, could be irreparably harmed from any accident releasing radiation or mixed radioactive and hazardous wastes.

(5) It is Washington state policy to prohibit adding more waste to a site where mixed radioactive and hazardous wastes (a) are not stored or monitored in compliance with state and federal hazardous waste laws and (b) have been dumped in unlined soil trenches which threaten to contaminate our state's resources.

(6) It is state policy to protect Washington's current and future residents, particularly children and other sensitive individuals, from the cumulative risks of cancer caused by all cancer-causing hazardous substances, including radionuclides, by ensuring that hazardous substance release and disposal sites meet the standards established pursuant to chapter 70.105D RCW.

(7) Effective public and tribal involvement is necessary for government agencies to make sound decisions that will protect human health and the environment for thousands of years. It is Washington state policy to encourage and enhance effective public and tribal involvement in the complex decisions relating to cleanup, closure, permitting, and transportation of mixed waste; and to provide effective assistance to the public and local governments in reviewing and commenting upon complex decision documents. It is appropriate that the

polluter pay for necessary public participation for decisions relating to waste releases and risks from mixed waste sites.

(8) The transport of mixed radioactive and hazardous wastes, is inherently dangerous, and should be minimized. Decisions involving transportation of these wastes must be made with full involvement of the potentially affected public through whose communities these wastes will pass.

NEW SECTION. Sec. 3. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Dangerous waste" has the same meaning as the term is defined in RCW 70.105.010.

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

(3) "Dispose" or "disposal" have the same meanings as the terms are defined in RCW 70.105.010.

(4) "Facility" has the same meaning as the term is defined in RCW 70.105.010.

(5) "Hanford" means the geographic area comprising the Hanford Nuclear Reservation, owned and operated by the United States department of energy, or any successor federal agency.

(6) "Hazardous substance" has the same meaning as the term is defined in RCW 70.105D.020.

(7) "Hazardous waste" means and includes all dangerous and extremely hazardous waste, as those terms are defined in RCW 70.105.010.

(8) "Local government" means a city, town, or county.

(9) "Mixed waste" or "mixed radioactive and hazardous waste" means any hazardous substance or dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component, including any such substances that have been released to the environment, or pose a threat of future release, in a manner that may expose persons or the environment to either the nonradioactive or radioactive hazardous substances.

(10) "Mixed waste surcharge" means an additional charge for the purposes of local government and public participation in decisions relating to mixed waste facilities: Added to the service charge assessed under RCW 70.105.280 against those facilities that store, treat, incinerate, or dispose of mixed wastes; or against facilities at which mixed wastes have been released, or which are undergoing closure pursuant to chapter 70.105 RCW or remedial action pursuant to chapter 70.105D RCW.

(11) "Person" has the same meaning as the term is defined in RCW 70.105D.020.

(12) "Release" has the same meaning as the term is defined in RCW 70.105D.020.

(13) "Remedy or remedial action" have the same meanings as the terms are defined in RCW 70.105D.020.

(14) "Site" means the contiguous geographic area under the same ownership, lease, or operation where a facility is located, or where there has been a release of hazardous substances. In the event of a release of hazardous substances, "site" includes any area, or body of surface or ground water, where a hazardous substance has been deposited, stored, disposed of, placed, migrated to, or otherwise come to be located.

(15) Unless otherwise defined, or the context indicates otherwise, terms not defined in this section have the same meaning as defined in chapter 70.105 RCW, when used in this chapter.

NEW SECTION. Sec. 4. DUTIES OF THE DEPARTMENT OF ECOLOGY TO REGULATE MIXED WASTES. (1) The department of ecology shall regulate mixed wastes to the fullest extent it is not preempted by federal law, pursuant to chapter 70.105 RCW and the further provisions of this chapter.

(2) Any facility owner or operator of a site storing, managing, processing, transferring, treating, or disposing of mixed wastes shall apply for and obtain a final facility permit under chapter 70.105 RCW, this chapter, and the federal resource, conservation, and recovery act (RCRA), 42 U.S.C. Sec. 6901 et seq., as amended, before transporting to, storing or disposing at, the facility any additional mixed wastes not generated at the facility. At any facility granted a sitewide permit, under which permits for individual units are appended or become individual chapters, final facility permits must be applied for and obtained, for each unit or facility within the site where mixed wastes are, or will be, stored or disposed, prior to transporting to, storing or disposing at, the facility any additional mixed wastes not generated at the facility.

(3) The department shall not issue any permit requested under subsection (2) of this section unless the facility owner or operator is in compliance with the requirements of chapter 70.105 RCW, this chapter, and RCRA, 42 U.S.C. Sec. 6901 et seq., as amended, for obtaining and maintaining a final facility permit for existing mixed wastes stored, treated, or disposed of at the facility.

(4) If any sites, units, or facilities have interim status or an interim status permit, but fail to meet requirements for maintaining interim status under chapter 70.105 RCW, this chapter, or RCRA, 42 U.S.C. Sec. 6901 et seq., as amended, including but not limited to ground water monitoring and compliance requirements, the department shall find that the applicant for a final facility permit for mixed wastes under this section has failed to demonstrate compliance for purposes of obtaining such a permit pursuant to subsection (2) or (3) of this section.

(5) The addition of new trenches or cells, or widening or deepening of trenches, at a site with existing trenches containing mixed wastes shall be considered an expansion of the existing facilities for purposes of compliance with RCW Chapter 70.105 or this chapter, and any permit or permit modification for such expansion shall be subject to the requirements of this section.

(6)(a) The department shall not issue a permit, or modify any existing permit, allowing for the treatment, storage, or disposal of any additional mixed wastes not generated at the site or facility as part of a remedial or corrective action, until:

(i) The site or facility is in full compliance with the requirements of chapter 70.105 RCW, this chapter, and RCRA, 42 U.S.C. Sec. 6901 et seq., as amended, for obtaining and maintaining a closure permit for any facility or unit from which a release of hazardous substances has occurred or is threatened to occur, after characterization and corrective action; or

(ii) The department has issued a formal determination that no further remedial action is necessary to remedy such a release pursuant to chapter 70.105D RCW.

(b) The prohibitions of this subsection (6) against granting or modifying a permit apply whenever a release of a hazardous substance, including but not limited to releases of radionuclides and any other carcinogenic substances, has occurred at a site or facility, and such release, or the cumulative impact of all releases at the site, are projected by the department to have the potential to exceed the following standards:

(i) Surface or ground water standards established pursuant to federal or state laws, including but not limited to maximum concentration limits, drinking water, or other standards; or

(ii) Cleanup or other standards adopted to protect human health or the environment pursuant to RCW 70.105D.030.

(7) Until all the requirements of subsection (6) have been met, the department shall, by permit condition, limit any new construction of, expansion of, or final facility permit for, a facility for treating, storing or disposing of mixed waste to the capacity or size necessary for investigation, characterization, remediation, or corrective action of facilities or units undergoing closure, or remedial or corrective action at the site.

(8) The department may grant or modify permits pursuant to RCW Chapter 70.105 solely for the purpose of remediating or closing existing facilities or units where there has been a release or threatened release of mixed wastes, if the permit expressly bars the storage or disposal of wastes that are not generated onsite pursuant to a remedial action, closure or corrective action approved by the department pursuant to this chapter or RCW Chapter 70.105D.

(9) The department may permit specific treatment capacity at sites subject to the limitations of this section to be utilized for remediation or cleanup wastes from other sites, consistent with a site treatment plan approved by the department pursuant to RCRA, 42 USC 6901 et seq., as amended; provided that the department determines, after public notice and comment and consideration of impacts and alternatives in an environmental impact statement prepared pursuant to RCW Chapter 43.21C, that use of such capacity will not: (i) significantly increase any emissions, discharges, risks or consequences of potential accidents; (ii) result in permanent disposal of imported offsite wastes in the soil at the site; (iii) be stored in excess of any applicable time limits, or any applicable requirement; or, (iv) impact funding for cleanup and corrective actions at the site or, result in delay of treatment or remediation of wastes at the site.

NEW SECTION. Sec. 5. RELEASES OF RADIOACTIVE SUBSTANCES; CLEAN-UP STANDARDS. (1) The department shall consider releases, or potential releases, of radioactive substances or radionuclides as hazardous substances if the radioactive substance poses a risk of a carcinogenic, toxic, or any other adverse health or environmental effect. The department shall require corrective action for, or remediation of, such releases to meet the same health risk based minimum clean-up standards as adopted for other carcinogenic, toxic, or other hazardous substances posing similar health risks pursuant to RCW 70.105D.030.

(2) The department shall include all known or suspected human carcinogens, including radionuclides and radioactive substances, in calculating the applicable clean-up standard, corrective action level, or maximum allowable projected release from a landfill or other facility or unit at which mixed wastes

are stored, disposed, or are reasonably believed by the department to be present, for purposes of chapter 70.105 RCW, this chapter, or chapter 70.105D RCW. In making any permit decision pursuant to chapter 70.105 RCW or this chapter, or in reviewing the adequacy of any environmental document prepared by another state, local, or federal agency, relating to mixed waste sites or facilities, the department shall ensure that the cumulative risk from all such carcinogens does not exceed the maximum acceptable carcinogen risk established by the department for purposes of determining clean-up standards pursuant to RCW 70.105D.030, or one additional cancer caused from exposure to all potential releases of hazardous substances at the site per one hundred thousand exposed individuals, whichever is more protective.

NEW SECTION. Sec. 6. DISPOSAL OF WASTE IN UNLINED TRENCHES TO END; INVESTIGATION AND CLEANUP OF UNLINED TRENCHES; CLOSURE OF MIXED WASTE TANK SYSTEMS. (1)(a) The department, within sixty days after the effective date of this act, shall order any site owner or operator utilizing landfills or burial grounds containing unlined soil trenches in which mixed wastes are reasonably believed by the department to have been disposed to:

(i) Cease disposal of all further wastes in unlined soil trenches or facilities within thirty days of the order;

(ii) Initiate an investigation to provide the department with an inventory based on actual characterization of all hazardous substances potentially disposed in unlined trenches;

(iii) Initiate an investigation of releases or potential releases of any hazardous substances that were potentially disposed in unlined trenches;

(iv) Prepare, or pay the costs of the department to prepare, pursuant to the provisions of chapters 70.105 and 70.105D RCW, a plan for waste retrieval, treatment, closure, and monitoring for the unlined soil trenches, which may include temporary caps pending full characterization and remediation, the schedule for which shall be based upon determination of requirements to prevent migration of wastes; and

(v) Install and maintain a ground water and soil column monitoring system, within two years, which is in compliance with all requirements of chapter 70.105 RCW, this chapter, and RCRA, 42 U.S.C. Sec. 6901 et seq., as amended.

(b) The department shall provide, by rule, for public notice, hearings, and comment on the scope of investigations and all actions necessary to fulfill the purposes of this section. Notice to the public for purposes of this section shall include a description of potential impacts to health or the environment from the facilities, and the potential for any state resources, or land areas, to be restricted from future use due to potential releases of hazardous substances from the site or facility.

(2) At any site with one or more land disposal facilities or units containing unlined trenches or pits, at which mixed wastes are stored or were disposed, any proposed expansion of such land disposal facility or unit, or application to permit new land disposal facilities at the same site, shall be considered to be an impermissible expansion of the existing units or facilities where:

(a) There is a reasonable basis to believe mixed or hazardous wastes are buried or stored that have not been fully characterized to conclusively determine that no mixed or hazardous wastes are present;

(b) A release of a hazardous substance has occurred, including but not limited to releases of radioactive or mixed wastes; or

(c) The department has information to indicate that there is a significant potential for a release of hazardous substances.

(3) Determinations and permit actions, pursuant to chapter 70.105 RCW or this chapter, relating to the closure of tank systems consisting of one or more interconnected tanks in which mixed wastes are currently, or were, stored, shall be made by the department only after consideration of the cumulative impacts of all tank residuals and leaks from such systems at the site pursuant to chapter 43.21C RCW. Actions may not be taken to close individual tanks, or which may prevent the retrieval of residual mixed wastes remaining in a tank, in any element of the tank system, or in the soil due to leaks from the tank system, prior to compliance with this section and determination of the quantity, nature, and potential impacts from such residuals or releases. In no event may the department allow the use of a landfill closure for mixed waste tank systems prior to all potentially effective and practicable actions having been taken to characterize, and remediate, releases and potential releases. The department may require research and development of technologies for characterization or retrieval pursuant to this section.

NEW SECTION. Sec. 7. DISCLOSURE OF COSTS AND CLEAN-UP BUDGETS. The department shall require, as a condition for any permit issued pursuant to the provisions of chapter 70.105 RCW or this chapter for facilities storing, treating, or disposing of mixed wastes, and at which hazardous substance releases to the environment have occurred, and remedial or corrective action has not been completed, that the site owner or operator disclose annually to the department the projected total and annual cost of each project or action required to meet the provisions of each applicable federal or state law governing investigation, cleanup, corrective action, closure, or health and safety of facilities at the site; and, if the owner or operator is a state or federal agency, the budgets or budget requests for such purposes for the owner's current fiscal year and each of the upcoming three fiscal years. Where the owner of the site is a federal agency, the annual disclosure shall be provided to the department within fourteen days of: Submission of the agency's budget request to Congress; final appropriation of funds; and at the time any field request is submitted to the agency's headquarters for funding in fiscal years beyond the current fiscal year. The disclosures to the department required by this section shall include, at a minimum, a comparison of the cost estimate for all activity required by compliance orders, decrees, schedules, or agreements, with the funds requested and with the funds appropriated. The owner or operator shall provide additional detail on projected costs and budgets, at the request of the department. Every year, the department shall hold public hearings, and seek advice from the site advisory board, on the disclosures required by this section and funding priorities.

NEW SECTION. Sec. 8. EXEMPTIONS: NAVAL REACTOR DISPOSAL AT HANFORD; LOW-LEVEL WASTE COMPACT. (1) Intent. The state of Washington has previously permitted, and committed to assist in the national need for, disposal of sealed nuclear reactor vessels and compartments from submarines and other vessels of the United States Navy; and to operate a regional disposal site for low-level waste with no hazardous waste pursuant to an

interstate compact. The U.S. Navy reactor vessels or compartments are sealed in a manner estimated to prevent release of hazardous or radioactive wastes for hundreds of years, exceeding the performance of a liner system while disposal trenches are operating. Therefore, the state of Washington accepts the burden and risks of continued disposal of retired U.S. Navy reactor vessels and low-level waste pursuant to the Compact, recognizing that this disposal will cause future impacts to the soil, environment, and ground water.

(2) Nothing in this act shall affect existing permits for, or in any manner prohibit, the storage or disposal of sealed nuclear reactor vessels or compartments from retired United States Navy submarines or surface ships at the existing disposal facility at Hanford, or affect existing permits for the operation of any facility by the federal government at which United States Navy reactors are decommissioned or refueled.

(3) Obligations of the state pursuant to the Northwest Interstate Compact on Low-Level Radioactive Waste Management and agreements made by the compact shall not be interfered with or affected by any provision of this act. If hazardous or mixed wastes have been disposed or released at any facility operated pursuant to the Compact, the relevant provisions of this chapter apply.

NEW SECTION. **Sec. 9. PUBLIC INVOLVEMENT.** (1) At any site or facility at which there has been a release of mixed wastes, permits issued under chapter 70.105 RCW for mixed waste facilities shall provide for the operation and funding of a broadly representative advisory board. The board shall be composed of representatives chosen by: potentially affected tribes; regional and statewide citizen groups with an established record of concern regarding human health or the environment impacted, or potentially impacted by releases from the site; local groups concerned with health and resource impacts; local governments; and the state of Oregon if that state may be, or has been, impacted by the release or threatened release of waste. Such permits shall specify that the advisory board be continued with adequate funding, provided by the owner or operator of the site, to perform its chartered functions until final closure or certification of the completion of remedial or corrective action.

(2) The department shall request the advisory board created or maintained at a facility pursuant to this section to advise it on procedural and substantive matters necessary for informed public comment. The department shall formally consider and respond to any comments from the advisory board regarding exposure scenarios prior to issuing any decision on a remedial, corrective or closure action.

(3) The department shall base planning for its own oversight and permitting functions utilizing an assumption that mixed waste facility service charges established pursuant to RCW 70.105.280 should not be less than one percent of the first two hundred million dollars of the estimated annual site clean-up budget for the coming year, and one half of one percent of the estimated annual site clean-up budget above that level. If the department determines that a lower or higher level of service charges is necessary to support its oversight and public involvement functions, then it shall seek comment from any advisory committee established for the site, and from the public, regarding the appropriate level of support.

(4) (a) Due to the complexity of issues involving mixed waste storage, treatment and disposal facilities, at such facilities, the department shall make

available annual local government and public participation grants for both: (i) assistance in public review of mixed waste permit, closure, and cleanup decisions; and, (ii) review of, and public comment on, site budgets, compliance costs and funding priorities. Public participation grants pursuant to this section shall be provided as determined by the criteria adopted by the department pursuant to RCW 70.105D.070(5). Local government grants pursuant to this section shall be made available to either a local government or a coalition of local governments. Grants under this section may be renewed annually at a level two times that permitted under RCW 70.105D.070(5), and shall not be subject to annual appropriation by the Legislature.

(b) Local government and public participation grants established under this chapter shall be funded through the state toxics control account, by charging an applicant or permit holder a mixed waste surcharge added to the service charge established by RCW 70.105.280. This surcharge shall be collected and administered consistent with the procedures and requirements established in this section and RCW 70.105.280 to ensure adequate public and local government involvement. This mixed waste surcharge shall be no less than fifteen one-hundredths of one percent of the first two hundred million dollars of annual site budget for all related clean-up activities, of which five one-hundredths of one percent shall be available for grants to local government. The mixed waste surcharge for public and local government participation grants shall be five one-hundredths of one percent of the portion of any estimated annual site clean-up budget exceeding two hundred million dollars. Any unused mixed waste surcharges assessed under this section shall remain in the state toxics control account established pursuant to chapter 70.105D RCW, and shall be utilized to reduce the mixed waste surcharge assessed the owner or operator of the facility in future years.

(5) For federal facilities with releases of mixed wastes or hazardous substances owned or operated a federal agency, such as Hanford, the annual site clean-up budget shall be determined by the department, for purposes of this section, based upon the greater of the congressional budget request or appropriations of the federal government for activities at the site related to cleanup or waste management. If the appropriation amount for a fiscal year exceeds the congressional budget request, the department shall adjust the assessment of the mixed waste surcharge within thirty days of final enactment of the appropriation.

NEW SECTION. Sec. 10. ENFORCEMENT AND APPEALS. (1) Any person may bring a civil action to compel the owner or operator of a mixed waste facility to comply with the requirements of this chapter or any permit or order issued by the department pursuant to this chapter; or to compel the department to perform any nondiscretionary duty under this chapter. At least thirty days before commencing the action, the person must give written notice to the department of intent to sue, unless a substantial endangerment exists. The court may award attorney fees and other costs to a prevailing plaintiff in the action.

(2) Orders of the department relating to mixed waste facilities under this chapter may be appealed to the pollution control hearings board, by any person whose interests in natural resources or health may be adversely affected by the action or inaction of the department.

(3) Civil actions under this section may be brought in superior court of Thurston county or of the county in which the release or threatened release of a hazardous substance occurs, or where mixed wastes that are the subject of the action may be transported, stored, treated, or disposed.

(4) Any violation of this chapter shall be considered a violation of chapter 70.105 RCW, and subject to all enforcement actions by the department or attorney general for violations of that chapter, including imposition of civil or criminal penalties.

NEW SECTION. Sec. 11. CONSTRUCTION. The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act. In the event of conflict between the provisions of this act and any other act, the provisions of this act shall govern.

NEW SECTION. Sec. 12. SHORT TITLE. This act shall be known as the Cleanup Priority Act.

NEW SECTION. Sec. 13. CAPTIONS NOT PART OF LAW. Captions used in this act are not any part of the law.

NEW SECTION. Sec. 14. Sections 1 through 13 of this act constitute a new chapter in Title 70 RCW.

Originally filed in Office of Secretary of State January 8, 2004.

Approved by the People of the State of Washington in the General Election on November 2, 2004.

CHAPTER 2

[Initiative 872]

THE PEOPLE'S CHOICE INITIATIVE

AN ACT Relating to elections and primaries; amending RCW 29A.04.127, 29A.36.170, 29A.04.310, 29A.24.030, 29A.24.210, 29A.36.010, 29A.52.010, 29A.80.010, and 42.12.040; adding a new section to chapter 29A.04 RCW; adding a new section to chapter 29A.52 RCW; adding a new section to chapter 29A.32 RCW; creating new sections; repealing RCW 29A.04.157, 29A.28.010, 29A.28.020, and 29A.36.190; and providing for contingent effect.

Be it enacted by the People of the State of Washington:

TITLE

NEW SECTION. Sec. 1. This act may be known and cited as the People's Choice Initiative of 2004.

LEGISLATIVE INTENT: PROTECTING VOTERS' RIGHTS AND CHOICE

NEW SECTION. Sec. 2. The Washington Constitution and laws protect each voter's right to vote for any candidate for any office. The Washington State Supreme Court has upheld the blanket primary as protecting compelling state interests "allowing each voter to keep party identification, if any, secret; allowing the broadest possible participation in the primary election; and giving each voter a free choice among all candidates in the primary." *Heavey v. Chapman*, 93 Wn.2d 700, 705, 611 P.2d 1256 (1980). The Ninth Circuit Court of Appeals has threatened this system through a decision, that, if not overturned

by the United States Supreme Court, may require change. In the event of a final court judgment invalidating the blanket primary, this People's Choice Initiative will become effective to implement a system that best protects the rights of voters to make such choices, increases voter participation, and advances compelling interests of the state of Washington.

WASHINGTON VOTERS' RIGHTS

NEW SECTION. Sec. 3. The rights of Washington voters are protected by its Constitution and laws and include the following fundamental rights:

- (1) The right of qualified voters to vote at all elections;
- (2) The right of absolute secrecy of the vote. No voter may be required to disclose political faith or adherence in order to vote;
- (3) The right to cast a vote for any candidate for each office without any limitation based on party preference or affiliation, of either the voter or the candidate.

DEFINITIONS

NEW SECTION. Sec. 4. A new section is added to chapter 29A.04 RCW to read as follows:

"Partisan office" means a public office for which a candidate may indicate a political party preference on his or her declaration of candidacy and have that preference appear on the primary and general election ballot in conjunction with his or her name. The following are partisan offices:

- (1) United States senator and United States representative;
- (2) All state offices, including legislative, except (a) judicial offices and (b) the office of superintendent of public instruction;
- (3) All county offices except (a) judicial offices and (b) those offices for which a county home rule charter provides otherwise.

Sec. 5. RCW 29A.04.127 and 2003 c 111 s 122 are each amended to read as follows:

"Primary" or "primary election" means a ~~((statutory))~~ procedure for ~~((nominating))~~ winning candidates ~~((to))~~ for public office ~~((at the polls))~~ to a final list of two as part of a special or general election. Each voter has the right to cast a vote for any candidate for each office without any limitation based on party preference or affiliation, of either the voter or the candidate.

Sec. 6. RCW 29A.36.170 and 2003 c 111 s 917 are each amended to read as follows:

(1) ~~((Except as provided in RCW 29A.36.180 and in subsection (2) of this section, on the ballot at the general election for a nonpartisan))~~ For any office for which a primary was held, only the names of the top two candidates will appear on the general election ballot; the name(s) of the candidate who received the greatest number of votes will appear first and the candidate who received the next greatest number of votes ((for that office shall appear under the title of that office, and the names shall appear in that order. If a primary was conducted,)) will appear second. No candidate's name may be printed on the subsequent general election ballot unless he or she receives at least one percent of the total votes cast for that office at the preceding primary, if a primary was

conducted. On the ballot at the general election for ~~((any other nonpartisan))~~ an office for which no primary was held, the names of the candidates shall be listed in the order determined under RCW 29A.36.130.

(2) ~~((On the ballot at the general election))~~ For the office of justice of the supreme court, judge of the court of appeals, judge of the superior court, or state superintendent of public instruction, if a candidate in a contested primary receives a majority of all the votes cast for that office or position, only the name of that candidate may be printed ~~((under the title of the office))~~ for that position on the ballot at the general election.

NEW SECTION. Sec. 7. A new section is added to chapter 29A.52 RCW to read as follows:

(1) A primary is a first stage in the public process by which voters elect candidates to public office.

(2) Whenever candidates for a partisan office are to be elected, the general election must be preceded by a primary conducted under this chapter. Based upon votes cast at the primary, the top two candidates will be certified as qualified to appear on the general election ballot, unless only one candidate qualifies as provided in RCW 29A.36.170.

(3) For partisan office, if a candidate has expressed a party or independent preference on the declaration of candidacy, then that preference will be shown after the name of the candidate on the primary and general election ballots by appropriate abbreviation as set forth in rules of the secretary of state. A candidate may express no party or independent preference. Any party or independent preferences are shown for the information of voters only and may in no way limit the options available to voters.

CONFORMING AMENDMENTS

Sec. 8. RCW 29A.04.310 and 2003 c 111 s 143 are each amended to read as follows:

~~((Nominating))~~ Primaries for general elections to be held in November must be held on:

(1) The third Tuesday of the preceding September; or ~~((on))~~

(2) The seventh Tuesday immediately preceding ~~((such))~~ that general election, whichever occurs first.

Sec. 9. RCW 29A.24.030 and 2003 c 111 s 603 are each amended to read as follows:

A candidate who desires to have his or her name printed on the ballot for election to an office other than president of the United States, vice president of the United States, or an office for which ownership of property is a prerequisite to voting shall complete and file a declaration of candidacy. The secretary of state shall adopt, by rule, a declaration of candidacy form for the office of precinct committee officer and a separate standard form for candidates for all other offices filing under this chapter. Included on the standard form shall be:

(1) A place for the candidate to declare that he or she is a registered voter within the jurisdiction of the office for which he or she is filing, and the address at which he or she is registered;

(2) A place for the candidate to indicate the position for which he or she is filing;

(3) For partisan offices only, a place for the candidate to indicate ((a)) his or her major or minor party ((designation, if applicable)) preference, or independent status;

(4) A place for the candidate to indicate the amount of the filing fee accompanying the declaration of candidacy or for the candidate to indicate that he or she is filing a nominating petition in lieu of the filing fee under RCW 29A.24.090;

(5) A place for the candidate to sign the declaration of candidacy, stating that the information provided on the form is true and swearing or affirming that he or she will support the Constitution and laws of the United States and the Constitution and laws of the state of Washington.

In the case of a declaration of candidacy filed electronically, submission of the form constitutes agreement that the information provided with the filing is true, that he or she will support the Constitutions and laws of the United States and the state of Washington, and that he or she agrees to electronic payment of the filing fee established in RCW 29A.24.090.

The secretary of state may require any other information on the form he or she deems appropriate to facilitate the filing process.

Sec. 10. RCW 29A.24.210 and 2003 c 111 s 621 are each amended to read as follows:

Filings for a partisan elective office shall be opened for a period of three normal business days whenever, on or after the first day of the regular filing period and before the sixth Tuesday prior to ~~((a primary))~~ an election, a vacancy occurs in that office, leaving an unexpired term to be filled by an election for which filings have not been held.

Any ~~((such))~~ special three-day filing period shall be fixed by the election officer with whom declarations of candidacy for that office are filed. The election officer shall give notice of the special three-day filing period by notifying the press, radio, and television in the county or counties involved, and by ~~((such))~~ any other means as may be required by law.

Candidacies validly filed within the special three-day filing period shall appear on the primary or general election ballot as if filed during the regular filing period.

The procedures for filings for partisan offices where a vacancy occurs under this section or a void in candidacy occurs under RCW 29A.24.140 must be substantially similar to the procedures for nonpartisan offices under RCW 29A.24.150 through 29A.24.170.

NEW SECTION. Sec. 11. A new section is added to chapter 29A.32 RCW to read as follows:

The voters' pamphlet must also contain the political party preference or independent status where a candidate appearing on the ballot has expressed such a preference on his or her declaration of candidacy.

Sec. 12. RCW 29A.36.010 and 2003 c 111 s 901 are each amended to read as follows:

On or before the day following the last day allowed for ~~((political parties to fill vacancies in the ticket as provided by RCW 29A.28.010))~~ candidates to withdraw under RCW 29A.24.130, the secretary of state shall certify to each county auditor a list of the candidates who have filed declarations of candidacy

in his or her office for the primary. For each office, the certificate shall include the name of each candidate, his or her address, and his or her party (~~designation, if any~~) preference or independent designation as shown on filed declarations.

Sec. 13. RCW 29A.52.010 and 2003 c 111 s 1301 are each amended to read as follows:

Whenever it shall be necessary to hold a special election in an odd-numbered year to fill an unexpired term of any office which is scheduled to be voted upon for a full term in an even-numbered year, no (~~September~~) primary election shall be held in the odd-numbered year if, after the last day allowed for candidates to withdraw, (~~either of the following circumstances exist:~~

(1) ~~No more than one candidate of each qualified political party has filed a declaration of candidacy for the same partisan office to be filled; or~~

(2) ~~no more than two candidates have filed a declaration of candidacy for a single (~~nonpartisan~~) office to be filled.~~

In (~~either~~) this event, the officer with whom the declarations of candidacy were filed shall immediately notify all candidates concerned and the names of the candidates that would have been printed upon the (~~September~~) primary ballot, but for the provisions of this section, shall be printed as (~~nominees~~) candidates for the positions sought upon the (~~November~~) general election ballot.

Sec. 14. RCW 29A.80.010 and 2003 c 111 s 2001 are each amended to read as follows:

~~((1))~~ Each political party organization may(~~:~~

~~(a) Make its own~~) adopt rules (~~and regulations; and~~

~~(b) Perform all functions inherent in such an organization.~~

~~(2) Only major political parties may designate candidates to appear on the state primary ballot as provided in RCW 29A.28.010)~~ governing its own organization and the nonstatutory functions of that organization.

Sec. 15. RCW 42.12.040 and 2003 c 238 s 4 are each amended to read as follows:

(1) If a vacancy occurs in any partisan elective office in the executive or legislative branches of state government or in any partisan county elective office before the sixth Tuesday prior to the (~~primary for the~~) next general election following the occurrence of the vacancy, a successor shall be elected to that office at that general election. Except during the last year of the term of office, if such a vacancy occurs on or after the sixth Tuesday prior to the (~~primary for that~~) general election, the election of the successor shall occur at the next succeeding general election. The elected successor shall hold office for the remainder of the unexpired term. This section shall not apply to any vacancy occurring in a charter county (~~which~~) that has charter provisions inconsistent with this section.

(2) If a vacancy occurs in any legislative office or in any partisan county office after the general election in a year that the position appears on the ballot and before the start of the next term, the term of the successor who is of the same party as the incumbent may commence once he or she has qualified as defined in RCW (~~(29.01.135)~~) 29A.04.133 and shall continue through the term for which he or she was elected.

CODIFICATION AND REPEALS

NEW SECTION. Sec. 16. The code reviser shall revise the caption of any section of Title 29A RCW as needed to reflect changes made through this Initiative.

NEW SECTION. Sec. 17. The following acts or parts of acts are each repealed:

- (1) RCW 29A.04.157 (September primary) and 2003 c 111 s 128;
- (2) RCW 29A.28.010 (Major party ticket) and 2003 c 111 s 701, 1990 c 59 s 102, 1977 ex.s. c 329 s 12, & 1965 c 9 s 29.18.150;
- (3) RCW 29A.28.020 (Death or disqualification—Correcting ballots—Counting votes already cast) and 2003 c 111 s 702, 2001 c 46 s 4, & 1977 ex.s. c 329 s 13; and
- (4) RCW 29A.36.190 (Partisan candidates qualified for general election) and 2003 c 111 s 919.

NEW SECTION. Sec. 18. This act takes effect only if the Ninth Circuit Court of Appeals' decision in *Democratic Party of Washington State v. Reed*, 343 F.3d 1198 (9th Cir. 2003) holding the blanket primary election system in Washington state invalid becomes final and a Final Judgment is entered to that effect.

Originally filed in Office of Secretary of State January 26, 2004.

Approved by the People of the State of Washington in the General Election on November 2, 2004.

CHAPTER 3

[Substitute Senate Bill 5097]

APPRENTICESHIP—PUBLIC WORKS

AN ACT Relating to apprenticeship utilization requirements on public works projects; adding new sections to chapter 39.04 RCW; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A well-trained construction trades work force is critical to the ability of the state of Washington to construct public works. Studies of the state's work force highlight population trends that, without a concerted effort to offset them, will lead to an inadequate supply of skilled workers in the construction industry. State government regularly constructs public works. The efficient and economical construction of public works projects will be harmed if there is not an ample supply of trained construction workers. Apprenticeship training programs are particularly effective in providing training and experience to individuals seeking to enter or advance in the work force. By providing for apprenticeship utilization on public works projects, state government can create opportunities for training and experience that will help assure that a trained work force will be available in sufficient numbers in the future for the construction of public works.

NEW SECTION. Sec. 2. The definitions in this section apply throughout this section and sections 1 and 3 of this act unless the context clearly requires otherwise.

(1) "Apprentice" means an apprentice enrolled in a state-approved apprenticeship training program.

(2) "Apprentice utilization requirement" means the requirement that the appropriate percentage of labor hours be performed by apprentices.

(3) "Labor hours" means the total hours of workers receiving an hourly wage who are directly employed on the site of the public works project. "Labor hours" includes hours performed by workers employed by the contractor and all subcontractors working on the project. "Labor hours" does not include hours worked by foremen, superintendents, owners, and workers who are not subject to prevailing wage requirements.

(4) "State-approved apprenticeship training program" means an apprenticeship training program approved by the Washington state apprenticeship council.

NEW SECTION. Sec. 3. (1) From January 1, 2005, and thereafter, for all public works estimated to cost one million dollars or more, all specifications shall require that no less than fifteen percent of the labor hours be performed by apprentices.

(2) Awarding agency directors may adjust the requirements of this section for a specific project for the following reasons:

(a) The demonstrated lack of availability of apprentices in specific geographic areas;

(b) A disproportionately high ratio of material costs to labor hours, which does not make feasible the required minimum levels of apprentice participation;

(c) Participating contractors have demonstrated a good faith effort to comply with the requirements of this act; or

(d) Other criteria the awarding agency director deems appropriate, which are subject to review by the office of the governor.

(3) This section applies only to public works contracts awarded by the state. However, this section does not apply to contracts awarded by state four-year institutions of higher education, state agencies headed by a separately elected public official, or the department of transportation.

(4)(a) The department of general administration must provide information and technical assistance to affected agencies and collect the following data from affected agencies for each project covered by this section:

(i) The name of each apprentice and apprentice registration number;

(ii) The name of each project;

(iii) The dollar value of each project;

(iv) The date of the contractor's notice to proceed;

(v) The number of apprentices and labor hours worked by them, categorized by trade or craft;

(vi) The number of journey level workers and labor hours worked by them, categorized by trade or craft; and

(vii) The number, type, and rationale for the exceptions granted under subsection (2) of this section.

(b) The department of labor and industries shall assist the department of general administration in providing information and technical assistance.

(5) At the request of the senate labor, commerce, research and development committee, the house of representatives commerce and labor committee, or their successor committees, and the governor, the department of general

administration and the department of labor and industries shall compile and summarize the agency data and provide a joint report to both committees. The report shall include recommendations on modifications or improvements to the apprentice utilization program and information on skill shortages in each trade or craft.

NEW SECTION. **Sec. 4.** Sections 1 through 3 of this act are each added to chapter 39.04 RCW.

NEW SECTION. **Sec. 5.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate February 2, 2005.

Passed by the House February 16, 2005.

Approved by the Governor February 24, 2005.

Filed in Office of Secretary of State February 24, 2005.

CHAPTER 4

[Engrossed Substitute Senate Bill 5151]

PARK DISTRICT PROPERTY

AN ACT Relating to disposition of surplus property by a metropolitan park district; amending RCW 35.61.132; providing an expiration date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 35.61.132 and 1989 c 319 s 4 are each amended to read as follows:

For any real estate transaction proposed to result in a project that provides programming and activities for disadvantaged youth, the funding endowment for which equals or exceeds twenty million dollars, and that requires the transfer of title of surplus district property to a charitable organization as so recognized by its 501(c)(3) federal income taxation status, every metropolitan park district may, by simple majority vote of its board of park commissioners, sell, exchange, or otherwise dispose of any real or personal property acquired for park or recreational purposes when such property is declared surplus for park or other recreational purposes: PROVIDED, That where the property is acquired by donation or dedication for park or recreational purposes, the consent of the donor or dedicator, his or her heirs, successors, or assigns is first obtained if the consent of the donor is required in the instrument conveying the property to the metropolitan park district. In the event the donor or dedicator, his or her heirs, successors, or assigns cannot be located after a reasonable search, the metropolitan park district may petition the superior court in the county where the property is located for approval of the sale. If sold, all sales shall be by public bids and sale made only to the highest or best bidder.

Every metropolitan park district may, by unanimous decision of its board of park commissioners, sell, exchange, or otherwise dispose of any real or personal property acquired for park or recreational purposes when such property is declared surplus for park or other recreational purposes: PROVIDED, That where the property is acquired by donation or dedication for park or recreational purposes, the consent of the donor or dedicator, his or her heirs, successors, or assigns is first obtained if the consent of the donor is required in the instrument

conveying the property to the metropolitan park district. In the event the donor or dedicator, his or her heirs, successors, or assigns cannot be located after a reasonable search, the metropolitan park district may petition the superior court in the county where the property is located for approval of the sale. If sold, all sales shall be by public bids and sale made only to the highest and best bidder.

NEW SECTION. Sec. 2. Section 1 of this act expires December 31, 2006.

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate January 28, 2005.

Passed by the House February 16, 2005.

Approved by the Governor February 24, 2005.

Filed in Office of Secretary of State February 24, 2005.

CHAPTER 5

[Substitute House Bill 1014]

DNA TESTING

AN ACT Relating to DNA testing; amending RCW 10.73.170; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 10.73.170 and 2003 c 100 s 1 are each amended to read as follows:

(1) ~~((On or before December 31, 2004, a person in this state who has been convicted of a felony and is currently serving a term of imprisonment and who has been denied postconviction DNA testing may submit a request to the state Office of Public Defense, which will transmit the request to the county prosecutor in the county where the conviction was obtained for postconviction DNA testing, if DNA evidence was not admitted because the court ruled DNA testing did not meet acceptable scientific standards or DNA testing technology was not sufficiently developed to test the DNA evidence in the case. On and after January 1, 2005, a person must raise the DNA issues at trial or on appeal.~~

~~(2) The prosecutor shall screen the request. The request shall be reviewed based upon the likelihood that the DNA evidence would demonstrate innocence on a more probable than not basis. The prosecutor shall inform the requestor and the state Office of Public Defense of the decision, and shall, in the case of an adverse decision, advise the requestor of appeals rights. Upon determining that testing should occur and the evidence still exists, the prosecutor shall request DNA testing by the Washington state patrol crime laboratory. Contact with victims shall be handled through victim/witness divisions.~~

~~(3) A person denied a request made pursuant to subsections (1) and (2) of this section has a right to appeal his or her request within thirty days of denial of the request by the prosecutor. The appeal shall be to the attorney general's office. If the attorney general's office determines that it is likely that the DNA testing would demonstrate innocence on a more probable than not basis, then the attorney general's office shall request DNA testing by the Washington state patrol crime laboratory.~~

~~(4) Notwithstanding any other provision of law, any biological material that has been secured in connection with a criminal case prior to July 22, 2001, may~~

~~not be destroyed before January 1, 2005.))~~ A person convicted of a felony in a Washington state court who currently is serving a term of imprisonment may submit to the court that entered the judgment of conviction a verified written motion requesting DNA testing, with a copy of the motion provided to the state office of public defense.

(2) The motion shall:

(a) State that:

(i) The court ruled that DNA testing did not meet acceptable scientific standards; or

(ii) DNA testing technology was not sufficiently developed to test the DNA evidence in the case; or

(iii) The DNA testing now requested would be significantly more accurate than prior DNA testing or would provide significant new information;

(b) Explain why DNA evidence is material to the identity of the perpetrator of, or accomplice to, the crime, or to sentence enhancement; and

(c) Comply with all other procedural requirements established by court rule.

(3) The court shall grant a motion requesting DNA testing under this section if such motion is in the form required by subsection (2) of this section, and the convicted person has shown the likelihood that the DNA evidence would demonstrate innocence on a more probable than not basis.

(4) Upon written request to the court that entered a judgment of conviction, a convicted person who demonstrates that he or she is indigent under RCW 10.101.010 may request appointment of counsel solely to prepare and present a motion under this section, and the court, in its discretion, may grant the request. Such motion for appointment of counsel shall comply with all procedural requirements established by court rule.

(5) DNA testing ordered under this section shall be performed by the Washington state patrol crime laboratory. Contact with victims shall be handled through victim/witness divisions.

(6) Notwithstanding any other provision of law, upon motion of defense counsel or the court's own motion, a sentencing court in a felony case may order the preservation of any biological material that has been secured in connection with a criminal case, or evidence samples sufficient for testing, in accordance with any court rule adopted for the preservation of evidence. The court must specify the samples to be maintained and the length of time the samples must be preserved.

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House February 28, 2005.

Passed by the Senate February 16, 2005.

Approved by the Governor March 9, 2005.

Filed in Office of Secretary of State March 9, 2005.

CHAPTER 6

[Substitute House Bill 1154]

MENTAL HEALTH

AN ACT Relating to mental health parity; amending RCW 48.21.240, 48.44.340, and 48.46.290; adding new sections to chapter 41.05 RCW; adding a new section to chapter 48.21 RCW; adding a new section to chapter 48.44 RCW; adding a new section to chapter 48.46 RCW; adding new sections to chapter 70.47 RCW; adding a new section to chapter 48.02 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that the costs of leaving mental disorders untreated or undertreated are significant, and often include: Decreased job productivity, loss of employment, increased disability costs, deteriorating school performance, increased use of other health services, treatment delays leading to more costly treatments, suicide, family breakdown and impoverishment, and institutionalization, whether in hospitals, juvenile detention, jails, or prisons.

Treatable mental disorders are prevalent and often have a high impact on health and productive life. The legislature finds that the potential benefits of improved access to mental health services are significant. Additionally, the legislature declares that it is not cost-effective to treat persons with mental disorders differently than persons with medical and surgical disorders.

Therefore, the legislature intends to require that insurance coverage be at parity for mental health services, which means this coverage be delivered under the same terms and conditions as medical and surgical services.

NEW SECTION. Sec. 2. A new section is added to chapter 41.05 RCW to read as follows:

(1) For the purposes of this section, "mental health services" means medically necessary outpatient and inpatient services provided to treat mental disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on the effective date of this section, or such subsequent date as may be provided by the administrator by rule, consistent with the purposes of this act, with the exception of the following categories, codes, and services: (a) Substance related disorders; (b) life transition problems, currently referred to as "V" codes, and diagnostic codes 302 through 302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psychiatric association; (c) skilled nursing facility services, home health care, residential treatment, and custodial care; and (d) court ordered treatment unless the authority's or contracted insuring entity's medical director determines the treatment to be medically necessary.

(2) All health benefit plans offered to public employees and their covered dependents under this chapter that provide coverage for medical and surgical services shall provide:

(a) For all health benefit plans established or renewed on or after January 1, 2006, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment,

coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(b) For all health benefit plans established or renewed on or after January 1, 2008, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(c) For all health benefit plans established or renewed on or after July 1, 2010, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services. If the health benefit plan imposes any deductible, mental health services shall be included with medical and surgical services for the purpose of meeting the deductible requirement. Treatment limitations or any other financial requirements on coverage for mental health services are only allowed if the same limitations or requirements are imposed on coverage for medical and surgical services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(3) In meeting the requirements of subsection (2)(a) and (b) of this section, health benefit plans may not reduce the number of mental health outpatient visits or mental health inpatient days below the level in effect on July 1, 2002.

(4) This section does not prohibit a requirement that mental health services be medically necessary as determined by the medical director or designee, if a comparable requirement is applicable to medical and surgical services.

(5) Nothing in this section shall be construed to prevent the management of mental health services.

(6) The administrator will consider care management techniques for mental health services, including but not limited to: (a) Authorized treatment plans; (b) preauthorization requirements based on the type of service; (c) concurrent and retrospective utilization review; (d) utilization management practices; (e)

discharge coordination and planning; and (f) contracting with and using a network of participating providers.

NEW SECTION, Sec. 3. A new section is added to chapter 48.21 RCW to read as follows:

(1) For the purposes of this section, "mental health services" means medically necessary outpatient and inpatient services provided to treat mental disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on the effective date of this section, or such subsequent date as may be provided by the insurance commissioner by rule, consistent with the purposes of this act, with the exception of the following categories, codes, and services: (a) Substance related disorders; (b) life transition problems, currently referred to as "V" codes, and diagnostic codes 302 through 302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psychiatric association; (c) skilled nursing facility services, home health care, residential treatment, and custodial care; and (d) court ordered treatment unless the insurer's medical director or designee determines the treatment to be medically necessary.

(2) All group disability insurance contracts and blanket disability insurance contracts providing health benefit plans that provide coverage for medical and surgical services shall provide:

(a) For all health benefit plans established or renewed on or after January 1, 2006, for groups of more than fifty employees coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(b) For all health benefit plans established or renewed on or after January 1, 2008, for groups of more than fifty employees coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(c) For all health benefit plans established or renewed on or after July 1, 2010, for groups of more than fifty employees coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and

surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services. If the health benefit plan imposes any deductible, mental health services shall be included with medical and surgical services for the purpose of meeting the deductible requirement. Treatment limitations or any other financial requirements on coverage for mental health services are only allowed if the same limitations or requirements are imposed on coverage for medical and surgical services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(3) In meeting the requirements of subsection (2)(a) and (b) of this section, health benefit plans may not reduce the number of mental health outpatient visits or mental health inpatient days below the level in effect on July 1, 2002.

(4) This section does not prohibit a requirement that mental health services be medically necessary as determined by the medical director or designee, if a comparable requirement is applicable to medical and surgical services.

(5) Nothing in this section shall be construed to prevent the management of mental health services.

NEW SECTION. Sec. 4. A new section is added to chapter 48.44 RCW to read as follows:

(1) For the purposes of this section, "mental health services" means medically necessary outpatient and inpatient services provided to treat mental disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on the effective date of this section, or such subsequent date as may be provided by the insurance commissioner by rule, consistent with the purposes of this act, with the exception of the following categories, codes, and services: (a) Substance related disorders; (b) life transition problems, currently referred to as "V" codes, and diagnostic codes 302 through 302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psychiatric association; (c) skilled nursing facility services, home health care, residential treatment, and custodial care; and (d) court ordered treatment unless the health care service contractor's medical director or designee determines the treatment to be medically necessary.

(2) All health service contracts providing health benefit plans that provide coverage for medical and surgical services shall provide:

(a) For all health benefit plans established or renewed on or after January 1, 2006, for groups of more than fifty employees coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(b) For all health benefit plans established or renewed on or after January 1, 2008, for groups of more than fifty employees coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(c) For all health benefit plans established or renewed on or after July 1, 2010, for groups of more than fifty employees coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services. If the health benefit plan imposes any deductible, mental health services shall be included with medical and surgical services for the purpose of meeting the deductible requirement. Treatment limitations or any other financial requirements on coverage for mental health services are only allowed if the same limitations or requirements are imposed on coverage for medical and surgical services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(3) In meeting the requirements of subsection (2)(a) and (b) of this section, health benefit plans may not reduce the number of mental health outpatient visits or mental health inpatient days below the level in effect on July 1, 2002.

(4) This section does not prohibit a requirement that mental health services be medically necessary as determined by the medical director or designee, if a comparable requirement is applicable to medical and surgical services.

(5) Nothing in this section shall be construed to prevent the management of mental health services.

NEW SECTION. Sec. 5. A new section is added to chapter 48.46 RCW to read as follows:

(1) For the purposes of this section, "mental health services" means medically necessary outpatient and inpatient services provided to treat mental disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on the effective date of this section, or such

subsequent date as may be provided by the insurance commissioner by rule, consistent with the purposes of this act, with the exception of the following categories, codes, and services: (a) Substance related disorders; (b) life transition problems, currently referred to as "V" codes, and diagnostic codes 302 through 302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psychiatric association; (c) skilled nursing facility services, home health care, residential treatment, and custodial care; and (d) court ordered treatment unless the health maintenance organization's medical director or designee determines the treatment to be medically necessary.

(2) All health benefit plans offered by health maintenance organizations that provide coverage for medical and surgical services shall provide:

(a) For all health benefit plans established or renewed on or after January 1, 2006, for groups of more than fifty employees coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(b) For all health benefit plans established or renewed on or after January 1, 2008, for groups of more than fifty employees coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(c) For all health benefit plans established or renewed on or after July 1, 2010, for groups of more than fifty employees coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services. If the health benefit plan imposes any deductible, mental health services shall be included with medical and surgical services for the purpose of meeting the deductible requirement. Treatment limitations or any other financial requirements on coverage for mental health

services are only allowed if the same limitations or requirements are imposed on coverage for medical and surgical services; and

(i) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(3) In meeting the requirements of subsection (2)(a) and (b) of this section, health benefit plans may not reduce the number of mental health outpatient visits or mental health inpatient days below the level in effect on July 1, 2002.

(4) This section does not prohibit a requirement that mental health services be medically necessary as determined by the medical director or designee, if a comparable requirement is applicable to medical and surgical services.

(5) Nothing in this section shall be construed to prevent the management of mental health services.

NEW SECTION. Sec. 6. A new section is added to chapter 70.47 RCW to read as follows:

(1) For the purposes of this section, "mental health services" means medically necessary outpatient and inpatient services provided to treat mental disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on the effective date of this section, or such subsequent date as may be determined by the administrator, by rule, consistent with the purposes of this act, with the exception of the following categories, codes, and services: (a) Substance related disorders; (b) life transition problems, currently referred to as "V" codes, and diagnostic codes 302 through 302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psychiatric association; (c) skilled nursing facility services, home health care, residential treatment, and custodial care; and (d) court ordered treatment, unless the Washington basic health plan's or contracted managed health care system's medical director or designee determines the treatment to be medically necessary.

(2)(a) Any schedule of benefits established or renewed by the Washington basic health plan on or after January 1, 2006, shall provide coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the schedule of benefits. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered under the schedule of benefits.

(b) Any schedule of benefits established or renewed by the Washington basic health plan on or after January 1, 2008, shall provide coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the schedule of benefits. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the schedule of benefits imposes a maximum

out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered under the schedule of benefits.

(c) Any schedule of benefits established or renewed by the Washington basic health plan on or after July 1, 2010, shall include coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the schedule of benefits. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the schedule of benefits imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services. If the schedule of benefits imposes any deductible, mental health services shall be included with medical and surgical services for the purpose of meeting the deductible requirement. Treatment limitations or any other financial requirements on coverage for mental health services are only allowed if the same limitations or requirements are imposed on coverage for medical and surgical services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered under the schedule of benefits.

(3) In meeting the requirements of subsection (2)(a) and (b) of this section, the Washington basic health plan may not reduce the number of mental health outpatient visits or mental health inpatient days below the level in effect on July 1, 2002.

(4) This section does not prohibit a requirement that mental health services be medically necessary as determined by the medical director or designee, if a comparable requirement is applicable to medical and surgical services.

(5) Nothing in this section shall be construed to prevent the management of mental health services.

Sec. 7. RCW 48.21.240 and 1987 c 283 s 3 are each amended to read as follows:

(1) For groups not covered by section 3 of this act, each group insurer providing disability insurance coverage in this state for hospital or medical care under contracts which are issued, delivered, or renewed in this state ((on or after July 1, 1986,)) shall offer optional supplemental coverage for mental health treatment for the insured and the insured's covered dependents.

(2) Benefits shall be provided under the optional supplemental coverage for mental health treatment whether treatment is rendered by: (a) A ((physician licensed under chapter 18.71 or 18.57 RCW; (b) a psychologist licensed under chapter 18.83)) licensed mental health provider regulated under chapter 18.57, 18.71, 18.79, 18.83, or 18.225 RCW; ((c)) (b) a community mental health agency licensed by the department of social and health services pursuant to chapter 71.24 RCW; or ((d)) (c) a state hospital as defined in RCW 72.23.010. The treatment shall be covered at the usual and customary rates for such treatment. The insurer(~~, health care service contractor, or health maintenance organization~~) providing optional coverage under the provisions of this section

for mental health services may establish separate usual and customary rates for services rendered by ~~((physicians licensed under chapter 18.71 or 18.57 RCW, psychologists licensed under chapter 18.83 RCW, and community mental health centers licensed under chapter 71.24 RCW and state hospitals as defined in RCW 72.23.010))~~ the different categories of providers listed in (a) through (c) of this subsection. However, the treatment may be subject to contract provisions with respect to reasonable deductible amounts or copayments. In order to qualify for coverage under this section, a licensed community mental health agency shall have in effect a plan for quality assurance and peer review, and the treatment shall be supervised by ~~((a physician licensed under chapter 18.71 or 18.57 RCW or by a psychologist licensed under chapter 18.83 RCW))~~ one of the categories of providers listed in (a) of this subsection.

(3) ~~For groups not covered by section 3 of this act,~~ the group disability insurance contract may provide that all the coverage for mental health treatment is waived for all covered members if the contract holder so states in advance in writing to the insurer.

(4) This section shall not apply to a group disability insurance contract that has been entered into in accordance with a collective bargaining agreement between management and labor representatives prior to March 1, 1987.

Sec. 8. RCW 48.44.340 and 1987 c 283 s 4 are each amended to read as follows:

(1) ~~For groups not covered by section 4 of this act,~~ each health care service contractor providing hospital or medical services or benefits in this state under group contracts for health care services under this chapter which are issued, delivered, or renewed in this state ~~((on or after July 1, 1986,))~~ shall offer optional supplemental coverage for mental health treatment for the insured and the insured's covered dependents.

(2) Benefits shall be provided under the optional supplemental coverage for mental health treatment whether treatment is rendered by: (a) A ~~((physician licensed under chapter 18.71 or 18.57 RCW; (b) a psychologist licensed under chapter 18.83))~~ licensed mental health provider regulated under chapter 18.57, 18.71, 18.79, 18.83, or 18.225 RCW; ((e)) (b) a community mental health agency licensed by the department of social and health services pursuant to chapter 71.24 RCW; or ~~((d))~~ (c) a state hospital as defined in RCW 72.23.010. The treatment shall be covered at the usual and customary rates for such treatment. The ~~((insurer,))~~ health care service contractor ~~((, or health maintenance organization))~~ providing optional coverage under the provisions of this section for mental health services may establish separate usual and customary rates for services rendered by ~~((physicians licensed under chapter 18.71 or 18.57 RCW, psychologists licensed under chapter 18.83 RCW, and community mental health centers licensed under chapter 71.24 RCW and state hospitals as defined in RCW 72.23.010))~~ the different categories of providers listed in (a) through (c) of this subsection. However, the treatment may be subject to contract provisions with respect to reasonable deductible amounts or copayments. In order to qualify for coverage under this section, a licensed community mental health agency shall have in effect a plan for quality assurance and peer review, and the treatment shall be supervised by ~~((a physician licensed under chapter 18.71 or 18.57 RCW or by a psychologist licensed under chapter 18.83 RCW))~~ one of the categories of providers listed in (a) of this subsection.

(3) For groups not covered by section 4 of this act, the group contract for health care services may provide that all the coverage for mental health treatment is waived for all covered members if the contract holder so states in advance in writing to the health care service contractor.

(4) This section shall not apply to a group health care service contract that has been entered into in accordance with a collective bargaining agreement between management and labor representatives prior to March 1, 1987.

Sec. 9. RCW 48.46.290 and 1987 c 283 s 5 are each amended to read as follows:

(1) For groups not covered by section 5 of this act, each health maintenance organization providing services or benefits for hospital or medical care coverage in this state under group health maintenance agreements which are issued, delivered, or renewed in this state (~~(on or after July 1, 1986,))~~) shall offer optional supplemental coverage for mental health treatment to the enrolled participant and the enrolled participant's covered dependents.

(2) Benefits shall be provided under the optional supplemental coverage for mental health treatment whether treatment is rendered by the health maintenance organization or the health maintenance organization refers the enrolled participant or the enrolled participant's covered dependents for treatment (~~((t))~~) by: (a) A (~~(physician licensed under chapter 18.71 or 18.57 RCW; (b) a psychologist licensed under chapter 18.83))~~ licensed mental health provider regulated under chapter 18.57, 18.71, 18.79, 18.83, or 18.225 RCW; ((t)) (b) a community mental health agency licensed by the department of social and health services pursuant to chapter 71.24 RCW; or (~~((d))~~) (c) a state hospital as defined in RCW 72.23.010. The treatment shall be covered at the usual and customary rates for such treatment. The (~~(insurer, health care service contractor, or)~~) health maintenance organization providing optional coverage under the provisions of this section for mental health services may establish separate usual and customary rates for services rendered by (~~(physicians licensed under chapter 18.71 or 18.57 RCW, psychologists licensed under chapter 18.83 RCW, and community mental health centers licensed under chapter 71.24 RCW and state hospitals as defined in RCW 72.23.010))~~ the different categories of providers listed in (a) through (c) of this subsection. However, the treatment may be subject to contract provisions with respect to reasonable deductible amounts or copayments. In order to qualify for coverage under this section, a licensed community mental health agency shall have in effect a plan for quality assurance and peer review, and the treatment shall be supervised by (~~(a physician licensed under chapter 18.71 or 18.57 RCW or by a psychologist licensed under chapter 18.83 RCW))~~ one of the categories of providers listed in (a) of this subsection.

(3) For groups not covered by section 5 of this act, the group health maintenance agreement may provide that all the coverage for mental health treatment is waived for all covered members if the contract holder so states in advance in writing to the health maintenance organization.

(4) This section shall not apply to a group health maintenance agreement that has been entered into in accordance with a collective bargaining agreement between management and labor representatives prior to March 1, 1987.

NEW SECTION. Sec. 10. A new section is added to chapter 48.02 RCW to read as follows:

The insurance commissioner may adopt rules to implement sections 3 through 5 of this act, except that the rules do not apply to health benefit plans administered or operated under chapter 41.05 or 70.47 RCW.

NEW SECTION. Sec. 11. A new section is added to chapter 70.47 RCW to read as follows:

The administrator may adopt rules to implement section 6 of this act.

NEW SECTION. Sec. 12. A new section is added to chapter 41.05 RCW to read as follows:

The administrator may adopt rules to implement section 2 of this act.

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

Passed by the House January 28, 2005.

Passed by the Senate March 3, 2005.

Approved by the Governor March 9, 2005.

Filed in Office of Secretary of State March 9, 2005.

CHAPTER 7

[Senate Bill 5957]

MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

AN ACT Relating to escrow accounts required of self-funded multiple employer welfare arrangements; amending RCW 48.14.0201 and 48.41.060; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 48.14.0201 and 2004 c 260 s 24 are each amended to read as follows:

(1) As used in this section, "taxpayer" means a health maintenance organization as defined in RCW 48.46.020, a health care service contractor as defined in RCW 48.44.010, or a self-funded multiple employer welfare arrangement as defined in RCW 48.125.010.

(2) Each taxpayer shall pay a tax on or before the first day of March of each year to the state treasurer through the insurance commissioner's office. The tax shall be equal to the total amount of all premiums and prepayments for health care services received by the taxpayer during the preceding calendar year multiplied by the rate of two percent.

(3) Taxpayers shall prepay their tax obligations under this section. The minimum amount of the prepayments shall be percentages of the taxpayer's tax obligation for the preceding calendar year recomputed using the rate in effect for the current year. For the prepayment of taxes due during the first calendar year, the minimum amount of the prepayments shall be percentages of the taxpayer's tax obligation that would have been due had the tax been in effect during the previous calendar year. The tax prepayments shall be paid to the state treasurer through the commissioner's office by the due dates and in the following amounts:

- (a) On or before June 15, forty-five percent;
- (b) On or before September 15, twenty-five percent;
- (c) On or before December 15, twenty-five percent.

(4) For good cause demonstrated in writing, the commissioner may approve an amount smaller than the preceding calendar year's tax obligation as recomputed for calculating the health maintenance organization's, health care service contractor's, self-funded multiple employer welfare arrangement's, or certified health plan's prepayment obligations for the current tax year.

(5) Moneys collected under this section shall be deposited in the general fund through March 31, 1996, and in the health services account under RCW 43.72.900 after March 31, 1996.

(6) The taxes imposed in this section do not apply to:

(a) Amounts received by any taxpayer from the United States or any instrumentality thereof as prepayments for health care services provided under Title XVIII (medicare) of the federal social security act.

(b) Amounts received by any health care service contractor, as defined in RCW 48.44.010, as prepayments for health care services included within the definition of practice of dentistry under RCW 18.32.020.

(c) Participant contributions to self-funded multiple employer welfare arrangements that are not taxable in this state.

(7) Beginning January 1, 2000, the state does hereby preempt the field of imposing excise or privilege taxes upon taxpayers and no county, city, town, or other municipal subdivision shall have the right to impose any such taxes upon such taxpayers. This subsection shall be limited to premiums and payments for health benefit plans offered by health care service contractors under chapter 48.44 RCW, health maintenance organizations under chapter 48.46 RCW, and self-funded multiple employer welfare arrangements as defined in RCW 48.125.010. The preemption authorized by this subsection shall not impair the ability of a county, city, town, or other municipal subdivision to impose excise or privilege taxes upon the health care services directly delivered by the employees of a health maintenance organization under chapter 48.46 RCW.

(8)(a) The taxes imposed by this section apply to a self-funded multiple employer welfare arrangement only in the event that they are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the commissioner shall initially request an advisory opinion from the United States department of labor or obtain a declaratory ruling from a federal court on the legality of imposing state premium taxes on these arrangements. Once the legality of the taxes has been determined, the multiple employer welfare arrangement certified by the insurance commissioner must begin payment of these taxes.

(b) ~~If there has not been a final determination ((by the United States department of labor or a federal court that the taxes are not preempted by federal law, the taxes provided for in this section become effective on March 1, 2005, or thirty days following the issuance of a certificate of authority, whichever is later. During the time period between March 1, 2005, or thirty days following the issuance of a certificate of authority, whichever is later, and the final determination by the United States department of labor or a federal court, any taxes shall be deposited in an interest bearing escrow account maintained by the [self-funded] multiple employer welfare arrangement))~~ of the legality of these taxes, then beginning on the earlier of (i) the date the fourth multiple employer welfare arrangement has been certified by the insurance commissioner, or (ii) April 1, 2006, the arrangement shall deposit the taxes imposed by this section

into an interest bearing escrow account maintained by the arrangement. Upon a final determination that the taxes are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., all funds in the interest bearing escrow account shall be transferred to the state treasurer.

Sec. 2. RCW 48.41.060 and 2004 c 260 s 26 are each amended to read as follows:

(1) The board shall have the general powers and authority granted under the laws of this state to insurance companies, health care service contractors, and health maintenance organizations, licensed or registered to offer or provide the kinds of health coverage defined under this title. In addition thereto, the board shall:

(a) Designate or establish the standard health questionnaire to be used under RCW 48.41.100 and 48.43.018, including the form and content of the standard health questionnaire and the method of its application. The questionnaire must provide for an objective evaluation of an individual's health status by assigning a discreet measure, such as a system of point scoring to each individual. The questionnaire must not contain any questions related to pregnancy, and pregnancy shall not be a basis for coverage by the pool. The questionnaire shall be designed such that it is reasonably expected to identify the eight percent of persons who are the most costly to treat who are under individual coverage in health benefit plans, as defined in RCW 48.43.005, in Washington state or are covered by the pool, if applied to all such persons;

(b) Obtain from a member of the American academy of actuaries, who is independent of the board, a certification that the standard health questionnaire meets the requirements of (a) of this subsection;

(c) Approve the standard health questionnaire and any modifications needed to comply with this chapter. The standard health questionnaire shall be submitted to an actuary for certification, modified as necessary, and approved at least every eighteen months. The designation and approval of the standard health questionnaire by the board shall not be subject to review and approval by the commissioner. The standard health questionnaire or any modification thereto shall not be used until ninety days after public notice of the approval of the questionnaire or any modification thereto, except that the initial standard health questionnaire approved for use by the board after March 23, 2000, may be used immediately following public notice of such approval;

(d) Establish appropriate rates, rate schedules, rate adjustments, expense allowances, claim reserve formulas and any other actuarial functions appropriate to the operation of the pool. Rates shall not be unreasonable in relation to the coverage provided, the risk experience, and expenses of providing the coverage. Rates and rate schedules may be adjusted for appropriate risk factors such as age and area variation in claim costs and shall take into consideration appropriate risk factors in accordance with established actuarial underwriting practices consistent with Washington state individual plan rating requirements under RCW 48.44.022 and 48.46.064;

(e)(i) Assess members of the pool in accordance with the provisions of this chapter, and make advance interim assessments as may be reasonable and necessary for the organizational or interim operating expenses. Any interim assessments will be credited as offsets against any regular assessments due following the close of the year.

(ii) Self-funded multiple employer welfare arrangements are subject to assessment under this subsection only in the event that assessments are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the commissioner shall initially request an advisory opinion from the United States department of labor or obtain a declaratory ruling from a federal court on the legality of imposing assessments on these arrangements before imposing the assessment. Once the legality of the assessments has been determined, the multiple employer welfare arrangement certified by the insurance commissioner must begin payment of these assessments.

~~(iii) If there has not been a final determination ((by the United States department of labor or a federal court that the assessments are not preempted by federal law, the assessments provided for in this subsection become effective on March 1, 2005, or thirty days following the issuance of a certificate of authority, whichever is later. During the time period between March 1, 2005, or thirty days following the issuance of a certificate of authority, whichever is later, and the final determination by the United States department of labor or a federal court, any assessments shall be deposited in an interest bearing escrow account maintained by the [self funded] multiple employer welfare arrangement)) of the legality of these assessments, then beginning on the earlier of (A) the date the fourth multiple employer welfare arrangement has been certified by the insurance commissioner, or (B) April 1, 2006, the arrangement shall deposit the assessments imposed by this subsection into an interest bearing escrow account maintained by the arrangement. Upon a final determination that the assessments are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., all funds in the interest bearing escrow account shall be transferred to the board;~~

(f) Issue policies of health coverage in accordance with the requirements of this chapter;

(g) Establish procedures for the administration of the premium discount provided under RCW 48.41.200(3)(a)(iii);

(h) Contract with the Washington state health care authority for the administration of the premium discounts provided under RCW 48.41.200(3)(a) (i) and (ii);

(i) Set a reasonable fee to be paid to an insurance agent licensed in Washington state for submitting an acceptable application for enrollment in the pool; and

(j) Provide certification to the commissioner when assessments will exceed the threshold level established in RCW 48.41.037.

(2) In addition thereto, the board may:

(a) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this chapter including the authority, with the approval of the commissioner, to enter into contracts with similar pools of other states for the joint performance of common administrative functions, or with persons or other organizations for the performance of administrative functions;

(b) Sue or be sued, including taking any legal action as necessary to avoid the payment of improper claims against the pool or the coverage provided by or through the pool;

(c) Appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the pool, policy, and other contract design, and any other function within the authority of the pool; and

(d) Conduct periodic audits to assure the general accuracy of the financial data submitted to the pool, and the board shall cause the pool to have an annual audit of its operations by an independent certified public accountant.

(3) Nothing in this section shall be construed to require or authorize the adoption of rules under chapter 34.05 RCW.

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate March 9, 2005.

Passed by the House March 9, 2005.

Approved by the Governor March 15, 2005.

Filed in Office of Secretary of State March 15, 2005.

CHAPTER 8

[House Bill 1049]

PUBLIC WORKS BOARD—PROJECT AUTHORIZATION

AN ACT Relating to authorization for projects recommended by the public works board; creating a new section; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. Pursuant to chapter 43.155 RCW, the following project loans recommended by the public works board are authorized to be made with funds appropriated from the public works assistance account:

(1) Bainbridge Island—storm sewer project—construct a storm sewer waste management facility including bins for storage of asphalt, concrete, wood chips, rock, sand and gravel, and miscellaneous woody debris; and test remaining soil and remove contaminated soils from the Head of the Bay site. \$782,000

(2) Bainbridge Island—sanitary sewer project—upgrade wastewater treatment plant by upgrading the following: Headworks, biosolids, oxidation ditch aeration basins, sludge holding basins, secondary clarification, and sludge pumping and effluent outfall. \$3,618,000

(3) Battle Ground—sanitary sewer project—expand the capacity in the shared use facilities by performing the design engineering and construction for a parallel sewer line interceptor, 1 new transmission pump station, an influent pressure main, and treatment plant improvements to increase the capacity from 10.3 million gallons per day to 16 million gallons per day \$10,000,000

(4) Birchbay water and sewer district—sanitary sewer project—extend the existing sanitary sewer system constructing approximately 10,000 feet of gravity sewer mains, including manholes, side sewers to each lot, and other sewer appurtenances. The project will also include temporary erosion and sedimentation control measures and other public/private improvement restoration following sewer installation \$765,000

(5) Blaine—sanitary sewer project—construct a wastewater pretreatment facility and a 700,000 gallon equalization storage facilities along and underneath Marine Drive to prevent raw sewage overflows into Drayton Harbor,

construction of control structures required to operate and maintain facilities, and reconstruction of existing lift station number one \$5,080,000

(6) Brewster—sanitary sewer project—retrofit south lift station and dry well/wet well system will be converted to a submersible pump station, headworks structure will be enclosed, including electrical and ventilation systems, replacement of chlorine gas disinfection system with UV disinfection, construction of a plant water system, adding new effluent flow meter and automatic sampler, replacement of activated sludge pumps, retrofitting primary clarifier, installation of a new dewatering facility, electrical, and control features and appurtenances. \$2,659,600

(7) Carnation—sanitary sewer project—eliminate current septic tank/drainfield systems and replace them with a centralized sewer collection system that will connect directly to the treatment facility being built by King County, including approximately 26,000 feet of vacuum sewer collector pipes, 3,000 feet of force main, approximately 700 side sewers and the associated abandonment of septic tank/drainfield systems, relocation of 10,000 feet of water main, telemetry system for new sewer facilities, and a vacuum/pump station. \$4,374,700

(8) Castle Rock—sanitary sewer project—upgrade wastewater treatment plant by constructing a new treatment process, structures and equipment, new oxidation ditch, modernized headworks, disinfecting with ultraviolet, installation of a belt thickener, and press for solids and secondary clarifiers. \$655,000

(9) Chinook water district—domestic water project—construct a new package water filter plant \$1,425,000

(10) College Place—domestic water project—construct a 1.5 million gallon water storage reservoir, install a booster station, approximately 7,100 feet of 16 inch water transmission mains, three pressure reducing valve stations, and a second booster station in the Regency Park package system, telemetry improvements, and associated appurtenances. \$2,975,000

(11) Douglas county—storm sewer project—construction of a detention basin of approximately 35 acre feet, construction of an urban conveyance and water quality project that consists of construction of about 2,000 feet of closed conduit, 1,000 feet of open channel, and construction of a water quality treatment facility, and all appropriate appurtenances \$2,835,600

(12) Dupont—sanitary sewer project—replace approximately 6,600 feet of sanitary sewer line with manholes, 103 side sewers, and overlaying 4,200 feet of street. The city of DuPont will also purchase capacity from Pierce County allowing the transfer of flows for treatment to Pierce County \$1,985,600

(13) East Wenatchee water district—domestic water project—increase capacity and remedy leaking mains by replacing approximately one mile of 12 inch ductile iron transmission main \$490,875

(14) Eatonville—domestic water project—construct a membrane filtration system and use the existing disinfection system, install a booster pump station, additional well sources, basin modifications, and approximately 1,200 feet of transmission main to connect to the existing system \$807,500

(15) Edmonds—sanitary sewer project—lift station elimination and rehabilitation project includes elimination of lift station seven, demolish the facility and construct approximately 1,550 feet of gravity sewer line, and install

a new line from current location of lift station seven to lift station eight. Replace lift station eight, including upsizing of the wet well and replacement of all mechanical and electrical equipment and replacement and upsizing of approximately 450 feet of force main. \$1,216,903

(16) Enumclaw—sanitary sewer project—upgrade and expand the existing wastewater treatment plant by constructing a new headworks, install new extended aeration activated sludge basins, anaerobic/anoxic basins, and two additional secondary clarifiers. The city will also include construction of chemical facilities, enlarging laboratory area, sludge dewatering, and stabilization facilities and related appurtenances \$9,750,000

(17) Ephrata—sanitary sewer project—construction of approximately 2,400 feet of sanitary sewer main, 200 feet of side sewer pipe, eight manholes and appurtenances, and the rehabilitation of approximately one mile of access roadway in the port of Ephrata \$289,000

(18) Everett—sanitary sewer project—construct upgrades to the wastewater treatment plant that include: A headworks grit system, construction of two primary clarifiers, a new biofilter, new piping arrangements, modifications to the trickling filter pump station, installation of primary sludge grit removal equipment, sludge dispersion equipment, flow metering, new hypochlorite generation facilities, new scum collection and dewatering equipment, and minor upgrade of the north effluent pump station. \$10,000,000

(19) Freeland water district—domestic water project—solve the source and storage needs by constructing a new reservoir, connection of the new well to the new reservoir, connection of the new reservoir to the system, rehabilitation of the existing well number one, and all appropriate appurtenances \$308,030

(20) Gig Harbor—sanitary sewer project—upgrade to the wastewater treatment plant to improve its efficiency and effectiveness. In addition, an outfall extension into Colvos Passage, including a diffuser will be constructed. Project will result in a higher quality effluent being discharged to Puget Sound. \$10,000,000

(21) Goldendale—road project—reconstruct approximately 2,700 feet of East Collins Drive. This will include curb and gutters, storm drainage facilities, sewer line repair and replacement, water line replacement, and a 40 foot curb to curb road section consisting of two eleven foot travel lanes and two nine foot parking areas. \$827,316

(22) Highland water district—domestic water project—construct a 0.5 million gallon steel water tank and foundation, appurtenances such as water lines and valves, access road, and other site improvements as needed \$573,750

(23) Ilwaco—sanitary sewer project—replace approximately 2,000 feet of sanitary sewer lines and 2,250 feet of storm sewer lines, including contributing laterals. In addition, installation of new manholes, catch basins, and other related improvements would be made as part of the project \$774,000

(24) Jefferson County public utility district 1—domestic water project—extend water system to service the entire Marrowstone Island. Replacing individual wells with a public water supply. This will include installation of approximately 150,000 feet of water mains with accoutrements, a new 300,000 gallon storage tank, and expansion of existing treatment facilities. This will ensure a consistent source of potable water for the residents. \$2,000,000

(25) Jefferson County public utility district 1—sanitary sewer project—replace approximately 80 individual septic systems with a new community drainfield system, consisting of approximately 12 grinder pump stations, twin booster pump stations, two dosing tanks, and other components necessary to enable the system to function properly. Completion of this project will virtually eliminate the release of any untreated effluent into the wetland and Discovery Bay \$948,924

(26) Kennewick—domestic water project—upgrade the water treatment plant with installation of a new membrane filtration at the Columbia River plant and installation of an ultraviolet disinfection system at the Ranney collector number five. Other related improvements will be made to the system as part of the project. This project will bring the city into compliance with the department of health’s ground water under the influence (GWI) requirements. . \$10,000,000

(27) King county water district No. 111—domestic water project—construct four water treatment facilities. Each facility will include chlorine generation systems, backwash recycling facilities, SCADA systems at each plant, and any other related activities necessary to complete the construction. This will enable the district to be in compliance with iron and manganese MCLs and eliminate the hazards associated with chlorine. \$1,255,428

(28) King county water district No. 125—domestic water project—upgrade pressure zone 2 by installing two secondary source connections, including pressure-reducing valves, valves, piping, and appurtenances and approximately 150 feet of water main. The project will also include replacement of approximately 12,500 feet of undersized water main, including all valves, fittings, hydrants, and appurtenances and project area restoration as required. \$1,088,850

(29) Lake Forest Park—sanitary sewer project—installation of a series of extensions to the city of Lake Forest Park’s sanitary sewer system to provide service to residential areas currently not serviced. This will include construction of approximately 3.8 miles of sewer main extension including gravity sewer, pressure piping, service connections and side sewers, lift stations, grinder pump assemblies, surface restoration, temporary erosion and sedimentation control, and related work. \$4,656,000

(30) Leavenworth—domestic water project—reconstruct old reservoir on existing site, including new structural walls, new roof, and related appurtenances. Project will also include installation of a SCADA monitoring/radio telemetry control system \$1,400,000

(31) LOTT wastewater alliance—sanitary sewer project—construct four secondary clarifier mechanisms, replacement of RAS pumps, secondary scum pumping improvements, and motorized actuators. Upgrades to equipment and mechanisms will enable LOTT to meet increasing loads at the Budd Inlet wastewater treatment plant and improve the effluent quality \$4,278,404

(32) Malaga water district—domestic water project—construct a new 52,000 gallon partially buried concrete reservoir and connecting piping and install security fencing around tank. This project will enable the district to ensure a continuous safe water supply to the homes and businesses in the area \$161,500

(33) Manchester water district—domestic water project—upgrade a wide range of the water system. Project will include installation of a SCADA system

with all hardware, software, and backup equipment. Installation of a new flow meter at each wellhead and pump station. Distribution/transmission piping replacements and upgrades to the Mile Hill Road area, Yukon Harbor Drive and Southworth Drive. Installation of two interties in the South Street and Garfield Road area. Construction of two pressure-reducing stations located in the Beach Drive and Harper Hill areas \$970,870

(34) Mason county public utility district 1—domestic water project—source improvements and system rehabilitation to the newly acquired Arcadia Estates system. Project will include pump and controls for well number two, 24,000 gallon storage reservoir with draft fire hydrant, three booster pumps, two pressure tanks, pressure-reducing station, service meters, and three blow off assemblies. This will remove the red operating permit and ensure a safe and reliable source of potable water for the community \$95,950

(35) Mason county public utility district 1—domestic water project—rehabilitate the source of supply at the newly acquired Twanoh Heights water system. This project will include rehabilitation of well number one, installation of two pumps, abandonment of well number two per department of ecology rules, service meters and air release valves. This project will allow the community to have a continuous, safe and reliable water source. \$172,900

(36) Mason county public utility district 1—domestic water project—address system needs for the Madrona Beach water system by constructing a 11,500 gallon reservoir, booster station, site work/plumbing, service meters, and a source meter. This will enable the public utility district to comply with department of health requirements and remove a blue operating permit \$171,000

(37) Mason county public utility district 1—domestic water project—make improvements to the newly acquired Canal Beach water system. The improvements include drilling and testing a new well source, constructing a 20,000 gallon storage tank, piped system intertie, fire service line and hydrant, water services with new meters, and abandonment of existing well sources per department of ecology rules \$171,712

(38) Mason county public utility district 1—domestic water project—make improvements to the Minerva Terrace water system that will include drill and test well, integrate well into system, booster station with all appurtenances, 35,200 gallon reservoir, and a draft fire hydrant. This will enable the system to have the red operating permit to be lifted and comply with department of health rules. \$217,550

(39) Northeast Sammamish sewer/water district—domestic water project—construct a new water treatment plant, new 0.5 million gallon reservoir and pump station, new transmission water main, and new distribution main and associated minor improvements. The district will then be able to meet the federal arsenic level regulations and ensure a safe source of potable water for the community \$4,154,970

(40) Northshore utility district—sanitary sewer project—install approximately 2,445 feet of gravity sewer main, manholes, connection to the sanitary sewer system, and related restoration and appurtenances. In addition, the district will replace approximately 2,400 feet of asbestos concrete water mains. This will resolve the negative environmental and health impacts of the failing septic systems in the area \$814,634

(41) Northshore utility district—sanitary sewer project—install approximately 300 feet of gravity sewer main, manholes, connection to the sanitary sewer system, and related restoration and appurtenances. In addition, the district will replace approximately 300 feet of asbestos concrete water mains. This will resolve the negative environmental and health impacts of the failing septic systems in the area \$113,334

(42) Oak Harbor—domestic water project—replace existing water transmission mains being destroyed due to a highway project. The project includes construction of approximately 4,000 feet of transmission mains along Highway 20 just south of Deception Pass state park. Project will meet the city's foreseeable water requirements and provide sufficient capacity for the Naval Air Station—Whidbey. \$834,700

(43) Orchard Avenue irrigation district number 6—domestic water project—install approximately 19,100 feet of PVC pipe. Approximately 210 buried meter boxes, reconnect approximately 400 existing services, and all required valves and other fittings. Project will eliminate public health concern over potential lead contamination from lead joint pipe \$1,066,800

(44) Pierce County—road project—widen, reconstruct, and overlay the intersection of Canyon Road E and 176th Street E, which includes additional travel lanes in each direction and left and right turn lanes at the intersection, a new traffic signal system, traffic signal interconnect system, street lights, median, curb and gutter, concrete sidewalks, landscaping, undergrounding of utilities, storm drainage conveyance, storage, and treatment facilities. Project will increase carrying capacity and allow for economic development. \$2,942,000

(45) Pullman—sanitary sewer project—construct a new variable volume digester at the wastewater treatment plant, with an approximate capacity of 350,000 gallons. The work includes site preparation and construction of the digester, necessary piping modifications, and modifications to the existing plant control system. Project will enable the city to meet the environmental protection agency's SRT requirements. \$1,912,000

(46) Pullman—domestic water project—construct a well to replace well number 3. Included in the project will be the drilling of the replacement well, well pump, motor, controls, disinfection equipment, fluoride injection equipment, a well and chemical storage house, connection of transmission lines, and other related miscellaneous items and site work \$850,000

(47) Ridgefield—sanitary sewer project—construct a new pump station, install approximately 3,000 feet of force main, which will discharge directly into the treatment plant, and construct approximately 3,000 feet of gravity interceptor sewer. This project will enable the city to open up service to an area that is currently not served and allow for economic development \$1,718,000

(48) Ritzville—domestic water project—increase the city's water capacity from 1,200 to 2,000 gallons per minute by drilling a new well. This will also include installing the necessary pump and connections to the storage tank and construct a well house to protect the equipment. \$845,000

(49) Ronald wastewater district—sanitary sewer project—sewer extension to unsewered areas includes installation of approximately 2,700 feet PVC sewer main and approximately 2,000 feet PVC sewers in three separate areas of the district. All associated appurtenances will also be installed, such as manholes

and side sewer stubs. Approximately 1,100 sewer trunk main will be repaired. The streets and other public improvements that are disturbed during construction will be restored to city of Shoreline's standards \$1,021,700

(50) Samish water district—sanitary sewer project—upgrade its system by replacing pumps and controls at six sewage pump stations, replace controls at one sewage pump station, upgrade SCADA, and replace inline valves on existing sewer force main. This will ensure that the system operates within regulations. \$1,083,000

(51) Seattle—storm sewer project—increase capacity of the drainage system by installing approximately 1,760 feet of storm drain along South Trenton Street, 3rd Avenue South, and 4th Avenue South. Install 2,380 feet of storm drain along South Director Street and 7th Avenue South. The last part of the project will construct a new storm drain system on 8th Avenue South. These new drainage pipes will reduce flows to the combined sewer system and reduce the number of overflows. \$3,400,000

(52) Seattle—storm sewer project—upgrade two culverts in the lower reaches of Taylor Creek to remove fish barriers and construct a fish ladder to improve fish passage and control sediment transportation. Other related improvements will be made to the area as part of the project \$450,500

(53) Seattle—storm sewer project—construct two ponds that will include a 4 acre feet sediment collection pond, 2 acre feet decant pond, 750 feet of access road, 750 feet of decant piping, a gravel pump and its housing and controls, and 4,000 feet of landscaping around the new ponds. Additional related upgrades will be done to complete the project. \$1,832,600

(54) Skyway water/sewer district—domestic water project—replace and upsize the supply meter from the city of Seattle system and replace approximately 6,350 feet of asbestos water supply line. In addition, four new pressure zones interties will be installed to improve flow between pressure zones within the water/sewer district \$1,130,526

(55) Spokane—domestic water project—replace about 3,500 feet of riveted steel water transmission mains with ductile iron pipe. In addition, project will include all valves, connections, blowoffs, air valves, railroad crossing, and pavement restoration and traffic control. \$3,453,975

(56) Spokane—domestic water project—construct a 2 million gallon elevated steel tank with an accompanying booster station. This will include all piping, valves, telemetry, instrumentation, excavation and site preparation including landscaping, paving, and fencing \$2,232,950

(57) Spokane county—road project—construct a total of 8.3 miles of roadway from Havana Street to Forker Road and from Forker Road from Bigelow Gulch Road to Wellesley Road. The construction will provide for expanding the road to four traveled lanes plus eight foot shoulders to improve safety and traffic capacity. A center turn lane will be added at locations where vehicles routinely make left turns. Eight foot shoulders will be added to provide for safety of pedestrians and bicycles. \$10,000,000

(58) Stanwood—domestic water project—construct a 1 million gallon elevated water tank, water main, appurtenances, and equipment necessary to connect the new water tank to the existing system. Project will also install telemetry and control systems compatible with existing system, construction of a

Cedarhome booster pump station for filling the Cedarhome reservoir, and improvements to the sites such as grading, fencing, and landscaping

..... \$2,481,620

(59) Stevens County—solid waste project—expand municipal solid waste site by construction of an 11 acre lateral expansion, environmentally protective landfill lining and leachate collection system and construction of ancillary facilities such as perimeter roads. Leachate facilities will consist of piping, collection and conveyance facilities \$2,600,000

(60) Union Gap—sanitary sewer project—construct approximately 3,400 feet of sewer interceptor and 1,800 feet of sewer laterals in conjunction with new roadways in the Valley Mall Boulevard area \$676,429

(61) Washougal—sanitary sewer project—construct a redundant secondary clarifier adjacent to existing secondary clarifier, including piping connections to the existing clarifier distribution structure, scum pump station, and RAS/WAS pump room. Additional work will include RAS/WAS pump room modifications for installation of dedicated return and waste-activated sludge pumps, sidewalks, and site grading and all necessary electrical hardware and SCADA control modifications. Project will enable the city to meet their national pollution discharge elimination system permit requirements. \$794,000

(62) West Richland—sanitary sewer project—increase capacity by constructing a one million gallons per day biolac wastewater treatment facility, approximately 2,700 feet of sanitary sewer pipe, lift station, miscellaneous roadway patching, and site restoration. If additional funds are available, improvements to the facilities outfall structure will be designed along with facilities for sludge handling from the sewer maintenance program. Project will enable the city to meet their national pollution discharge elimination system permit requirements \$4,000,000

(63) Witworth water district 2—domestic water project—The district will solve the area problems by installing approximately 27,090 of water lines together with valves and appurtenances, connection to the existing system, 15 hydrants, pavement repair, and other surface restoration. In addition, installation of a two million gallon steel reservoir and a 1,700 gallons per minute booster pump station and various piping, appurtenances, pumps, controls, security, electrical, and connection to existing system \$2,502,300

(64) Yakima—sanitary sewer project—The project will be done in two phases. Phase I will install approximately 6,640 feet of sewer main trunk line in River Road from North 16th Avenue to North 40th Avenue. Phase II will install 5,500 feet of sewer main trunk line in River Road from North 6th Avenue to North 16th Avenue if public works trust fund loan funds remain and private development proceeds. The project will help prevent further loss of major employers by providing the transportation and utility infrastructure necessary to maintain competitive operations. \$2,307,000

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House January 26, 2005.

Passed by the Senate March 23, 2005.

Approved by the Governor March 28, 2005.

Filed in Office of Secretary of State March 28, 2005.

CHAPTER 9

[Engrossed Senate Bill 5606]

NATIONAL GUARD

AN ACT Relating to activation of the national guard; amending RCW 38.08.040 and 38.24.010; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 38.08.040 and 1993 c 263 s 1 are each amended to read as follows:

In event of war, insurrection, rebellion, invasion, tumult, riot, mob, or organized body acting together by force with intent to commit a felony or to offer violence to persons or property, or by force and violence to break and resist the laws of this state, or the United States, or in case of the imminent danger of the occurrence of any of said events, or at the lawful request of competent state or local authority in support of enforcement of controlled substance statutes, or whenever responsible civil authorities shall, for any reason, fail to preserve law and order, or protect life or property, or the governor believes that such failure is imminent, or in event of public disaster, or when otherwise required for the public health, safety, or welfare, or to perform any military duty authorized by state law, or to prepare for or recover from any of these events or the consequences thereof, the governor shall have power to order the organized militia of Washington, or any part thereof, into active service of the state to execute the laws, and to perform such duty as the governor shall deem proper.

Sec. 2. RCW 38.24.010 and 1991 c 43 s 4 are each amended to read as follows:

All bills, claims and demands for military purposes shall be certified or verified and audited in the manner prescribed by regulations promulgated by the governor and shall be paid by the state treasurer from funds available for that purpose. In all cases where the organized militia, or any part of the organized militia, is called into the service of the state to ~~((execute or enforce the laws or in case of war, riot, insurrection, invasion, breach of the peace, public disaster, or the imminent danger of the occurrence of any of these events))~~ perform duties under RCW 38.08.040, except for anticipated planning, training, exercises, and other administrative duties that are not of an emergent nature, warrants for allowed pay and expenses for such services or compensation for injuries or death shall be drawn upon the general fund of the state treasury and paid out of any moneys in said fund not otherwise appropriated. All such warrants shall be the obligation of the state and shall bear interest at the legal rate from the date of their presentation for payment.

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate March 14, 2005.

Passed by the House March 18, 2005.

Approved by the Governor March 28, 2005.
Filed in Office of Secretary of State March 28, 2005.

CHAPTER 10

[Senate Bill 5993]

CRIME VICTIMS' COMPENSATION—FUNDING

AN ACT Relating to funding for crime victims' compensation; adding new sections to 2003 1st sp.s. c 25 (unmodified); making appropriations; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to 2003 1st sp.s. c 25 (unmodified) to read as follows:

The sum of three million six hundred twenty-seven thousand dollars is appropriated for fiscal year ending June 30, 2005, from the state public safety and education account to the department of labor and industries for the additional costs incurred by the department in the crime victims compensation program.

NEW SECTION. Sec. 2. A new section is added to 2003 1st sp.s. c 25 (unmodified) to read as follows:

The sum of three million six hundred twenty-seven thousand dollars is appropriated for fiscal year ending June 30, 2005, from the state general fund to the state public safety and education account for the additional costs incurred by the department of labor and industries in the crime victims compensation program.

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate March 11, 2005.

Passed by the House March 18, 2005.

Approved by the Governor March 28, 2005.

Filed in Office of Secretary of State March 28, 2005.

CHAPTER 11

[Senate Bill 5794]

CIGARETTE TAXATION AGREEMENT

AN ACT Relating to authorizing a cigarette taxation agreement between the state of Washington and the Puyallup Indian Tribe; amending RCW 82.08.0316 and 82.12.0316; adding a new section to chapter 43.06 RCW; adding a new section to chapter 82.24 RCW; creating a new section; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. In 2001, the legislature enacted Engrossed Substitute Senate Bill No. 5372, which authorized the governor to enter into cigarette contracts with fourteen Indian tribes. In subsequent sessions, the legislature increased to twenty-one the number of tribes with whom the governor may negotiate under the terms of RCW 43.06.460. The legislature finds that this effort has been effective, as measured by the success of the existing agreements.

The legislature further finds the agreements resolved decades of conflict between the state and tribes over the sale of contraband cigarettes to non-Indians; benefited the tribes through tribal tax revenues; benefited the state because cigarettes are stamped and taxed; enhanced public health because access to low-priced cigarettes is reduced; improved law and order; and reduced the competitive advantage gained through the sale of tax-free cigarettes.

The 2001 legislation and its later amendments did not encompass the Puyallup Tribe of Indians within its scope due to the very different nature of the cigarette trade on the Puyallup Indian reservation. The legislature therefore intends to address the special circumstances on the Puyallup Indian reservation by recognizing the substantial distinctions and enacting legislation authorizing a cigarette tax agreement with the tribe that differs from the contracts entered into under RCW 43.06.460. Section 2 of this act provides the governor authority to enter into an agreement and sets forth the general framework for the agreement.

NEW SECTION. Sec. 2. A new section is added to chapter 43.06 RCW to read as follows:

(1) The governor may enter into a cigarette tax agreement with the Puyallup Tribe of Indians concerning the sale of cigarettes, subject to the limitations in this section. The legislature intends to address the uniqueness of the Puyallup Indian reservation and its selling environment through pricing and compliance strategies, rather than through the imposition of equivalent taxes. It is the legislature's intent (a) that an increase in prices through a flat tax will reduce much of the competitive advantage that has historically existed due to the discrepancy in the difference between state and tribal taxes, and (b) that the tribal retailers can remain in business under the changed circumstances. The governor may delegate the authority to negotiate a cigarette tax agreement with the Puyallup Tribe to the department of revenue. The department of revenue shall consult with the liquor control board during the negotiations.

(2) Any agreement must require the tribe to impose a tax of eleven dollars and seventy-five cents on each carton of cigarettes, with ten packs a carton and twenty cigarettes per pack being the industry standard. This tax shall be prorated for cartons and packs that are nonstandard. This tribal tax is in lieu of the combined state and local sales and use taxes, and state cigarette taxes, and as such these state taxes are not imposed during the term of the agreement on any transaction governed by the agreement. The tribal tax shall increase or decrease by the same dollar amount as any increase or decrease in the state cigarette tax.

(3) The agreement must include a provision requiring the tribe to transmit thirty percent of the tribal tax revenue on all cigarette sales to the state. The funds shall be transmitted to the state treasurer on a quarterly basis for deposit by the state treasurer into the general fund. The remaining tribal tax revenue must be used for essential government services, as that term is defined in RCW 43.06.455.

(4) The agreement is limited to retail sales in which Indian retailers make delivery and physical transfer of possession of the cigarettes from the seller to the buyer within Indian country, and are not in regard to transactions by non-Indian retailers. In addition, agreements shall provide that retailers shall not sell or give, or permit to be sold or given, cigarettes to any person under the age of eighteen years.

(5)(a) The agreement must include a provision to price and sell the cigarettes so that the retail selling price is not less than the price paid by the retailer for the cigarettes.

(b) The tribal tax is in addition to the retail selling price.

(c) The agreement must include a provision to assure the price paid to the retailer includes the tribal tax, as evidenced by the tribe's cigarette stamp.

(d) If the tribe is acting as a wholesaler to tribal retailers, the retail selling price must not be less than the price the tribe paid for such cigarettes plus the tribal tax, as evidenced by the tribe's cigarette stamp.

(6)(a) The agreement must include provisions regarding enforcement and compliance by the tribe in regard to enrolled tribal members who sell cigarettes and shall describe the individual and joint responsibilities of the tribe, the department of revenue, and the liquor control board.

(b) The agreement must include provisions for tax administration and compliance, such as transport and notice requirements, inspection procedures, stamping requirements, recordkeeping, and audit requirements.

(c) The agreement must include provisions for sharing of information among the tribe, the department of revenue, and the liquor control board.

(7) The agreement must provide that all cigarettes possessed or sold by a tribal retailer shall bear a tribal cigarette stamp obtained by wholesalers from a bank or other suitable stamp vendor and applied to the cigarettes. Tribal stamps must have serial numbers or some other discrete identification so that each stamp can be traced to its source.

(8) The agreement must provide that retailers shall purchase cigarettes only from wholesalers or manufacturers licensed to do business in the state of Washington.

(9) The agreement must be for a renewable period of no more than eight years.

(10) The agreement must include provisions to resolve disputes using a nonjudicial process, such as mediation, and shall include a dispute resolution protocol. The protocol shall include a procedure for notifying the other party that a violation has occurred, a procedure for establishing whether a violation has in fact occurred, an opportunity to correct such violation, and a provision providing for termination of the agreement should the violation fail to be resolved through this process, such termination subject to mediation should the terms of the agreement so allow. An agreement must provide for termination of the agreement if resolution of a dispute does not occur within twenty-four months from the time notification of a violation has occurred. Intervening violations do not extend this time period.

(11) The agreement may not include any provisions that impact the state's share of the master settlement agreement, and as such this agreement does not authorize negotiation regarding a redistribution of the state's proceeds under the master settlement agreement.

(12) Information received by the state or open to state review under the terms of an agreement is subject to RCW 82.32.330.

(13) It is the intent of the legislature that the liquor control board and the department of revenue continue the division of duties and shared authority under chapter 82.24 RCW.

(14) For purposes of this section:

(a) "Indian country" has the same meaning as in chapter 82.24 RCW.

(b) "Indian retailer" or "retailer" means (i) a retailer wholly owned and operated by an Indian tribe or (ii) a business wholly owned and operated by an enrolled tribal member and licensed by the tribe.

(c) "Indian tribe" or "tribe" means the Puyallup Tribe of Indians, which is a federally recognized Indian tribe located within the geographical boundaries of the state of Washington.

Sec. 3. RCW 82.08.0316 and 2001 c 235 s 4 are each amended to read as follows:

The tax levied by RCW 82.08.020 does not apply to sales of cigarettes by an Indian retailer during the effective period of a cigarette tax contract subject to RCW 43.06.455 or a cigarette tax agreement under section 2 of this act.

Sec. 4. RCW 82.12.0316 and 2001 c 235 s 5 are each amended to read as follows:

The provisions of this chapter shall not apply in respect to the use of cigarettes sold by an Indian retailer during the effective period of a cigarette tax contract subject to RCW 43.06.455 or a cigarette tax agreement under section 2 of this act.

NEW SECTION. Sec. 5. A new section is added to chapter 82.24 RCW to read as follows:

The taxes imposed by this chapter do not apply to the sale, use, consumption, handling, possession, or distribution of cigarettes by an Indian retailer during the effective period of a cigarette tax agreement under section 2 of this act.

NEW SECTION. Sec. 6. (1) On January 5, 2005, it was announced that a cigarette tax agreement had been reached between the state of Washington and the Puyallup Indian Tribe. Before being signed by the governor, the legislature must provide authorization to the governor to sign such an agreement. Because the state and the Puyallup Indian Tribe have reached an agreement in principle, time for implementation is of the essence.

(2) This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate March 9, 2005.

Passed by the House March 25, 2005.

Approved by the Governor April 5, 2005.

Filed in Office of Secretary of State April 5, 2005.

CHAPTER 12

[Engrossed Substitute Senate Bill 5509]

HIGH-PERFORMANCE PUBLIC BUILDINGS

AN ACT Relating to high-performance green buildings; adding new sections to chapter 28A.150 RCW; adding a new section to chapter 28B.10 RCW; adding a new section to chapter 39.04 RCW; and adding a new chapter to Title 39 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) The legislature finds that public buildings can be built and renovated using high-performance methods that save money, improve school performance, and make workers more productive. High-performance public buildings are proven to increase student test scores, reduce worker absenteeism, and cut energy and utility costs.

(2) It is the intent of the legislature that state-owned buildings and schools be improved by adopting recognized standards for high-performance public buildings and allowing flexible methods and choices in how to achieve those standards. The legislature also intends that public agencies and public school districts shall document costs and savings to monitor this program and ensure that economic, community, and environmental goals are achieved each year, and that an independent performance review be conducted to evaluate this program and determine the extent to which the results intended by this chapter are being met.

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

(1) "Department" means the department of general administration.

(2) "High-performance public buildings" means high-performance public buildings designed, constructed, and certified to a standard as identified in this chapter.

(3) "Institutions of higher education" means the state universities, the regional universities, The Evergreen State College, the community colleges, and the technical colleges.

(4) "LEED silver standard" means the United States green building council leadership in energy and environmental design green building rating standard, referred to as silver standard.

(5)(a) "Major facility project" means: (i) A construction project larger than five thousand gross square feet of occupied or conditioned space as defined in the Washington state energy code; or (ii) a building renovation project when the cost is greater than fifty percent of the assessed value and the project is larger than five thousand gross square feet of occupied or conditioned space as defined in the Washington state energy code.

(b) "Major facility project" does not include: (i) Projects for which the department, public school district, or other applicable agency and the design team determine the LEED silver standard or the Washington sustainable school design protocol to be not practicable; or (ii) transmitter buildings, pumping stations, hospitals, research facilities primarily used for sponsored laboratory experimentation, laboratory research, or laboratory training in research methods, or other similar building types as determined by the department. When the LEED silver standard is determined to be not practicable for a project, then it must be determined if any LEED standard is practicable for the project. If LEED standards or the Washington sustainable school design protocol are not followed for the project, the public school district or public agency shall report these reasons to the department.

(6) "Public agency" means every state office, officer, board, commission, committee, bureau, department, and public higher education institution.

(7) "Public school district" means a school district eligible to receive state basic education moneys pursuant to RCW 28A.150.250 and 28A.150.260.

(8) "Washington sustainable school design protocol" means the school design protocol and related information developed by the state board of education and the office of the superintendent of public instruction, in conjunction with school districts and the school facilities advisory board.

NEW SECTION. Sec. 3. (1) All major facility projects of public agencies receiving any funding in a state capital budget, or projects financed through a financing contract as defined in RCW 39.94.020, must be designed, constructed, and certified to at least the LEED silver standard. This subsection applies to major facility projects that have not entered the design phase prior to the effective date of this section and to the extent appropriate LEED silver standards exist for that type of building or facility.

(2) All major facility projects of any entity other than a public agency or public school district receiving any funding in a state capital budget must be designed, constructed, and certified to at least the LEED silver standard. This subsection applies to major facility projects that have not entered the grant application process prior to the effective date of this section and to the extent appropriate LEED silver standards exist for that type of building or facility.

(3)(a) Public agencies, under this section, shall monitor and document ongoing operating savings resulting from major facility projects designed, constructed, and certified as required under this section.

(b) Public agencies, under this section, shall report annually to the department on major facility projects and operating savings.

(4) The department shall consolidate the reports required in subsection (3) of this section into one report and report to the governor and legislature by September 1st of each even-numbered year beginning in 2006 and ending in 2016. In its report, the department shall also report on the implementation of this chapter, including reasons why the LEED standard was not used as required by section 2 (5)(b) of this act. The department shall make recommendations regarding the ongoing implementation of this chapter, including a discussion of incentives and disincentives related to implementing this chapter.

NEW SECTION. Sec. 4. (1) All major facility projects of public school districts receiving any funding in a state capital budget must be designed and constructed to at least the LEED silver standard or the Washington sustainable school design protocol. To the extent appropriate LEED silver or Washington sustainable school design protocol standards exist for the type of building or facility, this subsection applies to major facility projects that have not received project approval from the superintendent of public instruction prior to: (a) July 1, 2006, for volunteering school districts; (b) July 1, 2007, for class one school districts; and (c) July 1, 2008, for class two school districts.

(2) Public school districts under this section shall: (a) Monitor and document appropriate operating benefits and savings resulting from major facility projects designed and constructed as required under this section for a minimum of five years following local board acceptance of a project receiving state funding; and (b) report annually to the superintendent of public instruction. The form and content of each report must be mutually developed by the office of the superintendent of public instruction in consultation with school districts.

(3) The superintendent of public instruction shall consolidate the reports required in subsection (2) of this section into one report and report to the

governor and legislature by September 1st of each even-numbered year beginning in 2006 and ending in 2016. In its report, the superintendent of public instruction shall also report on the implementation of this chapter, including reasons why the LEED standard or Washington sustainable school design protocol was not used as required by section 2(5)(b) of this act. The superintendent of public instruction shall make recommendations regarding the ongoing implementation of this chapter, including a discussion of incentives and disincentives related to implementing this chapter.

(4) The state board of education, in consultation with the superintendent of public instruction, shall develop and issue guidelines for administering this chapter for public school districts. The purpose of the guidelines is to define a procedure and method for employing and verifying compliance with the LEED silver standard or the Washington sustainable school design protocol.

(5) The superintendent of public instruction shall utilize the school facilities advisory board as a high-performance buildings advisory committee comprised of affected public schools, the state board of education, the superintendent of public instruction, the department, and others at the superintendent of public instruction's discretion to provide advice on implementing this chapter. Among other duties, the advisory committee shall make recommendations regarding an education and training process and an ongoing evaluation or feedback process to help the superintendent of public instruction and the state board of education implement this chapter.

NEW SECTION. Sec. 5. On or before January 1, 2009, the department and the superintendent of public instruction shall summarize the reports submitted under sections 3(4) and 4(3) of this act and submit the individual reports to the legislative committees on capital budget and ways and means for review of the program's performance and consideration of any changes that may be needed to adapt the program to any new or modified standards for high-performance buildings that meet the intent of this chapter.

NEW SECTION. Sec. 6. (1)(a) The department, in consultation with affected public agencies, shall develop and issue guidelines for administering this chapter for public agencies. The purpose of the guidelines is to define a procedure and method for employing and verifying activities necessary for certification to at least the LEED silver standard for major facility projects.

(b) The department and the office of the superintendent of public instruction shall amend their fee schedules for architectural and engineering services to accommodate the requirements in the design of major facility projects under this chapter.

(c) The department and the office of the superintendent of public instruction shall procure architecture and engineering services consistent with chapter 39.80 RCW.

(d) Major facility projects designed to meet standards identified in this chapter must include building commissioning as a critical cost-saving part of the construction process. This process includes input from the project design and construction teams and the project ownership representatives.

(e) As provided in the request for proposals for construction services, the operating agency shall hold a preproposal conference for prospective bidders to

discuss compliance with and achievement of standards identified in this chapter for prospective respondents.

(2) The department shall create a high-performance buildings advisory committee comprised of representatives from the design and construction industry involved in public works contracting, personnel from the affected public agencies responsible for overseeing public works projects, the state board of education, the office of the superintendent of public instruction, and others at the department's discretion to provide advice on implementing this chapter. Among other duties, the advisory committee shall make recommendations regarding an education and training process and an ongoing evaluation or feedback process to help the department implement this chapter.

(3) The department and the state board of education shall adopt rules to implement this section.

NEW SECTION. Sec. 7. A new section is added to chapter 28A.150 RCW to read as follows:

(1) In adopting implementation rules, the state board of education, in consultation with the superintendent of public instruction and the department of general administration, shall review and modify the current requirement for an energy conservation report review by the department of general administration as provided in WAC 180-27-075.

(2) In adopting implementation rules, the state board of education, in consultation with the superintendent of public instruction shall:

(a) Review and modify the current requirements for value engineering, constructability review, and building commissioning as provided in WAC 180-27-080;

(b) Review private and public utility providers' capacity and financial/technical assistance programs for affected public school districts to monitor and report utility consumption for purposes of reporting to the superintendent of public instruction as provided in section 4 of this act;

(c) Coordinate with the department of general administration, the state board of health, the department of ecology, federal agencies, and other affected agencies as appropriate in their consideration of rules to implement this section.

NEW SECTION. Sec. 8. A new section is added to chapter 28B.10 RCW to read as follows:

Institutions of higher education must comply with high-performance public building requirements under sections 1 through 3 and 6 of this act.

NEW SECTION. Sec. 9. A new section is added to chapter 28A.150 RCW to read as follows:

Public school districts must comply with high-performance public building requirements under sections 1, 2, 4, 6, and 7 of this act.

NEW SECTION. Sec. 10. A member of the design or construction teams may not be held liable for the failure of a major facility project to meet the LEED silver standard or other LEED standard established for the project as long as a good faith attempt was made to achieve the LEED standard set for the project.

NEW SECTION. Sec. 11. A new section is added to chapter 39.04 RCW to read as follows:

For purposes of determining compliance with chapter 39.— RCW (sections 1 through 6, 10, and 12 through 14 of this act), the department of general administration shall credit the project for using wood products with a credible third party sustainable forest certification or from forests regulated under chapter 76.09 RCW, the Washington forest practices act.

NEW SECTION. Sec. 12. Except as provided in this section, affordable housing projects funded out of the state capital budget are exempt from the provisions of this chapter. On or before July 1, 2008, the department of community, trade, and economic development shall identify, implement, and apply a sustainable building program for affordable housing projects that receive housing trust fund (under chapter 43.185 RCW) funding in a state capital budget. The department of community, trade, and economic development shall not develop its own sustainable building standard, but shall work with stakeholders to adopt an existing sustainable building standard or criteria appropriate for affordable housing. Any application of the program to affordable housing, including any monitoring to track the performance of either sustainable features or energy standards or both, is the responsibility of the department of community, trade, and economic development. Beginning in 2009 and ending in 2016, the department of community, trade, and economic development shall report to the department as required under section 3(3)(b) of this act.

NEW SECTION. Sec. 13. It is the intent and an established goal of the LEED program as authored by the United States green building council to increase demand for building materials and products that are extracted and manufactured locally, thereby reducing the environmental impacts and to support the local economy. Therefore, it is the intent of the legislature to emphasize this defined goal and establish a priority to use Washington state based resources, building materials, products, industries, manufacturers, and other businesses to provide economic development to Washington state and to meet the objectives of this chapter.

NEW SECTION. Sec. 14. The joint legislative audit and review committee, or its successor legislative agency, shall conduct a performance review of the high-performance buildings program established under this chapter.

(1) The performance audit shall include, but not be limited to:

(a) The identification of the costs of implementation of high-performance building standards in the design and construction of major facility projects subject to this chapter;

(b) The identification of operating savings attributable to the implementation of high-performance building standards, including but not limited to savings in energy, utility, and maintenance costs;

(c) The identification of any impacts of high-performance buildings standards on worker productivity and student performance; and

(d) An evaluation of the effectiveness of the high-performance building standards established under this chapter, and recommendations for any changes in those standards that may be supported by the committee's findings.

(2) The committee shall make a preliminary report of its findings and recommendations on or before December 1, 2010, and a final report on or before July 1, 2011.

NEW SECTION. Sec. 15. Sections 1 through 6, 10, and 12 through 14 of this act constitute a new chapter in Title 39 RCW.

Passed by the Senate March 11, 2005.

Passed by the House March 30, 2005.

Approved by the Governor April 8, 2005.

Filed in Office of Secretary of State April 8, 2005.

CHAPTER 13

[Senate Bill 5148]

SLANDER OF A WOMAN

AN ACT Relating to repealing the crime of slander of a woman; and repealing RCW 9.58.110 and 9.58.120.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The following acts or parts of acts are each repealed:

(1) RCW 9.58.110 (Slander of woman) and 1909 c 249 s 181; and

(2) RCW 9.58.120 (Testimony necessary to convict) and 1927 c 90 s 1 & 1909 c 249 s 182.

Passed by the Senate February 16, 2005.

Passed by the House March 30, 2005.

Approved by the Governor April 8, 2005.

Filed in Office of Secretary of State April 8, 2005.

CHAPTER 14

[Senate Bill 5356]

STATE ROUTE NUMBER 290

AN ACT Relating to the alignment of state route number 290; and amending RCW 47.17.520.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 47.17.520 and 1977 ex.s. c 6 s 1 are each amended to read as follows:

A state highway to be known as state route number 290 is established as follows:

Beginning at a junction with state route number ((2)) 90 in Spokane, thence northeasterly by way of Millwood, Trentwood, and Newman Lake to the termination of Idaho state highway number 53 at the Washington-Idaho boundary line(~~;~~~~also~~

~~Beginning at a junction with state route number 90 in Spokane, thence northerly to a junction with state route number 290 in the vicinity of Hamilton Street)).~~

Passed by the Senate February 25, 2005.

Passed by the House March 30, 2005.

Approved by the Governor April 8, 2005.

Filed in Office of Secretary of State April 8, 2005.

CHAPTER 15

[Senate Bill 5433]

COMMISSION ON JUDICIAL CONDUCT

AN ACT Relating to the membership of the commission on judicial conduct; amending RCW 2.64.020; and providing a contingent effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 2.64.020 and 1989 c 367 s 2 are each amended to read as follows:

The commission shall consist of eleven members. One member shall be a judge selected by and from the court of appeals judges; one member shall be a judge selected by and from the superior court judges; one member shall be a judge selected by and from the (~~district~~) limited jurisdiction court judges; two members shall be selected by the state bar association and be admitted to the practice of law in this state; and six members shall be nonlawyers appointed by the governor. The term of each member of the commission shall be four years.

NEW SECTION. **Sec. 2.** This act takes effect January 1, 2006, if the proposed amendment to Article IV, section 31 of the state Constitution (Senate Joint Resolution No. . . . , changing the membership of the commission on judicial conduct) is validly submitted to and is approved and ratified by the voters at the next general election. If the proposed amendment is not approved and ratified, this act is void in its entirety.

Passed by the Senate March 8, 2005.

Passed by the House March 30, 2005.

Approved by the Governor April 8, 2005.

Filed in Office of Secretary of State April 8, 2005.

CHAPTER 16

[House Bill 1007]

COMMEMORATIVE WORKS ACCOUNT

AN ACT Relating to establishing a commemorative works account for the department of general administration; reenacting and amending RCW 43.79A.040; and adding a new section to chapter 43.19 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. **Sec. 1.** A new section is added to chapter 43.19 RCW to read as follows:

(1) The commemorative works account is created in the custody of the state treasurer and shall be used by the department of general administration for the ongoing care, maintenance, and repair of commemorative works on the state capitol grounds. Only the director or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not necessary for expenditures.

(2) For purposes of this section, "state capitol grounds" means buildings and land owned by the state and otherwise designated as state capitol grounds, including the west capitol campus, the east capitol campus, the north capitol campus, the Tumwater campus, the Lacey campus, Sylvester Park, Centennial Park, the Old Capitol Building, and Capitol Lake.

Sec. 2. RCW 43.79A.040 and 2004 c 246 s 8 and 2004 c 58 s 10 are each reenacted and amended to read as follows:

(1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury.

(2) All income received from investment of the treasurer's trust fund shall be set aside in an account in the treasury trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment 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)(a) Monthly, the state treasurer shall distribute the earnings credited to the investment income account to the state general fund except under (b) and (c) of this subsection.

(b) The following accounts and funds shall receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The Washington promise scholarship account, the college savings program account, the Washington advanced college tuition payment program account, the agricultural local fund, the American Indian scholarship endowment fund, the students with dependents grant account, the basic health plan self-insurance reserve account, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the Washington international exchange scholarship endowment fund, the developmental disabilities endowment trust fund, the energy account, the fair fund, the fruit and vegetable inspection account, the future teachers conditional scholarship account, the game farm alternative account, the grain inspection revolving fund, the juvenile accountability incentive account, the law enforcement officers' and fire fighters' plan 2 expense fund, the local tourism promotion account, the produce railcar pool account, the rural rehabilitation account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the sulfur dioxide abatement account, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund account, the Washington horse racing commission class C purse fund account, and the Washington horse racing commission operating account (earnings from the Washington horse racing commission operating account must be credited to the Washington horse racing commission class C purse fund account). However, the earnings to be distributed shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(c) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advanced right of way revolving fund, the advanced environmental mitigation revolving account, the city and county advance right-of-way revolving fund, the federal narcotics asset forfeitures

account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

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

Passed by the House March 4, 2005.

Passed by the Senate April 5, 2005.

Approved by the Governor April 12, 2005.

Filed in Office of Secretary of State April 12, 2005.

CHAPTER 17

[Substitute House Bill 1075]

NURSING CARE QUALITY ASSURANCE COMMISSION

AN ACT Relating to the nursing care quality assurance commission; and amending RCW 18.79.070.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 18.79.070 and 1994 sp.s. c 9 s 407 are each amended to read as follows:

(1) The state nursing care quality assurance commission is established, consisting of ~~((eleven))~~ fifteen members to be appointed by the governor to four-year terms. The governor shall consider nursing members who are recommended for appointment by the appropriate professional associations in the state. No person may serve as a member of the commission for more than two consecutive full terms.

(2) There must be ~~((three))~~ seven registered nurse members, two advanced registered nurse practitioner members, three licensed practical nurse members, ~~((two))~~ and three public members ~~((and one nonvoting midwife member licensed under chapter 18.50 RCW,))~~ on the commission. Each member of the commission must be a citizen of the United States and a resident of this state.

(3)(a) Registered nurse members of the commission must:

~~((a))~~ (i) Be licensed as registered nurses under this chapter; and

~~((b))~~ (ii) Have had at least ~~((five))~~ three years' experience in the active practice of nursing and have been engaged in that practice within two years of appointment.

(b) In addition:

(i) At least one member must be on the faculty at a four-year university nursing program;

(ii) At least one member must be on the faculty at a two-year community college nursing program;

(iii) At least two members must be staff nurses providing direct patient care;
and

(iv) At least one member must be a nurse manager or a nurse executive.

(4) Advanced registered nurse practitioner members of the commission must:

(a) Be licensed as advanced registered nurse practitioners under this chapter; and

(b) Have had at least ~~((five))~~ three years' experience in the active practice of advanced registered nursing and have been engaged in that practice within two years of appointment.

(5) Licensed practical nurse members of the commission must:

(a) Be licensed as licensed practical nurses under this chapter; and

(b) Have had at least ~~((five))~~ three years' actual experience as a licensed practical nurse and have been engaged in practice as a practical nurse within two years of appointment.

(6) Public members of the commission may not be a member of any other health care licensing board or commission, or have a fiduciary obligation to a facility rendering health services regulated by the commission, or have a material or financial interest in the rendering of health services regulated by the commission.

~~((7) The nonvoting licensed midwife member of the commission must:~~

~~(a) Be licensed as a midwife under chapter 18.50 RCW; and~~

~~(b) Have had at least five years' actual experience as a licensed midwife and have been engaged in practice as a midwife within two years of appointment.))~~

In appointing the initial members of the commission, it is the intent of the legislature that, to the extent possible, the governor appoint the existing members of the board of nursing and the board of practical nursing repealed under chapter 9, Laws of 1994 sp. sess. The governor may appoint initial members of the commission to staggered terms of from one to four years. Thereafter, all members shall be appointed to full four-year terms. Members of the commission hold office until their successors are appointed.

When the secretary appoints pro tem members, reasonable efforts shall be made to ensure that at least one pro tem member is a registered nurse who is currently practicing and, in addition to meeting other minimum qualifications, has graduated from an associate or baccalaureate nursing program within three years of appointment.

Passed by the House March 7, 2005.

Passed by the Senate April 4, 2005.

Approved by the Governor April 12, 2005.

Filed in Office of Secretary of State April 12, 2005.

CHAPTER 18

[House Bill 1086]

COMMERCIAL FEED

AN ACT Relating to commercial feed; amending RCW 15.53.901, 15.53.9013, 15.53.9014, 15.53.9014, 15.53.9016, 15.53.9018, 15.53.9024, and 15.53.9044; adding a new section to chapter 15.53 RCW; repealing RCW 15.53.9053; providing effective dates; providing an expiration date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 15.53.901 and 1995 c 374 s 33 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter.

(1) "Brand name" means a word, name, symbol, or device, or any combination thereof, identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

(2) "Commercial feed" means all materials or combination of materials that are distributed or intended for distribution for use as feed or for mixing in feed, unless such materials are specifically exempted. Unmixed whole seeds and physically altered entire unmixed seeds, when such whole seeds or physically altered seeds are not chemically changed or not adulterated within the meaning of RCW 15.53.902, are exempt. The department by rule may exempt from this definition, or from specific provisions of this chapter, commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when such commodities, compounds, or substances are not intermixed with other materials, and are not adulterated within the meaning of RCW 15.53.902.

(3) "Contract feeder" means a person who is an independent contractor and feeds commercial feed to animals pursuant to a contract whereby such commercial feed is supplied, furnished, or otherwise provided to such person and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product.

(4) "Customer-formula feed" means commercial feed that consists of a mixture of commercial feeds or feed ingredients, or both, each batch of which is manufactured according to the instructions of the final purchaser.

(5) "Department" means the department of agriculture of the state of Washington or its duly authorized representative.

(6) "Director" means the director of the department or a duly authorized representative.

(7) "Distribute" means to offer for sale, sell, exchange or barter, commercial feed; or to supply, furnish, or otherwise provide commercial feed to a contract feeder.

(8) "Distributor" means a person who distributes.

(9) "Drug" means an article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than people and articles, other than feed intended to affect the structure or a function of the animal body.

(10) (~~"Exempt buyer" means a licensee who has agreed to be responsible for reporting tonnage and paying inspection fees for all commercial feeds they distribute. An exempt buyer must apply for exempt buyer status with the department. The department shall maintain a list of all exempt buyers and make the list available on request.~~) "Facility" means any place where a commercial feed is manufactured, repackaged, sold, transloaded, or stored for later distribution.

(11) "Feed ingredient" means each of the constituent materials making up a commercial feed.

(12) "Final purchaser" means a person who purchases commercial feed to feed to animals in his or her care.

(13) "Initial distributor" means a person who first distributes a commercial feed in or into this state.

(14) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.

(15) "Labeling" means all labels and other written, printed, or graphic matter: (a) Upon a commercial feed or any of its containers or wrappers; or (b) accompanying such commercial feed.

(16) "Licensee" means a person who holds a commercial feed license as prescribed in this chapter.

(17) "Manufacture" means to grind, mix or blend, or further process a commercial feed for distribution.

(18) "Medicated feed" means a commercial feed containing a drug or other medication.

(19) "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

(20) "Official sample" means a sample of feed taken by the department, obtained and analyzed as provided in RCW 15.53.9024 (3), (5), or (6).

(21) "Percent" or "percentage" means percentage by weight.

(22) "Person" means an individual, firm, partnership, corporation, or association.

(23) "Pet" means a domesticated animal normally maintained in or near the household of the owner of the pet.

(24) "Pet food" means a commercial feed prepared and distributed for consumption by pets.

(25) "Product name" means the name of the commercial feed that identifies it as to kind, class, or specific use.

(26) "Responsible buyer" means a licensee who is not the final purchaser of a commercial feed and has agreed to be responsible for reporting tonnage and paying inspection fees for all commercial feeds they distribute.

(27) "Retail" means to distribute to the final purchaser.

~~((27))~~ (28) "Sell" or "sale" includes exchange.

~~((28))~~ (29) "Specialty pet" means a domesticated animal pet normally maintained in a cage or tank, such as, but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes, and turtles.

~~((29))~~ (30) "Specialty pet food" means a commercial feed prepared and distributed for consumption by specialty pets.

~~((30))~~ (31) "Ton" means a net weight of two thousand pounds avoirdupois.

~~((31))~~ (32) "Transload" means to transfer commercial feed from one carrier to another carrier without processing or blending the ingredients, for example, transferred from rail car to trucks or shipping containers.

(33) "Quantity statement" means the net weight (mass), net volume (liquid or dry), or count.

Sec. 2. RCW 15.53.9013 and 1995 c 374 s 35 are each amended to read as follows:

(1) ~~((Beginning January 1, 1996, a))~~ Except as provided under subsection (2) of this section, any person: (a) Who manufactures a commercial feed~~((is an initial distributor of a commercial feed, or))~~ in this state; (b) who distributes a commercial feed in or into this state; or (c) whose name appears~~((as the responsible party))~~ on a commercial feed label~~((to be distributed in or into this state shall))~~ as guarantor, must first obtain from the department a commercial feed license for each facility~~((Sale of))~~ that distributes in or into this state.

(2) The following persons are exempt from the requirement of a commercial feed license:

(a) Any person who makes only retail sales of commercial feed which bears labeling or other approved indication that the commercial feed is from a licensed manufacturer, guarantor, or distributor who has assumed full responsibility for reporting and paying the inspection fee due under this act;

(b) Any person distributing only pet food or specialty pet food;

(c) Any person distributing food processing byproducts from fruit, vegetable, or potato processing plants, freezing or dehydrating facilities, or juice or jelly preserving plants, except that the distribution of byproducts or products of sugar refineries are not exempt from the requirement of a commercial feed license; and

(d) Any person distributing bona fide experimental feed on which accurate records and experimental programs are maintained(~~(, and pet food and specialty pet food are exempt from the requirement of a commercial feed license. The sale of byproducts or products of sugar refineries are not exempt from the requirement of a commercial feed license)).~~

~~((2))~~ (3) Application for a commercial feed license ((shall) must be made annually on forms provided by the department and ((shall) must be accompanied by a fee of fifty dollars(~~(, except that for the period beginning January 1, 1996, and ending June 30, 1996, the fee shall be twenty-five dollars. The commercial feed license shall expire on June 30th of each year).~~

~~((3))~~ (4) The commercial feed license expires on June 30th of each year. The application and fee for a commercial feed license renewal is due July 1st of each year. If a completed application and appropriate fee is not received by July 1st, a late renewal fee of fifty dollars per facility will be assessed in addition to the license fee and must be paid by the applicant before the renewal license is issued. A late renewal fee will not apply if the applicant furnishes an affidavit that he or she has not distributed a commercial feed subsequent to the expiration of his or her prior license. The assessment of the late renewal fee will not prevent the department from taking other action as provided for in this chapter.

(5) An application for a commercial feed license ((shall) must include ((the following):

(a) The name and mailing address of the applicant;

(b) The physical address of the facility;

(c) The name, contact information, and signature of the applicant; and

(d) Other information required by the department by rule.

~~((4))~~ After January 1, 1996, application for license renewal is due July 1st of each year. If an application for license renewal provided for in this section is not filed with the department prior to July 15th, a delinquency fee of fifty dollars shall be assessed and added to the original fee and must be paid by the applicant before the renewal license is issued. The assessment of the delinquency fee shall not prevent the department from taking other action as provided for in this chapter. The penalty does not apply if the applicant furnishes an affidavit that he or she has not distributed a commercial feed subsequent to the expiration of his or her prior license.

~~((5))~~ (6) The department may deny a license application if the applicant is not in compliance with this chapter or applicable rules, and may ((revoke)) cancel a license if the licensee is not in compliance with this chapter or

applicable rules. Prior to denial or (~~revocation~~) cancellation of a license, the department shall provide notice and an opportunity to correct deficiencies. If an applicant or licensee fails to correct the deficiency, the department shall deny or (~~revoke~~) cancel the license. If aggrieved by the decision, the applicant or licensee may request a hearing as authorized under chapter 34.05 RCW.

~~((6))~~ (7) Notwithstanding the payment of a (~~delinquency~~) late renewal fee, it is a violation to distribute a commercial feed by an unlicensed person, and nothing in this chapter (~~shall~~) prevents the department from imposing a penalty authorized by this chapter for the violation.

~~((7))~~ (8) The department may under conditions specified by rule, request (~~copies~~) submission of labels and labeling in order to determine compliance with the provisions of this chapter.

Sec. 3. RCW 15.53.9014 and 1995 c 374 s 36 are each amended to read as follows:

(1) (~~Each pet food and specialty pet food shall be registered with the department and such registration shall be renewed annually before such commercial feed may be distributed in this state.~~) A person may not distribute in this state a pet food or specialty pet food that has not been registered by the department.

(2) (~~The~~) All applications for registration (~~of pet food and specialty pet food shall be~~) must be submitted on forms provided by the department and (~~shall be accompanied by the fees in subsection (3) of this section. Registrations expire on June 30th of each year.~~

(3) Pet food and specialty pet food registration fees are as follows:

(a) Each pet food and specialty pet food distributed in packages of ten pounds or more shall be accompanied by a fee of eleven dollars, except that for the period beginning January 1, 1996, and ending June 30, 1996, the fee shall be five dollars and fifty cents. If such commercial feed is also distributed in packages of less than ten pounds it shall be registered under (b) of this subsection.

(b) Each pet food and specialty pet food distributed in packages of less than ten pounds shall be accompanied by a fee of forty five dollars, except that for the period beginning January 1, 1996, and ending June 30, 1996, the fee shall be twenty two dollars and fifty cents. No inspection fee may be collected on pet food and specialty pet food distributed in packages of less than ten pounds.

(4) The department may require that the application for registration of pet food and specialty pet food be accompanied by a label and/or other printed matter describing the product.) must include:

(a) The name and mailing address of the applicant;

(b) The physical address of the applicant;

(c) The name, contact information, and signature of the applicant;

(d) Indication of the package sizes distributed for each product; and

(e) Other information required by the department by rule.

(3) An application for registration must be accompanied by a label and other applicable printed matter describing the product and the following fees:

(a) For those registrants whose names begin with a number or the letters A through N:

(i) Eleven dollars per product for those products distributed only in packages of ten pounds or more;

(ii) Forty-five dollars per product for those products distributed in packages of less than ten pounds; or

(iii) Forty-five dollars per product for those products distributed both in packages of less than ten pounds and packages of ten pounds or more.

(b) For those registrants whose names begin with the letters O through Z:

(i) Twenty-two dollars per product for those products distributed only in packages of ten pounds or more;

(ii) Ninety dollars per product for those products distributed in packages of less than ten pounds; or

(iii) Ninety dollars per product for those products distributed both in packages of less than ten pounds and packages of ten pounds or more.

(4)(a) All registrations issued by the department to a registrant whose name begins with a number or the letters A through N expire July 1, 2006.

(b) All registrations issued by the department to a registrant whose name begins with the letters O through Z expire July 1, 2007.

(5) A distributor (~~((shall not be))~~) is not required to register a pet food or specialty pet food that is already registered under (~~((the provisions of))~~) this chapter, as long as it is distributed with the original label.

(6) Changes in the guarantee of either chemical or ingredient composition of a pet food or specialty pet food registered under (~~((the provisions of))~~) this chapter may be permitted if there is satisfactory evidence that such changes would not result in a lowering of the feed value of the product for the purpose for which it was designed.

(7) The department (~~((is authorized to refuse))~~) may deny registration of any (~~((application))~~) pet food or specialty pet food not in compliance with (~~((the provisions of))~~) this chapter and (~~((any))~~) its rules (~~((adopted under this chapter and to))~~). The department may cancel any registration subsequently found to be not in compliance with ((any provisions of)) this chapter and ((any)) its rules ((adopted under this chapter)). Prior to (~~((refusal))~~) denial or cancellation of a registration, the applicant or registrant of an existing registered pet food or specialty pet food (~~((shall))~~) must be notified of the reasons and given an opportunity to amend the application to comply. If the applicant does not make the necessary corrections, the department (~~((shall refuse to register the feed))~~) will deny or cancel the registration. The applicant or registrant of an existing registered pet food or specialty pet food may request a hearing as provided for in chapter 34.05 RCW.

(8) (~~((After January 1, 1996,))~~) Application for renewal of registration is due July 1st of each ((year)) registration period. If an application for renewal (~~((of the registration provided for in this section))~~) is not (~~((filed prior to July 15th of any one year, a penalty))~~) received by the department by the due date, a late fee of ten dollars per product ((shall be assessed and)) is added to the original fee and ((shall)) must be paid by the applicant before the renewal registration may be issued((-unless)). A late fee will not apply if the applicant furnishes an affidavit that he or she has not distributed this feed subsequent to the expiration of ((his or her)) the prior registration. Payment of a late fee does not prevent the department from imposing a penalty authorized by this chapter for the violation.

~~((9) It is a violation of this chapter to distribute an unregistered pet food or specialty pet food. Payment of a delinquency fee shall not prevent the~~

department from imposing a penalty authorized by this chapter for the violation.)

Sec. 4. RCW 15.53.9014 and 1995 c 374 s 36 are each amended to read as follows:

(1) ~~((Each pet food and specialty pet food shall be registered with the department and such registration shall be renewed annually before such commercial feed may be distributed in this state.))~~ A person may not distribute in this state a pet food or specialty pet food that has not been registered by the department.

(2) ~~((The))~~ All applications for registration ~~((of pet food and specialty pet food shall be))~~ must be submitted on forms provided by the department and ~~((shall be accompanied by the fees in subsection (3) of this section. Registrations expire on June 30th of each year.~~

(3) ~~Pet food and specialty pet food registration fees are as follows:~~

(a) ~~Each pet food and specialty pet food distributed in packages of ten pounds or more shall be accompanied by a fee of eleven dollars, except that for the period beginning January 1, 1996, and ending June 30, 1996, the fee shall be five dollars and fifty cents. If such commercial feed is also distributed in packages of less than ten pounds it shall be registered under (b) of this subsection.~~

(b) ~~Each pet food and specialty pet food distributed in packages of less than ten pounds shall be accompanied by a fee of forty five dollars, except that for the period beginning January 1, 1996, and ending June 30, 1996, the fee shall be twenty-two dollars and fifty cents. No inspection fee may be collected on pet food and specialty pet food distributed in packages of less than ten pounds.~~

(4) ~~The department may require that the application for registration of pet food and specialty pet food be accompanied by a label and/or other printed matter describing the product.)~~ must include:

(a) The name and mailing address of the applicant;

(b) The physical address of the applicant;

(c) The name, contact information, and signature of the applicant;

(d) Indication of the package sizes distributed for each product; and

(e) Other information required by the department by rule.

(3) An application for registration must be accompanied by a label and other applicable printed matter describing the product and the following fees:

(a) Twenty-two dollars per product for those products distributed only in packages of ten pounds or more;

(b) Ninety dollars per product for those products distributed in packages of less than ten pounds; or

(c) Ninety dollars per product for those products distributed both in packages of less than ten pounds and packages of ten pounds or more.

(4) Registrations are issued by the department for a two-year period beginning on July 1st of a given year and ending twenty-four months later on July 1st, except that registrations issued to a registrant who applies to register an additional product during the last twelve months of the registrant's period expire on the next July 1st.

(5) A distributor ~~((shall not be))~~ is not required to register a pet food or specialty pet food that is already registered under ~~((the provisions of))~~ this chapter, as long as it is distributed with the original label.

(6) Changes in the guarantee of either chemical or ingredient composition of a pet food or specialty pet food registered under ~~((the provisions of))~~ this chapter may be permitted if there is satisfactory evidence that such changes would not result in a lowering of the feed value of the product for the purpose for which it was designed.

(7) The department ~~((is authorized to refuse))~~ may deny registration of any ~~((application))~~ pet food or specialty pet food not in compliance with ~~((the provisions of))~~ this chapter and ~~((any))~~ its rules ~~((adopted under this chapter and to))~~. The department may cancel any registration subsequently found to be not in compliance with ~~((any provisions of))~~ this chapter and ~~((any))~~ its rules ~~((adopted under this chapter))~~. Prior to ~~((refusal))~~ denial or cancellation of a registration, the applicant or registrant of an existing registered pet food or specialty pet food ~~((shall))~~ must be notified of the reasons and given an opportunity to amend the application to comply. If the applicant does not make the necessary corrections, the department ~~((shall refuse to register the feed))~~ will deny or cancel the registration. The applicant or registrant of an existing registered pet food or specialty pet food may request a hearing as provided for in chapter 34.05 RCW.

(8) ~~((After January 1, 1996,))~~ Application for renewal of registration is due July 1st of each ((year)) registration period. If an application for renewal ~~((of the registration provided for in this section))~~ is not ~~((filed prior to July 15th of any one year, a penalty of ten))~~ received by the department by the due date, a late fee of twenty dollars per product ((shall be assessed and)) is added to the original fee and ~~((shall))~~ must be paid by the applicant before the renewal registration may be issued ~~((, unless))~~. A late fee will not apply if the applicant furnishes an affidavit that he or she has not distributed this feed subsequent to the expiration of ~~((his or her))~~ the prior registration. Payment of a late fee does not prevent the department from imposing a penalty authorized by this chapter for the violation.

~~((9) It is a violation of this chapter to distribute an unregistered pet food or specialty pet food. Payment of a delinquency fee shall not prevent the department from imposing a penalty authorized by this chapter for the violation.))~~

NEW SECTION. Sec. 5. A new section is added to chapter 15.53 RCW to read as follows:

(1) To become a responsible buyer, a commercial feed licensee must apply for responsible buyer status on forms provided by the department. The application must include:

- (a) The name and mailing address of the licensee;
- (b) The physical address of the licensee;
- (c) The name, contact information, and signature of the applicant; and
- (d) Other information required by the department by rule.

(2) To be removed from responsible buyer status, the licensee must notify the department in writing. The licensee is not released from responsible buyer status until the department notifies the licensee in writing of such release.

(3) The department will maintain a current list of all responsible buyers and make the list available on request.

Sec. 6. RCW 15.53.9016 and 1995 c 374 s 37 are each amended to read as follows:

(1) Any commercial feed, except a customer-formula feed, distributed in this state (~~shall~~) must be accompanied by a legible label bearing the following information:

(a) The product name and the brand name, if any, under which the commercial feed is distributed.

(b) The guaranteed analysis stated in such terms as the department by rule determines is required to advise the user of the composition of the feed or to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods such as the methods published by the association of official analytical chemists.

(c) The common or usual name of each ingredient used in the manufacture of the commercial feed, except as the department may, by regulation, permit the use of a collective term for a group of ingredients all of which perform the same function. An ingredient statement is not required for single standardized ingredient feeds which are officially defined.

(d) The name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed.

(e) Adequate directions for use for all commercial feeds containing drugs and for all such other commercial feeds as the department may require by rule as necessary for their safe and effective use.

(f) Those precautionary statements (~~as~~) the department by rule determines are necessary for the safe and effective use of the commercial feed.

(g) The net weight as required under chapter 19.94 RCW.

(2) When a commercial feed, except a customer-formula feed, is distributed in this state in bags or other containers, the label (~~shall~~) must be placed on or affixed to the container; when a commercial feed, except a customer-formula feed, is distributed in bulk the label (~~shall~~) must accompany delivery and be furnished to the purchaser at time of delivery.

(3) A customer-formula feed (~~shall~~) must be labeled by shipping document. The shipping document, which is to accompany delivery and be supplied to the purchaser at the time of delivery, (~~shall~~) must bear the following information:

(a) Name and address of the manufacturer;

(b) Name and address of the purchaser;

(c) Date of delivery;

(d) Product name and the net weight as required under chapter 19.94 RCW;

(e) Adequate directions for use for all customer-formula feeds containing drugs and for such other feeds as the department may require by rule as necessary for their safe and effective use;

(f) The directions for use and precautionary statements as required by subsection (1)(e) and (f) of this section; and

(g) If a drug containing product is used:

(i) The purpose of the medication (claim statement);

(ii) The established name of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with rules established by the department.

(4) The product name and quantity statement of each commercial feed and each other ingredient used in the customer formula feed must be on file at the plant producing the product. These records must be kept on file for one year

after the last sale. This information (~~shall~~) must be made available to the purchaser, the dealer making the sale, and the department on request.

Sec. 7. RCW 15.53.9018 and 1995 c 374 s 38 are each amended to read as follows:

(1) Every registrant or licensee must file a semiannual report on forms provided by the department setting forth the number of tons of commercial feed distributed in or into this state. The report must be filed regardless of the amount of feed distributed or inspection fees owed. The report must include:

(a) The name and mailing address of the registrant or licensee;

(b) The physical address of the registrant or licensee;

(c) The name, contact information, and signature of the person filing the report;

(d) The total number of tons distributed in or into this state;

(e) The total number of tons on which the registrant or licensee is paying;

(f) If the registrant or licensee is not paying inspection fees on all commercial feed he or she distributed in or into this state, information regarding the registrants or licensees that are responsible for paying the inspection fees and the number of tons involved; and

(g) Other information required by the department by rule.

(2) Except as provided in subsections ~~((4))~~ (3) through (5) of this section, each initial distributor ~~((of a commercial feed in this state shall))~~ or responsible buyer must pay to the department an inspection fee on all commercial feed ~~((sold))~~ distributed by such person during the ~~((year))~~ reporting period. The inspection fee ~~((shall))~~ must accompany the report required in subsection (1) of this section. The inspection fee shall be not less than four cents nor more than twelve cents per ton as prescribed by the ~~((director))~~ department by rule~~((: PROVIDED, That such))~~. These fees shall be used for ~~((routine))~~ enforcement and administration of this chapter and its rules ~~((adopted under this chapter))~~.

~~((2) An inspection fee is not required for: (a) Commercial feed distributed by a person having proof that inspection fees have been paid by his or her supplier (manufacturer); (b) commercial feed in packages weighing less than ten pounds; (c) commercial feed for shipment to points outside this state;))~~

(3) The initial distributor is not required to pay an inspection fee for commercial feed he or she distributed to a responsible buyer.

(4) In a situation where a responsible buyer is distributing to another responsible buyer, the inspection fee must be paid by the last responsible buyer to distribute the commercial feed.

(5) The initial distributor or responsible buyer is not required to pay an inspection fee for: (a) Pet food and specialty pet food distributed in packages weighing less than ten pounds; (b) distribution of bona fide experimental feeds on which accurate records and experimental programs are maintained; (c) commercial feed distributed to points outside this state; and (d) food processing byproducts from fruit, vegetable, or potato processing plants, freezing or dehydrating facilities, or juice or jelly preserving plants~~((: and (e) bona fide experimental feeds on which accurate records and experimental programs are maintained))~~.

~~((3))~~ (6) Tonnage will be reported and inspection fees will be paid on (a) byproducts or products of sugar refineries; and (b) materials used in the preparation of pet foods and specialty pet food.

~~((4)) When more than one distributor is involved in the distribution of a commercial feed, the initial distributor is responsible for reporting the tonnage and paying the inspection fee, unless this sale or transaction is made to an exempt buyer.~~

~~((5)) (7)(a) Each person made responsible by this chapter for ((the payment of)) filing a report or paying inspection fees ((for commercial feed sold in this state shall file a report with the department on January 1st and July 1st of each year showing the number of tons of such commercial feed sold during the six calendar months immediately preceding the date the report is due. The proper inspection fee shall be remitted with the report. The person required to file the report and pay the fee shall have a thirty day period of grace immediately following the day the report and payment are due to file the report, and pay the fee. Upon permission of the department, an annual statement under oath may be filed by any person distributing within the state less than one hundred tons for each six month period during any year, and upon filing such statement such person shall pay the inspection fee at the rate provided for in subsection (1) of this section. The minimum inspection fee shall be twelve dollars and fifty cents for each six month reporting period or twenty five dollars if reporting annually.~~

~~((6)) must do so according to the following schedule:~~

(i) For the period January 1st through June 30th of each year, the report and inspection fees are due on July 31st of that year; and

(ii) For the period July 1st through December 31st of each year, the report and inspection fees are due on January 31st of the following year.

(b) If a complete report is not received by the due date or the appropriate inspection fees are not received by the due date, the person responsible for filing the report or paying the inspection fee must pay a late fee equal to fifteen percent of the inspection fee owed or fifty dollars, whichever is greater.

(c) The department may cancel the registration of a person's commercial feed or may cancel a person's commercial feed license if that person fails to pay the late fee. The applicant or licensee may request a hearing as authorized under chapter 34.05 RCW.

(8) If inspection fees are owed, the minimum inspection fee is twelve dollars and fifty cents.

~~((9)) For the purpose of ((determining accurate tonnage of commercial feed distributed in this state or to identify or verify semiannual tonnage reports, the department may require each registrant or licensee, or both, to maintain records or file additional reports.~~

((7)) verifying the accuracy of reports and payment of appropriate inspection fees, the department may examine, at reasonable times ((the records maintained under this section. Records shall)), a registrant's or licensee's distribution records and may require each registrant or licensee to maintain records or file additional reports. These records must be maintained in usable condition by the registrant or licensee for a period of ((two)) three years unless by rule this retention period is extended and must be submitted to the department upon request.

~~((8)) The registrant or licensee shall maintain records required under this section and submit these records to the department upon request.~~

~~((9)) Any person responsible for reporting tonnage or paying inspection fees who fails to do so before the thirty first day following the last day of each~~

reporting period, shall pay a penalty equal to fifteen percent of the inspection fee due or fifty dollars, whichever is greater. The penalty, together with any delinquent inspection fee is due before the forty first day following the last day of each reporting period. The department may cancel registration of a registrant or may revoke a license of a licensee who fails to pay the penalty and delinquent inspection fees within that time period. The applicant or licensee may request a hearing as authorized under chapter 34.05 RCW.)

(10) The report required by subsection (~~((5))~~) (1) of this section shall not be a public record, and (~~(it is a misdemeanor for any person to divulge)~~) any information given in such report which would reveal the business operation of the person making the report (~~(= PROVIDED, That nothing contained in this subsection shall be construed to prevent or make unlawful)~~) is exempt from public disclosure under chapter 42.17 RCW, and information obtained by the department from other governmental agencies or other sources that is used to verify information received in the report is exempt from public disclosure under chapter 42.17 RCW. However, this subsection does not prevent the use of information concerning the business operation of a person if any action, suit, or proceeding instituted under the authority of this chapter, including any civil action for collection of unpaid inspection fees, which action is hereby authorized and which shall be as an action at law in the name of the director of the department.

(11) Any commercial feed (~~(purchased)~~) obtained by a consumer or contract feeder outside the jurisdiction of this state and brought into this state for use is subject to all the provisions of this chapter, including inspection fees.

Sec. 8. RCW 15.53.9024 and 1995 c 374 s 41 are each amended to read as follows:

(1) For the purpose of enforcement of this chapter, and in order to determine whether its provisions have been complied with, including whether an operation is subject to such provisions, inspectors duly designated by the director, upon presenting appropriate credentials, and a written notice to the owner, operator, or agent in charge, are authorized (a) to enter, during normal business hours, (~~(a factory, warehouse, or establishment)~~) any facility within the state in which commercial feeds are manufactured, transloaded, processed, packed, distributed, or held for distribution, or to enter a vehicle being used to transport or hold such feeds; and (b) to inspect at reasonable times and within reasonable limits and in a reasonable manner, (~~(such factory, warehouse, establishment)~~) the facilities, or vehicles and all pertinent equipment, finished and unfinished materials, containers, (~~(and)~~) labeling, and records. The inspection may include the verification of only such records, and production and control procedures as may be necessary to determine compliance with (~~(the current good manufacturing practice regulations established under RCW 15.53.902(9) and rules adopted under good manufacturing practices for feeds to include nonmedicated feeds)~~) this chapter and its rules.

(2) A separate notice shall be given for each such inspection, but a notice is not required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

(3) If the inspector or employee making such inspection of a (~~factory, warehouse, or other establishment~~) facility or vehicle has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, he or she shall give to the owner, operator, or agent in charge, a receipt describing the samples obtained.

(4) If the owner of a (~~factory, warehouse, or establishment~~) facility or vehicle described in subsection (1) of this section, or his or her agent, refuses to admit the director or his or her agent to inspect in accordance with subsections (1) and (2) of this section, the director or his or her agent is authorized to obtain from any court of competent jurisdiction a warrant directing such owner or his or her agent to submit the premises described in the warrant to inspection.

(5) For the enforcement of this chapter, the director or his or her duly assigned agent is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours to have access to, and to obtain samples, and to examine records relating to distribution of commercial feeds.

(6) Sampling and analysis shall be conducted in accordance with methods published by the association of official analytical chemists, or in accordance with other generally recognized methods.

(7) The results of all analyses of official samples shall be forwarded by the department to the person named on the label and to the purchaser, if known. If the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded and upon request within thirty days following the receipt of the analysis, the department shall furnish to the registrant or licensee a portion of the sample concerned. If referee analysis is requested, a portion of the official sample shall be furnished by the department and shall be sent directly to an independent lab agreed to by all parties.

(8) The department, in determining for administrative purposes whether a feed is deficient in any component, shall be guided solely by the official sample as defined in RCW 15.53.901(20) and obtained and analyzed as provided for in this section.

(9) Analysis of an official sample by the department shall be accepted as prima facie evidence by any court of competent jurisdiction.

Sec. 9. RCW 15.53.9044 and 1988 c 254 s 5 are each amended to read as follows:

All moneys collected under this chapter shall be paid to the director and deposited in an account within the agricultural local fund. Such deposits shall be used only in the administration and enforcement of this chapter. (~~Any residual balance remaining in the commercial feed fund on June 9, 1988, shall be transferred to the account within the agricultural local fund.~~)

NEW SECTION. Sec. 10. RCW 15.53.9053 (Continuation of prior licenses and registrations) and 1995 c 374 s 44 & 1975 1st ex.s. c 257 s 12 are each repealed.

NEW SECTION. Sec. 11. Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005.

NEW SECTION. Sec. 12. Section 4 of this act takes effect July 1, 2006.

NEW SECTION. Sec. 13. Section 3 of this act expires July 1, 2006.

Passed by the House February 28, 2005.

Passed by the Senate April 4, 2005.

Approved by the Governor April 12, 2005.

Filed in Office of Secretary of State April 12, 2005.

CHAPTER 19

[Substitute House Bill 1090]

TRANSPORTATION SIGNAGE

AN ACT Relating to transportation system signage using icons and pictograms; adding a new section to chapter 35.95A RCW; adding a new section to chapter 81.112 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. It is the intent of the legislature to promote the use of icons and pictograms that incorporate the use of commonly accepted symbols that can be understood and interpreted by a variety of people from all walks of life and different nations in order to assist them in the navigation of this state. These signs can be used on roadways and for other transportation-related facilities such as transit stations, airports, bus and train stations, and ferry terminals. Pictograms are signs that depict services, facilities, or destinations in picture form and are used throughout the world. Pictograms are useful for traveling within a transit system as well as for locating transit system stations and stops.

The legislature finds that many signing methods such as icons, already in use by the Washington state department of transportation and other agencies, facilitate use of the transportation systems in the state and connections between modes. The legislature also finds that the development of pictograms for use within transit systems will assist system users, complement other signing methods, and increase transit system ridership through easier way-finding. The pictograms may reflect the unique characteristics of the facility, and those characteristics should be considered and are acceptable in icon and pictogram design. It is the intent of the legislature to have icons and pictograms in use as new systems are put into service to promote tourism and be in place by 2010 to assist international visitors coming to Washington during the Olympic Games in Vancouver, British Columbia, Canada.

NEW SECTION. Sec. 2. A new section is added to chapter 35.95A RCW to read as follows:

Each authority shall incorporate in plans for stations along any monorail project signing that is easily understood by the traveling public, including, but not limited to, persons with disabilities, non-English speaking persons, and visitors from other nations. The signage must employ graphics consistent with international symbols for transportation facilities and signage that are consistent with department of transportation guidelines and programs. The signage must also use distinguishing pictograms as a means to identify stations and points of interest along the monorail corridor for persons who use languages that are not Roman-alphabet based. These requirements are intended to apply to new sign installation and not to existing signs. The authority may replace existing signs as

it chooses; however, it shall use the new signing designs when existing signs are replaced. All signage must comply with requirements of applicable federal law and may include recommendations contained in federal publications providing directions on way-finding for persons with disabilities.

NEW SECTION. Sec. 3. A new section is added to chapter 81.112 RCW to read as follows:

Each authority shall incorporate in plans for stations along any light-rail facility signing that is easily understood by the traveling public, including, but not limited to, persons with disabilities, non-English speaking persons, and visitors from other nations. The signage must employ graphics consistent with international symbols for transportation facilities and signage that are consistent with department of transportation guidelines and programs. The signage must also use distinguishing symbols or pictograms developed by the authority as a means to identify stations and may identify points of interest along the corridor for persons who use languages that are not Roman-alphabet based. These requirements are intended to apply to new sign installation and not to existing signs, installed before the effective date of this act. The authority may replace existing signs as it chooses; however, it shall use the new signing designs when existing signs are replaced. All signage must comply with requirements of applicable federal law and may include recommendations contained in federal publications providing directions on way-finding for persons with disabilities.

Passed by the House March 4, 2005.

Passed by the Senate April 4, 2005.

Approved by the Governor April 12, 2005.

Filed in Office of Secretary of State April 12, 2005.

CHAPTER 20

[Substitute House Bill 1214]

FOOD FISH AND SHELLFISH COMMERCIAL LICENSES

AN ACT Relating to food fish and shellfish commercial licenses; and amending RCW 77.65.010, 77.65.170, 77.65.190, 77.65.210, and 77.65.390.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 77.65.010 and 1998 c 190 s 93 are each amended to read as follows:

(1) Except as otherwise provided by this title, a person may not engage in any of the following activities without a license or permit issued by the director:

(a) Commercially fish for or take food fish or shellfish;

(b) Deliver from a commercial fishing vessel food fish or shellfish taken for commercial purposes in offshore waters. As used in this subsection, "deliver" means arrival at a place or port, and includes arrivals from offshore waters to waters within the state and arrivals from state or offshore waters;

(c) Operate a charter boat or commercial fishing vessel engaged in a fishery;

(d) Engage in processing or wholesaling food fish or shellfish; or

(e) Act as a guide for personal use in freshwater rivers and streams, other than that part of the Columbia river below the bridge at Longview.

(2) No person may engage in the activities described in subsection (1) of this section unless the licenses or permits required by this title are in the person's

possession, and the person is the named license holder or an alternate operator designated on the license and the person's license is not suspended.

(3) A valid Oregon license that is equivalent to a license under this title is valid in the concurrent waters of the Columbia river if the state of Oregon recognizes as valid the equivalent Washington license. The director may identify by rule what Oregon licenses are equivalent.

(4) No license or permit is required for the production or harvesting of private sector cultured aquatic products as defined in RCW 15.85.020 or for the delivery, processing, or wholesaling of such aquatic products. However, if a means of identifying such products is required by rules adopted under RCW 15.85.060, the exemption from licensing or permit requirements established by this subsection applies only if the aquatic products are identified in conformance with those rules.

Sec. 2. RCW 77.65.170 and 2000 c 107 s 38 are each amended to read as follows:

(1) A salmon delivery license is required for a commercial fishing vessel to deliver salmon taken for commercial purposes in offshore waters to a place or port in the state. As used in this section, "deliver" and "delivery" mean arrival at a place or port, and include arrivals from offshore waters to waters within the state and arrivals ashore from offshore waters. The annual fee for a salmon delivery license is three hundred eighty dollars for residents and six hundred eighty-five dollars for nonresidents. The annual surcharge under RCW 77.95.090 is one hundred dollars for each license. Holders of nonlimited entry delivery licenses issued under RCW 77.65.210 may apply the nonlimited entry delivery license fee against the salmon delivery license fee.

(2) Only a person who meets the qualifications established in RCW 77.70.090 may hold a salmon delivery license issued under this section.

(3) A salmon delivery license authorizes no taking of salmon or other food fish or shellfish from the waters of the state.

(4) If the director determines that the operation of a vessel under a salmon delivery license results in the depletion or destruction of the state's salmon resource or the delivery into this state of salmon products prohibited by law, the director may revoke the license under the procedures of chapter 34.05 RCW.

Sec. 3. RCW 77.65.190 and 2000 c 107 s 40 are each amended to read as follows:

A person who does not qualify for a license under RCW 77.70.090 shall obtain a nontransferable emergency salmon delivery license to make one delivery from a commercial fishing vessel of salmon taken for commercial purposes in offshore waters. As used in this section, "delivery" means arrival at a place or port, and include arrivals from offshore waters to waters within the state and arrivals ashore from offshore waters. The director shall not issue an emergency salmon delivery license unless, as determined by the director, a bona fide emergency exists. The license fee is two hundred twenty-five dollars for residents and four hundred seventy-five dollars for nonresidents. An applicant for an emergency salmon delivery license shall designate no more than one vessel that will be used with the license. Alternate operator licenses are not required of persons delivering salmon under an emergency salmon delivery license. Emergency salmon delivery licenses are not renewable.

Sec. 4. RCW 77.65.210 and 2000 c 107 s 42 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, a person may not use a commercial fishing vessel to deliver food fish or shellfish taken for commercial purposes in offshore waters to a port in the state without a nonlimited entry delivery license. As used in this section, "deliver" and "delivery" mean arrival at a place or port, and include arrivals from offshore waters to waters within the state and arrivals ashore from offshore waters. As used in this section, "food fish" does not include salmon. As used in this section, "shellfish" does not include ocean pink shrimp ((~~or~~)), coastal crab, or fish or shellfish taken under an emerging commercial fisheries license if taken from offshore waters. The annual license fee for a nonlimited entry delivery license is one hundred ten dollars for residents and two hundred dollars for nonresidents.

(2) Holders of salmon troll fishery licenses issued under RCW 77.65.160, salmon delivery licenses issued under RCW 77.65.170, crab pot fishery licenses issued under RCW 77.65.220, food fish trawl—Non-Puget Sound fishery licenses, and emerging commercial fishery licenses issued under RCW 77.65.200, Dungeness crab—coastal fishery licenses, ocean pink shrimp delivery licenses, ((~~and~~)) shrimp trawl—Non-Puget Sound fishery licenses, and emerging commercial fishery licenses issued under RCW 77.65.220 may deliver food fish or shellfish taken in offshore waters without a nonlimited entry delivery license.

(3) A nonlimited entry delivery license authorizes no taking of food fish or shellfish from state waters.

Sec. 5. RCW 77.65.390 and 2000 c 107 s 51 are each amended to read as follows:

An ocean pink shrimp delivery license is required for a commercial fishing vessel to deliver ocean pink shrimp taken for commercial purposes in offshore waters and delivered to a port in the state. As used in this section, "deliver" and "delivery" mean arrival at a place or port, and include arrivals from offshore waters to waters within the state and arrivals from state or offshore waters. The annual license fee is one hundred fifty dollars for residents and three hundred dollars for nonresidents. Ocean pink shrimp delivery licenses are transferable.

Passed by the House March 4, 2005.

Passed by the Senate April 4, 2005.

Approved by the Governor April 12, 2005.

Filed in Office of Secretary of State April 12, 2005.

CHAPTER 21

[House Bill 1269]

LEOFF RETIREMENT SYSTEM—SERVICE CREDIT

AN ACT Relating to permitting members of the law enforcement officers' and fire fighters' retirement system plan 2 to make a one-time purchase of additional service credit; adding a new section to chapter 41.26 RCW; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. **Sec. 1.** A new section is added to chapter 41.26 RCW under the subchapter heading "plan 2" to read as follows:

(1) A member eligible to retire under RCW 41.26.430 may, at the time of filing a written application for retirement with the department, apply to the department to make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

NEW SECTION. **Sec. 2.** This act takes effect July 1, 2006.

Passed by the House February 28, 2005.

Passed by the Senate April 5, 2005.

Approved by the Governor April 12, 2005.

Filed in Office of Secretary of State April 12, 2005.

CHAPTER 22

[House Bill 1312]

BOILERS AND UNFIRED PRESSURE VESSELS

AN ACT Relating to the boilers and unfired pressure vessels law; amending RCW 70.79.080, 70.79.090, 70.79.160, 70.79.190, 70.79.320, and 70.79.170; adding a new section to chapter 70.79 RCW; and repealing RCW 70.79.360.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 70.79.080 and 1999 c 183 s 3 are each amended to read as follows:

This chapter shall not apply to the following boilers, unfired pressure vessels and domestic hot water tanks:

(1) Boilers and unfired pressure vessels under federal regulation or operated by any railroad subject to the provisions of the interstate commerce act;

(2) Unfired pressure vessels meeting the requirements of the interstate commerce commission for shipment of liquids or gases under pressure;

(3) Air tanks located on vehicles operating under the rules of other state authorities and used for carrying passengers, or freight;

(4) Air tanks installed on the right of way of railroads and used directly in the operation of trains;

(5) Unfired pressure vessels having a volume of five cubic feet or less when not located in places of public assembly;

(6) Unfired pressure vessels designed for a pressure not exceeding fifteen pounds per square inch gauge (~~when not located in place of public assembly~~);

(7) Tanks used in connection with heating water for domestic and/or residential purposes;

(8) Boilers and unfired pressure vessels in cities having ordinances which are enforced and which have requirements equal to or higher than those provided for under this chapter, covering the installation, operation, maintenance and inspection of boilers and unfired pressure vessels;

(9) Tanks containing water with no air cushion and no direct source of energy that operate at a temperature of one hundred thirty degrees Fahrenheit or less;

(10) Electric boilers:

(a) Having a tank volume of not more than one and one-half cubic feet;

(b) Having a maximum allowable working pressure of (~~eighty~~) one hundred pounds per square inch or less, with a pressure relief system to prevent excess pressure; and

(c) If constructed after June 10, 1994, constructed to American society of mechanical engineers code, or approved or otherwise certified by a nationally recognized or recognized foreign testing laboratory or construction code, including but not limited to Underwriters Laboratories, Edison Testing Laboratory, or Istituto Superiore Per La Prevenzione E La Sicurezza Del Lavoro;

(11) Electrical switchgear and control apparatus that have no external source of energy to maintain pressure and are located in restricted access areas under the control of an electric utility;

(12) Regardless of location, unfired pressure vessels and hot water heaters less than one and one-half cubic feet (11.25 gallons) in volume with a safety valve setting of one hundred fifty pounds per square inch gauge (psig) or less, or less than six inches in diameter and less than five cubic feet (37.5 gallons) in volume with a safety valve set at any pressure, or less than fifteen psig containing substances other than steam, lethal substances, or liquids with low flash points.

Sec. 2. RCW 70.79.090 and 1999 c 183 s 4 are each amended to read as follows:

The following boilers and unfired pressure vessels shall be exempt from the requirements of RCW 70.79.220 and 70.79.240 through 70.79.330:

(1) Boilers or unfired pressure vessels located on farms and used solely for agricultural purposes;

(2) Unfired pressure vessels that are part of fertilizer applicator rigs designed and used exclusively for fertilization in the conduct of agricultural operations;

(3) Steam boilers used exclusively for heating purposes carrying a pressure of not more than fifteen pounds per square inch gauge and which are located in private residences or in apartment houses of less than six families;

(4) Hot water heating boilers carrying a pressure of not more than thirty pounds per square inch and which are located in private residences or in apartment houses of less than six families;

(5) Approved pressure vessels (hot water heaters, hot water storage tanks, hot water supply boilers, and hot water heating boilers listed by a nationally recognized testing agency), with approved safety devices including a pressure relief valve, with a nominal water containing capacity of one hundred twenty

gallons or less having a heat input of two hundred thousand b.t.u.'s per hour or less, used for hot water supply at pressure of one hundred sixty pounds per square inch or less, and at temperatures of two hundred ten degrees Fahrenheit or less: **PROVIDED, HOWEVER,** That such pressure vessels are not installed in schools, child care centers, public and private hospitals, nursing and boarding homes, churches, public buildings owned or leased and maintained by the state or any political subdivision thereof, and assembly halls;

(6) Unfired pressure vessels containing only water under pressure for domestic supply purposes, including those containing air, the compression of which serves only as a cushion or airlift pumping systems, when located in private residences or in apartment houses of less than six families, or in public water systems as defined in RCW 70.119.020;

(7) Unfired pressure vessels containing liquified petroleum gases.

Sec. 3. RCW 70.79.160 and 1999 c 183 s 8 are each amended to read as follows:

Each company employing special inspectors shall, within thirty days following each internal or external boiler or unfired pressure vessel inspection made by such inspectors, file a report of such inspection with the chief inspector upon appropriate forms. ~~((Reports of external inspections shall not be required except when such inspections disclose that the boiler or unfired pressure vessel is in dangerous condition.))~~

NEW SECTION. Sec. 4. A new section is added to chapter 70.79 RCW to read as follows:

(1) No person, firm, partnership, corporation, or other entity may install or maintain any standards that violate this chapter. In cases where the interpretation and application of the installation or maintenance standards prescribed in this chapter is in dispute, the board shall determine the methods of installation or maintenance to be used in the particular case submitted for its decision. To appeal the board's decision, a person, firm, partnership, corporation, or other entity shall, in writing, notify the chief boiler inspector. The notice shall specify the ruling or interpretation desired and the contention of the person, firm, partnership, corporation, or other entity as to the proper interpretation or application on the question on which a decision is desired.

(2) Any person, firm, partnership, corporation, or other entity wishing to appeal a penalty issued under this chapter may appeal to the board. The appeal shall be filed within twenty days after service of the notice of the penalty to the assessed party by filing a written notice of appeal with the chief boiler inspector. The hearing and review procedures shall be conducted by the board in accordance with chapter 34.05 RCW.

Sec. 5. RCW 70.79.190 and 1951 c 32 s 20 are each amended to read as follows:

A person whose commission has been suspended or revoked shall be entitled to an appeal as provided in ~~((RCW 70.79.360))~~ section 4 of this act and to be present in person and/or represented by counsel on the hearing of the appeal.

Sec. 6. RCW 70.79.320 and 1986 c 97 s 2 are each amended to read as follows:

(1) It shall be unlawful for any person, firm, partnership, or corporation to operate under pressure in this state a boiler or unfired pressure vessel, to which this chapter applies, without a valid inspection certificate as provided for in this chapter.

(2) The department may assess a penalty against a person violating a provision of this chapter. The penalty shall be not more than five hundred dollars. Each day that the violation continues is a separate violation and is subject to a separate penalty.

(3) The department may not assess a penalty until it adopts rules describing the method it will use to calculate penalties for various violations.

(4) The department shall notify the violator of its action, and the reasons for its action, in writing. The department shall send the notice by certified mail to the violator that a hearing may be requested under ~~((RCW 70.79.360))~~ section 4 of this act. The hearing shall not stay the effect of the penalty.

Sec. 7. RCW 70.79.170 and 1951 c 32 s 18 are each amended to read as follows:

Examinations for ~~((chief,))~~ deputy~~((s))~~ or special inspectors shall be in writing and shall be held by the chief and a member of the board, or by at least two ~~((members of the board))~~ national board commissioned inspectors. Such examinations shall be confined to questions the answers to which will aid in determining the fitness and competency of the applicant for the intended service. In case an applicant for an inspector's appointment or commission fails to pass the examination, he may appeal to the board for another examination which shall be given by the ~~((board))~~ chief within ninety days. The record of an applicant's examination shall be accessible to said applicant and his employer.

NEW SECTION. Sec. 8. RCW 70.79.360 (Appeal from orders or acts) and 1951 c 32 s 36 are each repealed.

Passed by the House February 28, 2005.

Passed by the Senate April 4, 2005.

Approved by the Governor April 12, 2005.

Filed in Office of Secretary of State April 12, 2005.

CHAPTER 23

[House Bill 1321]

TERS PLAN 1—INSTRUCTIONAL POSITIONS

AN ACT Relating to allowing members of the teachers' retirement system plan 1 who are employed less than full time as psychologists, social workers, nurses, physical therapists, occupational therapists, or speech language pathologists or audiologists to annualize their salaries when calculating their average final compensation; and amending RCW 41.32.010.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 41.32.010 and 2003 c 31 s 1 are each amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context:

(1)(a) "Accumulated contributions" for plan 1 members, means the sum of all regular annuity contributions and, except for the purpose of withdrawal at the

time of retirement, any amount paid under RCW 41.50.165(2) with regular interest thereon.

(b) "Accumulated contributions" for plan 2 members, means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality tables and regulations as shall be adopted by the director and regular interest.

(3) "Annuity" means the moneys payable per year during life by reason of accumulated contributions of a member.

(4) "Member reserve" means the fund in which all of the accumulated contributions of members are held.

(5)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter.

(b) "Beneficiary" for plan 2 and plan 3 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(6) "Contract" means any agreement for service and compensation between a member and an employer.

(7) "Creditable service" means membership service plus prior service for which credit is allowable. This subsection shall apply only to plan 1 members.

(8) "Dependent" means receiving one-half or more of support from a member.

(9) "Disability allowance" means monthly payments during disability. This subsection shall apply only to plan 1 members.

(10)(a) "Earnable compensation" for plan 1 members, means:

(i) All salaries and wages paid by an employer to an employee member of the retirement system for personal services rendered during a fiscal year. In all cases where compensation includes maintenance the employer shall fix the value of that part of the compensation not paid in money.

(ii) For an employee member of the retirement system teaching in an extended school year program, two consecutive extended school years, as defined by the employer school district, may be used as the annual period for determining earnable compensation in lieu of the two fiscal years.

(iii) "Earnable compensation" for plan 1 members also includes the following actual or imputed payments, which are not paid for personal services:

(A) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned during a payroll period shall be considered earnable compensation and the individual shall receive the equivalent service credit.

(B) If a leave of absence, without pay, is taken by a member for the purpose of serving as a member of the state legislature, and such member has served in the legislature five or more years, the salary which would have been received for the position from which the leave of absence was taken shall be considered as compensation earnable if the employee's contribution thereon is paid by the employee. In addition, where a member has been a member of the state

legislature for five or more years, earnable compensation for the member's two highest compensated consecutive years of service shall include a sum not to exceed thirty-six hundred dollars for each of such two consecutive years, regardless of whether or not legislative service was rendered during those two years.

(iv) For members employed less than full time under written contract with a school district, or community college district, in an instructional position, for which the member receives service credit of less than one year in all of the years used to determine the earnable compensation used for computing benefits due under RCW 41.32.497, 41.32.498, and 41.32.520, the member may elect to have earnable compensation defined as provided in RCW 41.32.345. For the purposes of this subsection, the term "instructional position" means a position in which more than seventy-five percent of the member's time is spent as a classroom instructor (including office hours), a librarian, a psychologist, a social worker, a nurse, a physical therapist, an occupational therapist, a speech language pathologist or audiologist, or a counselor. Earnable compensation shall be so defined only for the purpose of the calculation of retirement benefits and only as necessary to insure that members who receive fractional service credit under RCW 41.32.270 receive benefits proportional to those received by members who have received full-time service credit.

(v) "Earnable compensation" does not include:

(A) Remuneration for unused sick leave authorized under RCW 41.04.340, 28A.400.210, or 28A.310.490;

(B) Remuneration for unused annual leave in excess of thirty days as authorized by RCW 43.01.044 and 43.01.041.

(b) "Earnable compensation" for plan 2 and plan 3 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

"Earnable compensation" for plan 2 and plan 3 members also includes the following actual or imputed payments which, except in the case of (b)(ii)(B) of this subsection, are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned during a payroll period shall be considered earnable compensation, to the extent provided above, and the individual shall receive the equivalent service credit.

(ii) In any year in which a member serves in the legislature the member shall have the option of having such member's earnable compensation be the greater of:

(A) The earnable compensation the member would have received had such member not served in the legislature; or

(B) Such member's actual earnable compensation received for teaching and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this

subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions.

(11) "Employer" means the state of Washington, the school district, or any agency of the state of Washington by which the member is paid.

(12) "Fiscal year" means a year which begins July 1st and ends June 30th of the following year.

(13) "Former state fund" means the state retirement fund in operation for teachers under chapter 187, Laws of 1923, as amended.

(14) "Local fund" means any of the local retirement funds for teachers operated in any school district in accordance with the provisions of chapter 163, Laws of 1917 as amended.

(15) "Member" means any teacher included in the membership of the retirement system. Also, any other employee of the public schools who, on July 1, 1947, had not elected to be exempt from membership and who, prior to that date, had by an authorized payroll deduction, contributed to the member reserve.

(16) "Membership service" means service rendered subsequent to the first day of eligibility of a person to membership in the retirement system: PROVIDED, That where a member is employed by two or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service is rendered. The provisions of this subsection shall apply only to plan 1 members.

(17) "Pension" means the moneys payable per year during life from the pension reserve.

(18) "Pension reserve" is a fund in which shall be accumulated an actuarial reserve adequate to meet present and future pension liabilities of the system and from which all pension obligations are to be paid.

(19) "Prior service" means service rendered prior to the first date of eligibility to membership in the retirement system for which credit is allowable. The provisions of this subsection shall apply only to plan 1 members.

(20) "Prior service contributions" means contributions made by a member to secure credit for prior service. The provisions of this subsection shall apply only to plan 1 members.

(21) "Public school" means any institution or activity operated by the state of Washington or any instrumentality or political subdivision thereof employing teachers, except the University of Washington and Washington State University.

(22) "Regular contributions" means the amounts required to be deducted from the compensation of a member and credited to the member's individual account in the member reserve. This subsection shall apply only to plan 1 members.

(23) "Regular interest" means such rate as the director may determine.

(24)(a) "Retirement allowance" for plan 1 members, means monthly payments based on the sum of annuity and pension, or any optional benefits payable in lieu thereof.

(b) "Retirement allowance" for plan 2 and plan 3 members, means monthly payments to a retiree or beneficiary as provided in this chapter.

(25) "Retirement system" means the Washington state teachers' retirement system.

(26)(a) "Service" for plan 1 members means the time during which a member has been employed by an employer for compensation.

(i) If a member is employed by two or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service is rendered.

(ii) As authorized by RCW 28A.400.300, up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(iii) As authorized in RCW 41.32.065, service earned in an out-of-state retirement system that covers teachers in public schools may be applied solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(b) "Service" for plan 2 and plan 3 members, means periods of employment by a member for one or more employers for which earnable compensation is earned subject to the following conditions:

(i) A member employed in an eligible position or as a substitute shall receive one service credit month for each month of September through August of the following year if he or she earns earnable compensation for eight hundred ten or more hours during that period and is employed during nine of those months, except that a member may not receive credit for any period prior to the member's employment in an eligible position except as provided in RCW 41.32.812 and 41.50.132;

(ii) If a member is employed either in an eligible position or as a substitute teacher for nine months of the twelve month period between September through August of the following year but earns earnable compensation for less than eight hundred ten hours but for at least six hundred thirty hours, he or she will receive one-half of a service credit month for each month of the twelve month period;

(iii) All other members in an eligible position or as a substitute teacher shall receive service credit as follows:

(A) A service credit month is earned in those calendar months where earnable compensation is earned for ninety or more hours;

(B) A half-service credit month is earned in those calendar months where earnable compensation is earned for at least seventy hours but less than ninety hours; and

(C) A quarter-service credit month is earned in those calendar months where earnable compensation is earned for less than seventy hours.

(iv) Any person who is a member of the teachers' retirement system and who is elected or appointed to a state elective position may continue to be a member of the retirement system and continue to receive a service credit month for each of the months in a state elective position by making the required member contributions.

(v) When an individual is employed by two or more employers the individual shall only receive one month's service credit during any calendar month in which multiple service for ninety or more hours is rendered.

(vi) As authorized by RCW 28A.400.300, up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.32.470. For purposes of plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

- (A) Less than eleven days equals one-quarter service credit month;
- (B) Eleven or more days but less than twenty-two days equals one-half service credit month;
- (C) Twenty-two days equals one service credit month;
- (D) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month;
- (E) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.

(vii) As authorized in RCW 41.32.065, service earned in an out-of-state retirement system that covers teachers in public schools may be applied solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(viii) The department shall adopt rules implementing this subsection.

(27) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(28) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(29) "Teacher" means any person qualified to teach who is engaged by a public school in an instructional, administrative, or supervisory capacity. The term includes state, educational service district, and school district superintendents and their assistants and all employees certificated by the superintendent of public instruction; and in addition thereto any full time school doctor who is employed by a public school and renders service of an instructional or educational nature.

(30) "Average final compensation" for plan 2 and plan 3 members, means the member's average earnable compensation of the highest consecutive sixty service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.32.810(2).

(31) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(32) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(33) "Director" means the director of the department.

(34) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(35) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(36) "Substitute teacher" means:

(a) A teacher who is hired by an employer to work as a temporary teacher, except for teachers who are annual contract employees of an employer and are guaranteed a minimum number of hours; or

(b) Teachers who either (i) work in ineligible positions for more than one employer or (ii) work in an ineligible position or positions together with an eligible position.

(37)(a) "Eligible position" for plan 2 members from June 7, 1990, through September 1, 1991, means a position which normally requires two or more

uninterrupted months of creditable service during September through August of the following year.

(b) "Eligible position" for plan 2 and plan 3 on and after September 1, 1991, means a position that, as defined by the employer, normally requires five or more months of at least seventy hours of earnable compensation during September through August of the following year.

(c) For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position.

(d) The elected position of the superintendent of public instruction is an eligible position.

(38) "Plan 1" means the teachers' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(39) "Plan 2" means the teachers' retirement system, plan 2 providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977, and prior to July 1, 1996.

(40) "Plan 3" means the teachers' retirement system, plan 3 providing the benefits and funding provisions covering persons who first become members of the system on and after July 1, 1996, or who transfer under RCW 41.32.817.

(41) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items compiled by the bureau of labor statistics, United States department of labor.

(42) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(43) "Index B" means the index for the year prior to index A.

(44) "Index year" means the earliest calendar year in which the index is more than sixty percent of index A.

(45) "Adjustment ratio" means the value of index A divided by index B.

(46) "Annual increase" means, initially, fifty-nine cents per month per year of service which amount shall be increased each July 1st by three percent, rounded to the nearest cent.

(47) "Member account" or "member's account" for purposes of plan 3 means the sum of the contributions and earnings on behalf of the member in the defined contribution portion of plan 3.

(48) "Separation from service or employment" occurs when a person has terminated all employment with an employer.

(49) "Employed" or "employee" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law.

Passed by the House March 7, 2005.

Passed by the Senate April 4, 2005.

Approved by the Governor April 12, 2005.

Filed in Office of Secretary of State April 12, 2005.

CHAPTER 24

[House Bill 1323]

SELECT COMMITTEE ON PENSION POLICY

AN ACT Relating to the membership of the executive committee of the select committee on pension policy; and amending RCW 41.04.276.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 41.04.276 and 2003 c 295 s 1 are each amended to read as follows:

(1) The select committee on pension policy is created. The select committee consists of:

(a) Four members of the senate appointed by the president of the senate, two of whom are members of the majority party and two of whom are members of the minority party. At least three of the appointees shall be members of the senate ways and means committee;

(b) Four members of the house of representatives appointed by the speaker, two of whom are members of the majority party and two of whom are members of the minority party. At least three of the appointees shall be members of the house of representatives appropriations committee;

(c) Four active members or representatives from organizations of active members of the state retirement systems appointed by the governor for staggered three-year terms, with no more than two appointees representing any one employee retirement system;

(d) Two retired members or representatives of retired members' organizations of the state retirement systems appointed by the governor for staggered three-year terms, with no two members from the same system;

(e) Four employer representatives of members of the state retirement systems appointed by the governor for staggered three-year terms; and

(f) The directors of the department of retirement systems and office of financial management.

(2)(a) The term of office of each member of the house of representatives or senate serving on the committee runs from the close of the session in which he or she is appointed until the close of the next regular session held in an odd-numbered year. If a successor is not appointed during a session, the member's term continues until the member is reappointed or a successor is appointed. The term of office for a committee member who is a member of the house of representatives or the senate who does not continue as a member of the senate or house of representatives ceases upon the convening of the next session of the legislature during the odd-numbered year following the member's appointment, or upon the member's resignation, whichever is earlier. All vacancies of positions held by members of the legislature must be filled from the same political party and from the same house as the member whose seat was vacated.

(b) Following the terms of members and representatives appointed under subsection (1)(d) of this section, the retiree positions shall be rotated to ensure that each system has an opportunity to have a retiree representative on the committee.

(3) The committee shall elect a chairperson and a vice-chairperson. The chairperson shall be a member of the senate in even-numbered years and a member of the house of representatives in odd-numbered years and the vice-

chairperson shall be a member of the house of representatives in even-numbered years and a member of the senate in odd-numbered years.

(4) The committee shall establish an executive committee of ~~((five))~~ six members, including the chairperson, the vice-chairperson, one member from subsection (1)(c) of this section, one member from subsection (1)(d) of this section, one member from subsection (1)(e) of this section, and ~~((one member from subsection (1)(f) of this section, with))~~ the director~~((s))~~ of the department of retirement systems ~~((and the office of financial management serving in alternate years))~~.

(5) Nonlegislative members of the select committee serve without compensation, but shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060.

(6) The office of state actuary under chapter 44.44 RCW shall provide staff and technical support to the committee.

Passed by the House March 8, 2005.

Passed by the Senate April 4, 2005.

Approved by the Governor April 12, 2005.

Filed in Office of Secretary of State April 12, 2005.

CHAPTER 25

[Substitute House Bill 1394]

BUSINESS AND PROFESSIONS ACCOUNT

AN ACT Relating to the department of licensing; amending RCW 18.96.050, 19.105.380, and 64.36.225; adding a new section to chapter 43.24 RCW; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 43.24 RCW to read as follows:

(1) The business and professions account is created in the state treasury. All receipts from business or professional licenses, registrations, certifications, renewals, examinations, or civil penalties assessed and collected by the department from the following chapters must be deposited into the account:

- (a) Chapter 18.11 RCW, auctioneers;
- (b) Chapter 18.16 RCW, cosmetologists, barbers, and manicurists;
- (c) Chapter 18.96 RCW, landscape architects;
- (d) Chapter 18.145 RCW, court reporters;
- (e) Chapter 18.165 RCW, private investigators;
- (f) Chapter 18.170 RCW, security guards;
- (g) Chapter 18.185 RCW, bail bond agents;
- (h) Chapter 19.16 RCW, collection agencies;
- (i) Chapter 19.31 RCW, employment agencies;
- (j) Chapter 19.105 RCW, camping resorts;
- (k) Chapter 19.138 RCW, sellers of travel;
- (l) Chapter 42.44 RCW, notaries public; and
- (m) Chapter 64.36 RCW, timeshares.

Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for expenses incurred in carrying out these business and professions licensing activities of the department. Any residue in

the account shall be accumulated and shall not revert to the general fund at the end of the biennium.

(2) The director shall biennially prepare a budget request based on the anticipated costs of administering the business and professions licensing activities listed in subsection (1) of this section, which shall include the estimated income from these business and professions fees.

Sec. 2. RCW 18.96.050 and 1984 c 287 s 52 are each amended to read as follows:

The members of the first board shall serve for the following terms:

One member for one year, one member for two years, one member for three years, one member for four years, and one member for five years from the date of appointment or until successors are duly appointed and qualified. Every member of the board shall receive a certificate of his or her appointment from the governor, and before beginning his or her term of office shall file with the secretary of state his or her written oath or affirmation for the faithful discharge of his or her official duties. On the expiration of the term of each member, the governor shall appoint a successor to serve for a term of five years, or until his or her successor has been appointed and qualified: PROVIDED, That no member shall serve more than ten consecutive years.

The governor may remove any member of the board for cause. Vacancies in the board for any reason shall be filled by appointment for the unexpired term. In carrying out the provisions of this chapter, the members of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses according to the provisions of RCW 43.03.050 and 43.03.060, such funds to be provided from the (~~landscape architects' account in the state general fund~~) business and professions account created in section 1 of this act.

Sec. 3. RCW 19.105.380 and 2002 c 86 s 273 are each amended to read as follows:

(1) In addition to the unprofessional conduct in RCW 18.235.130, the director may take disciplinary action for the following conduct, acts, or conditions:

(a) The applicant, registrant, or affiliate has failed to file copies of the camping resort contract form under RCW 19.105.360;

(b) The applicant, registrant, or affiliate has failed to comply with any provision of this chapter;

(c) The applicant's, registrant's, or affiliate's offering of camping resort contracts has worked or would work a fraud upon purchasers or owners of camping resort contracts;

(d) The camping resort operator or any officer, director, or affiliate of the camping resort operator has been enjoined from or had any civil penalty assessed for a finding of dishonest dealing or fraud in a civil suit, or been found to have engaged in any violation of any act designed to protect consumers, or has been engaged in dishonest practices in any industry involving sales to consumers;

(e) The applicant or registrant has represented or is representing to purchasers in connection with the offer or sale of a camping resort contract that a camping resort property, facility, amenity camp site, or other development is planned, promised, or required, and the applicant or registrant has not provided

the director with a security or assurance of performance as required by this chapter;

(f) The applicant or registrant has not provided or is no longer providing the director with the necessary security arrangements to ensure future availability of titles or properties as required by this chapter or agreed to in the permit to market;

(g) The applicant or registrant is or has been employing unregistered salespersons or offering or proposing a membership referral program not in compliance with this chapter;

(h) The applicant or registrant has breached any escrow, impound, reserve account, or trust arrangement or the conditions of an order or permit to market required by this chapter;

(i) The applicant or registrant has filed or caused to be filed with the director any document or affidavit, or made any statement during the course of a registration or exemption procedure with the director, that is materially untrue or misleading;

(j) The applicant or registrant has engaged in a practice of failing to provide the written disclosures to purchasers or prospective purchasers as required under this chapter;

(k) The applicant, registrant, or any of its officers, directors, or employees, if the operator is other than a natural person, have willfully done, or permitted any of their salespersons or agents to do, any of the following:

(i) Engage in a pattern or practice of making untrue or misleading statements of a material fact, or omitting to state a material fact;

(ii) Employ any device, scheme, or artifice to defraud purchasers or members;

(iii) Engage in a pattern or practice of failing to provide the written disclosures to purchasers or prospective purchasers as required under this chapter;

(l) The applicant or registrant has failed to provide a bond, letter of credit, or other arrangement to ensure delivery of promised gifts, prizes, awards, or other items of consideration, as required under this chapter, breached such a security arrangement, or failed to maintain such a security arrangement in effect because of a resignation or loss of a trustee, impound, or escrow agent;

(m) The applicant or registrant has engaged in a practice of selling contracts using material amendments or codicils that have not been filed or are the consequences of breaches or alterations in previously filed contracts;

(n) The applicant or registrant has engaged in a practice of selling or proposing to sell contracts in a ratio of contracts to sites available in excess of that filed in the affidavit required by this chapter;

(o) The camping resort operator has withdrawn, has the right to withdraw, or is proposing to withdraw from use all or any portion of any camping resort property devoted to the camping resort program, unless:

(i) Adequate provision has been made to provide within a reasonable time thereafter a substitute property in the same general area that is at least as desirable for the purpose of camping and outdoor recreation;

(ii) The property is withdrawn because, despite good faith efforts by the camping resort operator, a nonaffiliate of the camping resort has exercised a right of withdrawal from use by the camping resort (such as withdrawal

following expiration of a lease of the property to the camping resort) and the terms of the withdrawal right have been disclosed in writing to all purchasers at or prior to the time of any sales of camping resort contracts after the camping resort has represented to purchasers that the property is or will be available for camping or recreation purposes;

(iii) The specific date upon which the withdrawal becomes effective has been disclosed in writing to all purchasers and members prior to the time of any sales of camping resort contracts after the camping resort has represented to purchasers that the property is or will be available for camping or recreation purposes;

(iv) The rights of members and owners of the camping resort contracts under the express terms of the camping resort contract have expired, or have been specifically limited, upon the lapse of a stated or determinable period of time, and the director by order has found that the withdrawal is not otherwise inconsistent with the protection of purchasers or the desire of the majority of the owners of camping resort contracts, as expressed in their previously obtained vote of approval;

(p) The format, form, or content of the written disclosures provided therein is not complete, full, or materially accurate, or statements made therein are materially false, misleading, or deceptive;

(q) The applicant or registrant has failed to file an amendment for a material change in the manner or at the time required under this chapter or its implementing rules;

(r) The applicant or registrant has filed voluntarily or been placed involuntarily into a federal bankruptcy or is proposing to do so; or

(s) A camping resort operator's rights or interest in a campground has been terminated by foreclosure or the operations in a camping resort have been terminated in a manner contrary to contract provisions.

(2) An operator, registrant, or applicant against whom administrative or legal proceedings have been filed shall be responsible for and shall reimburse the state, by payment into the ~~((general fund))~~ business and professions account created in section 1 of this act, for all administrative and legal costs actually incurred by the department in issuing, processing, and conducting any such administrative or legal proceeding authorized under this chapter that results in a final legal or administrative determination of any type or degree in favor of the department.

(3) The director may enter into assurances of discontinuance in lieu of issuing a statement of charges or a cease and desist order or conducting a hearing under this chapter. The assurances shall consist of a statement of the law in question and an agreement not to violate the stated provision. The applicant or registrant shall not be required to admit to any violation of the law, nor shall the assurance be construed as such an admission. Violating or breaching an assurance under this subsection is grounds for suspension or revocation of registration or imposition of a fine.

(4) The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall

be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

Sec. 4. RCW 64.36.225 and 1987 c 370 s 8 are each amended to read as follows:

A registrant or applicant against whom an administrative or legal proceeding authorized under this chapter has been filed, shall be liable for and reimburse to the state of Washington by payment into the ~~((general fund))~~ business and professions account created in section 1 of this act, all administrative and legal costs, including attorneys' fees, incurred by the department in issuing and conducting administrative or legal proceedings that result in a final legal or administrative determination of any type or degree, in favor of the department or the state of Washington.

NEW SECTION. **Sec. 5.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005.

Passed by the House March 11, 2005.

Passed by the Senate April 5, 2005.

Approved by the Governor April 12, 2005.

Filed in Office of Secretary of State April 12, 2005.

CHAPTER 26

[Substitute Senate Bill 5150]

BOARD OF PILOTAGE COMMISSIONERS—LICENSES—LIABILITY

AN ACT Relating to marine pilot licensing qualifications and procedures; amending RCW 88.16.035, 88.16.090, and 88.16.118; prescribing penalties; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 88.16.035 and 1987 c 264 s 1 are each amended to read as follows:

The board of pilotage commissioners shall:

(1) Adopt rules, pursuant to chapter 34.05 RCW ~~((as now existing or hereafter amended))~~, necessary for the enforcement and administration of this chapter;

(2) ~~((License))~~ (a) Issue training licenses and pilot licenses to pilot applicants meeting the qualifications ((and passing the examination as)) provided for in RCW 88.16.090 ((as now or hereafter amended)) and such additional qualifications as may be determined by the board;

(b) Establish a comprehensive training program to assist in the training and evaluation of pilot applicants before final licensing; and ((to))

(c) Establish additional training requirements, including a program of continuing education developed after consultation with pilot organizations, including those located within the state of Washington, as required to maintain a competent pilotage service;

(3) Maintain a register of pilots, records of pilot accidents and other history pertinent to pilotage, along with a roster of vessels, agents, owners, operators, and masters necessary for the maintenance of a roster of persons interested in and concerned with pilotage and maritime safety;

(4) Determine from time to time the number of pilots necessary to be licensed in each district of the state to optimize the operation of a safe, fully regulated, efficient, and competent pilotage service in each district;

(5) Annually fix the pilotage tariffs for pilotage services performed aboard vessels as required by this chapter: PROVIDED, That the board may fix extra compensation for extra services to vessels in distress, for awaiting vessels, or for being carried to sea on vessels against the will of the pilot, and for such other services as may be determined by the board;

~~((5))~~ (6) File annually with the governor and the chairs of the transportation committees of the senate and house of representatives a report which includes, but is not limited to, the following: The number, names, addresses, ages, pilot license number, and years of service as a Washington licensed pilot of any person licensed by the board as a Washington state pilot; the names, employment, and other information of the members of the board; the total number of pilotage assignments by pilotage district, including information concerning the various types and sizes of vessels and the total annual tonnage; the annual earnings of individual pilots before and after deduction for expenses of pilot organizations, including extra compensation as a separate category; the annual expenses of private pilot associations, including personnel employed and capital expenditures; the status of pilotage tariffs, extra compensation, and travel; the retirement contributions paid to pilots and the disposition thereof; the number of groundings, mishaps, or other incidents which are reported to or investigated by the board, and which are determined to be accidents, as defined by the board, including the vessel name, location of incident, pilot's name, and disposition of the case together with information received before the board acted from all persons concerned, including the United States coast guard; the names, qualifications, time scheduled for examinations, and the district of persons desiring to apply for Washington state pilotage licenses; summaries of dispatch records, quarterly reports from pilots, and the bylaws and operating rules of pilotage organizations; the names, sizes in deadweight tons, surcharges, if any, port of call, name of the pilot, and names and horsepower of tug boats for any and all oil tankers subject to the provisions of RCW 88.16.190 together with the names of any and all vessels for which the United States coast guard requires special handling pursuant to their authority under the Ports and Waterways Safety Act of 1972; the expenses of the board; and any and all other information which the board deems appropriate to include;

~~((6))~~ (7) Publish a manual which includes the pilotage act and other statutes of Washington state and the federal government which affect pilotage, including the rules of the board, together with such additional information as may be informative for pilots, agents, owners, operators, and masters. Such manual shall be distributed without cost to all pilots and governmental agencies upon request. All other copies shall be sold for a five dollar fee with proceeds to be credited to the pilotage account;

~~((7))~~ (8) Appoint advisory committees and employ marine experts as necessary to carry out its duties under this chapter;

~~((8))~~ (9) Provide for the maintenance of efficient and competent pilotage service on all waters covered by this chapter; and do such other things as are reasonable, necessary, and expedient to insure proper and safe pilotage upon the

waters covered by this chapter and facilitate the efficient administration of this chapter.

Sec. 2. RCW 88.16.090 and 1999 sp.s. c 1 s 607 are each amended to read as follows:

(1) A person may pilot any vessel subject to ~~((the provisions of))~~ this chapter on waters covered by this chapter only if ~~((appointed and))~~ licensed to pilot such vessels on ~~((said))~~ such waters under ~~((and pursuant to the provisions of))~~ this chapter.

(2)(a) A person is eligible to be ~~((appointed))~~ licensed as a pilot if the person:

(i) Is a citizen of the United States~~((;))~~;

(ii) Is over the age of twenty-five years and under the age of seventy years~~((;))~~;

(iii) Is a resident of the state of Washington at the time of ~~((appointment and only if the pilot applicant))~~ licensure as a pilot;

(iv)(A) Holds at the time of application, as a minimum, a United States government license as ((a)) master of ((ocean or near coastal)) steam or motor vessels of not more than one thousand six hundred gross register tons ((or as a master of)) ((three thousand international tonnage convention tons) upon oceans, near coastal waters, or inland ((steam or motor vessels of not more than one thousand six hundred gross tons;)) waters; or the then most equivalent federal license as determined by the board; any such license to have been held by the applicant for a period of at least two years ((prior to taking the Washington state pilotage examination and)) before application;

(B) Holds at the time of licensure as a pilot, after successful completion of the board-required training program, a first class United States endorsement without restrictions on ((that)) the United States government license ((to pilot it)) for the pilotage district((s for)) in which the pilot applicant desires to be licensed((, and if the pilot applicant meets)); however, all applicants for a pilot examination scheduled to be given before July 1, 2008, must have the United States pilotage endorsement at the time of application; and

(C) The board may establish such other federal license requirements for applicants and pilots as it deems appropriate; and

(v) Successfully completes a board-specified training program.

(b) In addition to the requirements of (a) of this subsection, a pilot applicant must meet such other qualifications as may be required by the board.

(c) A person applying for a license under this section shall not have been convicted of an offense involving drugs or the personal consumption of alcohol in the twelve months prior to the date of application. This restriction does not apply to license renewals under this section.

(3) ~~((Pilots shall be licensed hereunder for a term of five years from and after the date of the issuance of their respective state licenses. Such licenses shall thereafter be renewed as of course, unless the board shall withhold same for good cause. Each pilot shall pay to the state treasurer an annual license fee as follows: For the period beginning July 1, 1995, through June 30, 2001, the fee shall be two thousand five hundred dollars; and for the period beginning July 1, 2001, the fee shall be three thousand dollars. The fees shall be deposited in the state treasury to the credit of the pilotage account. The board may assess~~

~~partially active or inactive pilots a reduced fee))~~ The board may establish such other training license and pilot license requirements as it deems appropriate.

~~(4) Pilot applicants shall be ((required to pass a written and oral examination administered and graded by the board which shall test such applicants on this chapter, the rules of the board, local harbor ordinances, and such other matters as may be required to compliment [complement] the United States examinations and qualifications. The board shall hold examinations at such times as will, in the judgment of the board, ensure the maintenance of an efficient and competent pilotage service. An examination shall be scheduled for the Puget Sound pilotage district if there are three or fewer successful candidates from the previous examination who are waiting to become pilots in that district.))~~ evaluated and ranked in a manner specified by the board based on their experience, other qualifications as may be set by the board, performance on a written examination or examinations established by the board, and performance in such other evaluation exercises as may be required by the board, for entry into a board-specified training program.

When the board determines that the demand for pilots requires entry of an applicant into the training program it shall issue a training license to that applicant, but under no circumstances may an applicant be issued a training license more than four years after taking the written entry examination. The training license authorizes the trainee to do such actions as are specified in the training program.

After the completion of the training program the board shall evaluate the trainee's performance and knowledge. The board, as it deems appropriate, may then issue a pilot license, delay the issuance of the pilot license, deny the issuance of the pilot license, or require further training and evaluation.

~~(5) ((The board shall develop an examination and grading sheet for each pilotage district, for the testing and grading of pilot applicants. The examinations shall be administered to pilot applicants and shall be updated as required to reflect changes in law, rules, policies, or procedures.))~~ The board may appoint a special independent ((examination)) committee or may contract with a firm knowledgeable and experienced in the development of professional tests and evaluations for development and grading of ((said)) the examinations and other evaluation methods. Active licensed state pilots may be consulted for the general development of any examinations and evaluation exercises but shall have no knowledge of the specific questions. The pilot members of the board may participate in the grading of examinations. If the board does appoint a special examination or evaluation development committee it is authorized to pay the members of ((said)) the committee the same compensation and travel expenses as received by members of the board. ((When grading examinations the board shall carefully follow the grading sheet prepared for that examination. The board shall develop a "sample examination" which would tend to indicate to an applicant the general types of questions on pilot examinations, but such sample questions shall not appear on any actual examinations.)) Any person who willfully gives advance knowledge of information contained on a pilot examination or other evaluation exercise is guilty of a gross misdemeanor.

(6) Pilots are licensed under this section for a term of five years from and after the date of the issuance of their respective state licenses. Licenses must thereafter be renewed as a matter of course, unless the board withholds the

license for good cause. Each pilot shall pay to the state treasurer an annual license fee of three thousand dollars. The fees must be deposited in the state treasury to the credit of the pilotage account. The board may assess partially active or inactive pilots a reduced fee.

(7) All pilots and applicants are subject to an annual physical examination by a physician chosen by the board. The physician shall examine the applicant's heart, blood pressure, circulatory system, lungs and respiratory system, eyesight, hearing, and such other items as may be prescribed by the board. After consultation with a physician and the United States coast guard, the board shall establish minimum health standards to ensure that pilots licensed by the state are able to perform their duties. Within ninety days of the date of each annual physical examination, and after review of the physician's report, the board shall make a determination of whether the pilot or ~~((candidate))~~ applicant is fully able to carry out the duties of a pilot under this chapter. The board may in its discretion check with the appropriate authority for any convictions of offenses involving drugs or the personal consumption of alcohol in the prior twelve months.

~~((7) The board shall prescribe, pursuant to chapter 34.05 RCW, a number of familiarization trips, between a minimum number of twenty five and a maximum of one hundred, which pilot applicants must make in the pilotage district for which they desire to be licensed. Familiarization trips any particular applicant must make are to be based upon the applicant's vessel handling experience.))~~

(8) The board may require vessel simulator training for a pilot applicant and shall require vessel simulator training for a licensed pilot subject to RCW 88.16.105. The board shall also require vessel simulator training in the first year of active duty for a new pilot and at least once every five years for all active pilots.

(9) The board shall prescribe, pursuant to chapter 34.05 RCW, such reporting requirements and review procedures as may be necessary to assure the accuracy and validity of license and service claims ~~((and records of familiarization trips of pilot candidates))~~. Willful misrepresentation of such required information by a pilot ~~((candidate))~~ applicant shall result in disqualification of the ~~((candidate))~~ pilot applicant.

~~((10) The board shall adopt rules to establish time periods and procedures for additional training trips and retesting as necessary for pilots who at the time of their licensing are unable to become active pilots.))~~

Sec. 3. RCW 88.16.118 and 1984 c 69 s 1 are each amended to read as follows:

(1) A ship's pilot licensed to act as such by the state of Washington shall not be liable for damages in excess of the amount of five thousand dollars for damages or loss occasioned by the pilot's errors, omissions, fault, or neglect in the performance of pilotage or pilot training services, except as may arise by reason of the willful misconduct or gross negligence of ~~((the))~~ that pilot. A ship's pilot trainee licensed to act as such by the state of Washington is not liable for damages in excess of the amount of five thousand dollars for damages or loss occasioned by the pilot trainee's errors, omissions, fault, or neglect in the performance of pilotage or pilot training services, except as may arise by reason of the willful misconduct or gross negligence of that pilot trainee.

(2) When a pilot or pilot trainee boards a vessel, that pilot or pilot trainee becomes a servant of the vessel and its owner and operator. Nothing in this section exempts the vessel, its owner or operator from liability for damage or loss occasioned by that ship to a person or property on the ground that ((+)) (a) the ship was piloted by a Washington state licensed pilot or pilot trainee, or ((-)) (b) the damage or loss was occasioned by the error, omission, fault, or neglect of a Washington state licensed pilot or pilot trainee.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate March 9, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 12, 2005.

Filed in Office of Secretary of State April 12, 2005.

CHAPTER 27

[Substitute House Bill 1387]

STATE PATROL—VEHICLE ACCIDENT INVESTIGATIONS

AN ACT Relating to Washington state patrol vehicle accident investigations and corrective action procedures; adding a new section to chapter 43.43 RCW; creating new sections; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. It is the intent of the legislature that accidents involving Washington state patrol officers follow a process that provides a high degree of integrity and credibility both within the investigation of the accident and the perception of the investigation from persons outside the investigation. It is the intent of the legislature to have a communication process in place for the Washington state patrol to communicate accident information to the persons and their families who are involved in the vehicle accidents. It is the intent of the legislature to have early detections in place to reduce future vehicle accidents.

NEW SECTION. Sec. 2. A new section is added to chapter 43.43 RCW to read as follows:

To ensure transparency, integrity, and credibility during Washington state patrol vehicle accident investigations, the agency will continue to review and reform the agency policies and procedures regarding Washington state patrol officers that are involved in vehicle accidents. The agency shall develop agency policies and include as part of the terms of their collective bargaining agreements a progressive corrective process addressing Washington state patrol officer vehicle accidents that may include retraining in vehicle handling, wage or benefit reductions, and termination of employment. The agency shall develop a process for tracking accidents and an accident review process. Annually, a collision data report must be produced designating each accident during the year as minor or severe and any resulting disciplinary actions and be available for review by the legislature. The agency shall implement communication procedures for the victims involved in the accidents from the time the accident occurs until the investigative process has been concluded. The policies must

also provide for outside supervision of accident investigations by a qualified independent agency under certain circumstances.

Before the legislative committee assembly in September 2005, the Washington state patrol shall have an outside entity that has a reputation for and has proven experience in law enforcement management and reviewing law enforcement and criminal justice policies and procedures review the agency's proposed law enforcement vehicle accident policies and procedures where a law enforcement officer is involved. The agency will present the proposed policies and procedures to the legislature and finalize the policies and procedures based on input from the legislature. The Washington state patrol shall report to the house and senate transportation committees by November 30, 2005, on the updated policies, processes, and procedures. Once the policies and procedures are completed, other law enforcement agencies may adopt the policies and procedures for their agencies.

NEW SECTION. Sec. 3. This act may be known and cited as the "Brock Loshbaugh Act."

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House March 11, 2005.

Passed by the Senate April 6, 2005.

Approved by the Governor April 13, 2005.

Filed in Office of Secretary of State April 13, 2005.

CHAPTER 28

[House Bill 1479]

ADVANCED REGISTERED NURSE PRACTITIONERS—PRESCRIPTIVE AUTHORITY

AN ACT Relating to independent prescriptive authority for advanced registered nurse practitioners; amending RCW 18.79.240; and repealing RCW 18.57.280, 18.71.370, and 18.79.320.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 18.79.240 and 2003 c 258 s 6 are each amended to read as follows:

(1) In the context of the definition of registered nursing practice and advanced registered nursing practice, this chapter shall not be construed as:

(a) Prohibiting the incidental care of the sick by domestic servants or persons primarily employed as housekeepers, so long as they do not practice registered nursing within the meaning of this chapter;

(b) Preventing a person from the domestic administration of family remedies or the furnishing of nursing assistance in case of emergency;

(c) Prohibiting the practice of nursing by students enrolled in approved schools as may be incidental to their course of study or prohibiting the students from working as nursing technicians;

(d) Prohibiting auxiliary services provided by persons carrying out duties necessary for the support of nursing services, including those duties that involve minor nursing services for persons performed in hospitals, nursing homes, or elsewhere under the direction of licensed physicians or the supervision of licensed registered nurses;

(e) Prohibiting the practice of nursing in this state by a legally qualified nurse of another state or territory whose engagement requires him or her to accompany and care for a patient temporarily residing in this state during the period of one such engagement, not to exceed six months in length, if the person does not represent or hold himself or herself out as a registered nurse licensed to practice in this state;

(f) Prohibiting nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of a church by adherents of the church so long as they do not engage in the practice of nursing as defined in this chapter;

(g) Prohibiting the practice of a legally qualified nurse of another state who is employed by the United States government or a bureau, division, or agency thereof, while in the discharge of his or her official duties;

(h) Permitting the measurement of the powers or range of human vision, or the determination of the accommodation and refractive state of the human eye or the scope of its functions in general, or the fitting or adaptation of lenses for the aid thereof;

(i) Permitting the prescribing or directing the use of, or using, an optical device in connection with ocular exercises, visual training, vision training, or orthoptics;

(j) Permitting the prescribing of contact lenses for, or the fitting and adaptation of contact lenses to, the human eye;

(k) Prohibiting the performance of routine visual screening;

(l) Permitting the practice of dentistry or dental hygiene as defined in chapters 18.32 and 18.29 RCW, respectively;

(m) Permitting the practice of chiropractic as defined in chapter 18.25 RCW including the adjustment or manipulation of the articulation of the spine;

(n) Permitting the practice of podiatric medicine and surgery as defined in chapter 18.22 RCW;

(o) Permitting the performance of major surgery, except such minor surgery as the commission may have specifically authorized by rule adopted in accordance with chapter 34.05 RCW;

(p) Permitting the prescribing of controlled substances as defined in Schedule(s) I ~~((through IV))~~ of the Uniform Controlled Substances Act, chapter 69.50 RCW ~~((, except as provided in (r) or (s) of this subsection))~~;

(q) Prohibiting the determination and pronouncement of death;

(r) Prohibiting advanced registered nurse practitioners, approved by the commission as certified registered nurse anesthetists from selecting, ordering, or administering controlled substances as defined in Schedules II through IV of the Uniform Controlled Substances Act, chapter 69.50 RCW, consistent with their commission-recognized scope of practice; subject to facility-specific protocols, and subject to a request for certified registered nurse anesthetist anesthesia services issued by a physician licensed under chapter 18.71 RCW, an osteopathic physician and surgeon licensed under chapter 18.57 RCW, a dentist licensed under chapter 18.32 RCW, or a podiatric physician and surgeon licensed under chapter 18.22 RCW; the authority to select, order, or administer Schedule II through IV controlled substances being limited to those drugs that are to be directly administered to patients who require anesthesia for diagnostic, operative, obstetrical, or therapeutic procedures in a hospital, clinic, ambulatory

surgical facility, or the office of a practitioner licensed under chapter 18.71, 18.22, 18.36, 18.36A, 18.57, 18.57A, or 18.32 RCW; "select" meaning the decision-making process of choosing a drug, dosage, route, and time of administration; and "order" meaning the process of directing licensed individuals pursuant to their statutory authority to directly administer a drug or to dispense, deliver, or distribute a drug for the purpose of direct administration to a patient, under instructions of the certified registered nurse anesthetist. "Protocol" means a statement regarding practice and documentation concerning such items as categories of patients, categories of medications, or categories of procedures rather than detailed case-specific formulas for the practice of nurse anesthesia;

(s) Prohibiting advanced registered nurse practitioners from ordering or prescribing controlled substances as defined in Schedules II through IV of the Uniform Controlled Substances Act, chapter 69.50 RCW, if and to the extent ~~(= (±)) that doing so is permitted by their scope of practice (= (ii) it is in response to a combined request from one or more physicians licensed under chapter 18.71 or 18.57 RCW and an advanced registered nurse practitioner licensed under this chapter, proposing a joint practice arrangement under which such prescriptive authority will be exercised with appropriate collaboration between the practitioners; and (iii) it is consistent with rules adopted under this subsection. The medical quality assurance commission, the board of osteopathic medicine and surgery, and the commission are directed to jointly adopt by consensus by rule a process and criteria that implements the joint practice arrangements authorized under this subsection. This subsection (1)(s) does not apply to certified registered nurse anesthetists).~~

(2) In the context of the definition of licensed practical nursing practice, this chapter shall not be construed as:

(a) Prohibiting the incidental care of the sick by domestic servants or persons primarily employed as housekeepers, so long as they do not practice practical nursing within the meaning of this chapter;

(b) Preventing a person from the domestic administration of family remedies or the furnishing of nursing assistance in case of emergency;

(c) Prohibiting the practice of practical nursing by students enrolled in approved schools as may be incidental to their course of study or prohibiting the students from working as nursing assistants;

(d) Prohibiting auxiliary services provided by persons carrying out duties necessary for the support of nursing services, including those duties that involve minor nursing services for persons performed in hospitals, nursing homes, or elsewhere under the direction of licensed physicians or the supervision of licensed registered nurses;

(e) Prohibiting or preventing the practice of nursing in this state by a legally qualified nurse of another state or territory whose engagement requires him or her to accompany and care for a patient temporarily residing in this state during the period of one such engagement, not to exceed six months in length, if the person does not represent or hold himself or herself out as a licensed practical nurse licensed to practice in this state;

(f) Prohibiting nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of a church by

adherents of the church so long as they do not engage in licensed practical nurse practice as defined in this chapter;

(g) Prohibiting the practice of a legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency thereof, while in the discharge of his or her official duties.

NEW SECTION. Sec. 2. The following acts or parts of acts are each repealed:

- (1) RCW 18.57.280 (Joint practice arrangements) and 2000 c 64 s 6;
- (2) RCW 18.71.370 (Joint practice arrangements) and 2000 c 64 s 5; and
- (3) RCW 18.79.320 (Joint practice arrangements) and 2000 c 64 s 7.

Passed by the House March 3, 2005.

Passed by the Senate April 5, 2005.

Approved by the Governor April 13, 2005.

Filed in Office of Secretary of State April 13, 2005.

CHAPTER 29

[House Bill 1396]

LAND SURVEYORS—CONTINUING PROFESSIONAL DEVELOPMENT

AN ACT Relating to continuing education for land surveyors; and amending RCW 18.43.080.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 18.43.080 and 1985 c 7 s 43 are each amended to read as follows:

(1) Certificates of registration, and certificates of authorization and renewals thereof, shall expire on the last day of the month of December following their issuance or renewal and shall become invalid on that date unless renewed. It shall be the duty of the administrator of the division of professional licensing to notify every person, firm, or corporation registered under this chapter((:)) of the date of the expiration of his or her certificate and the amount of the renewal fee that shall be required for its renewal for one year. Such notice shall be mailed at least thirty days before the end of December of each year. Renewal may be effected during the month of December by the payment of a fee determined by the director as provided in RCW 43.24.086. In case any professional engineer and/or land surveyor registered under this chapter shall fail to pay the renewal fee hereinabove provided for, within ninety days from the date when the same shall become due, the renewal fee shall be the current fee plus an amount equal to one year's fee.

(2) Beginning July 1, 2007, the department of licensing may not renew a certificate of registration for a land surveyor unless the registrant verifies to the board that he or she has completed at least fifteen hours of continuing professional development per year of the registration period. By July 1, 2006, the board shall adopt rules governing continuing professional development for land surveyors that are generally patterned after the model rules of the national council of examiners for engineering and surveying.

Passed by the House March 3, 2005.

Passed by the Senate April 5, 2005.

Approved by the Governor April 13, 2005.

Filed in Office of Secretary of State April 13, 2005.

CHAPTER 30

[Substitute House Bill 1461]

CONSERVATION ASSISTANCE REVOLVING ACCOUNT

AN ACT Relating to the conservation assistance revolving account; and amending RCW 89.08.550.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 89.08.550 and 2004 c 277 s 901 are each amended to read as follows:

(1) The conservation assistance revolving account is created in the custody of the state treasurer. (~~The account shall be administered by the conservation commission.~~) Moneys from the account may only be spent after appropriation. Moneys placed in the account shall include principal and interest from the repayment of any loans granted under this section, and any other moneys appropriated to the account by the legislature. (~~Expenditures from the account may be used to make loans to landowners for projects enrolled in the conservation reserve enhancement program.~~) Expenditures from the account may be used only to make loans to landowners for projects enrolled in the conservation reserve enhancement program and the continuous conservation reserve program.

(2) In order to aid the financing of conservation reserve enhancement program projects and continuous conservation reserve program projects, the conservation commission, through the conservation districts, may make interest-free loans to (~~conservation reserve enhancement program~~) these enrollees from the conservation assistance revolving account. The conservation commission may require such terms and conditions as it deems necessary to carry out the purposes of this section. Loans to landowners shall be for costs associated with the installation of conservation improvements eligible for and secured by federal farm service agency practice incentive payment reimbursement. Loans under this program promote critical habitat protection and restoration by bridging the financing gap between project implementation and federal funding. The conservation commission shall give loan preferences to those projects expected to generate the greatest environmental benefits and that occur in basins with critical or depressed salmonid stocks. Money received from landowners in loan repayments made under this section shall be paid into the conservation assistance revolving account for uses consistent with this section.

Passed by the House March 10, 2005.

Passed by the Senate April 4, 2005.

Approved by the Governor April 13, 2005.

Filed in Office of Secretary of State April 13, 2005.

CHAPTER 31

[Substitute House Bill 1462]

CONSERVATION DISTRICTS—FUNDING

AN ACT Relating to funding conservation districts; amending RCW 89.08.410; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 89.08.410 and 1989 c 18 s 2 are each amended to read as follows:

The state conservation commission may authorize grants to conservation districts from moneys appropriated to the commission for such purposes as provided in this section. Such grants shall be ~~((made))~~ awarded annually on or before the last day of June of each year and shall be made only to those conservation districts that apply for the grants. ~~((After all the grant requests have been submitted, the initial grants in any year shall be made so that a conservation district shall not receive a grant in excess of the lesser of: (1) an amount equal to the total moneys obtained by the conservation district from all other sources, other than any grants obtained from the state, during the preceding calendar year; or (2) twenty two thousand five hundred dollars. If the appropriated moneys are insufficient to make the maximum level of the initial grants, each grant amount shall be reduced by an equal dollar amount until the total amount of the grants is equal to the amount of the appropriation.~~

~~However, further grants shall be made to those conservation districts that were limited to grants of twenty two thousand five hundred dollars if the appropriated moneys are in excess of the amount of the initial distribution of grants, but the total of both grants to any conservation district in any year shall not exceed an amount equal to the total moneys obtained by that conservation district from all other sources, other than any grants obtained from the state, during the preceding calendar year. If the appropriated moneys are insufficient to make the second distribution of grants, each grant under the second distribution shall be reduced by an equal dollar amount until the total amount of all the grants is equal to the amount of the appropriation.)~~ The conservation commission may adopt rules pertaining to eligibility and distribution of these funds. The conservation commission shall submit a report on the distribution of these funds to the appropriate committees of the legislature by September 30, 2007.

NEW SECTION. **Sec. 2.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House March 9, 2005.

Passed by the Senate April 5, 2005.

Approved by the Governor April 13, 2005.

Filed in Office of Secretary of State April 13, 2005.

CHAPTER 32

[Substitute House Bill 1536]

SECRETARY OF HEALTH—GRANT ADMINISTRATION

AN ACT Relating to providing the secretary of health with authority to administer grants on behalf of the department of health; and amending RCW 43.70.005 and 43.70.040.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 43.70.005 and 1989 1st ex.s. c 9 s 101 are each amended to read as follows:

The legislature finds and declares that it is of importance to the people of Washington state to live in a healthy environment and to expect a minimum standard of quality in health care. The legislature further finds that the social and economic vitality of the state (~~((depend(s))~~) depends on a healthy and productive population. The legislature further declares where it is a duty of the state to assure a healthy environment and minimum standards of quality in health care facilities and among health care professionals, the ultimate responsibility for a healthy society lies with the citizens themselves.

For these reasons, the legislature recognizes the need for a strong, clear focus on health issues in state government and among state health agencies to give expression to the needs of individual citizens and local communities as they seek to preserve the public health. It is the intent of the legislature to form such focus by creating a single department in state government with the primary responsibilities for the preservation of public health, monitoring health care costs, the maintenance of minimal standards for quality in health care delivery, and the general oversight and planning for all the state's activities as they relate to the health of its citizenry.

Further, it is the intent of the legislature to improve illness and injury prevention and health promotion, and restore the confidence of the citizenry in the efficient and accountable expenditure of public funds on health activities ~~that~~ further the mission of the agency via grants and contracts, and to ensure that this new health agency delivers quality health services in an efficient, effective, and economical manner that is faithful and responsive to policies established by the legislature.

Sec. 2. RCW 43.70.040 and 2001 c 80 s 2 are each amended to read as follows:

In addition to any other powers granted the secretary, the secretary may:

(1) Adopt, in accordance with chapter 34.05 RCW, rules necessary to carry out the provisions of chapter 9, Laws of 1989 1st ex. sess.: PROVIDED, That for rules adopted after July 23, 1995, the secretary may not rely solely on a section of law stating a statute's intent or purpose, on the enabling provisions of the statute establishing the agency, or on any combination of such provisions, for statutory authority to adopt any rule;

(2) Appoint such advisory committees as may be necessary to carry out the provisions of chapter 9, Laws of 1989 1st ex. sess. Members of such advisory committees are authorized to receive travel expenses in accordance with RCW 43.03.050 and 43.03.060. The secretary and the board of health shall review each advisory committee within their jurisdiction and each statutory advisory committee on a biennial basis to determine if such advisory committee is needed;

(3) Undertake studies, research, and analysis necessary to carry out the provisions of chapter 9, Laws of 1989 1st ex. sess. in accordance with RCW 43.70.050;

(4) Delegate powers, duties, and functions of the department to employees of the department as the secretary deems necessary to carry out the provisions of chapter 9, Laws of 1989 1st ex. sess.;

(5) Enter into contracts and enter into and distribute grants on behalf of the department to carry out the purposes of chapter 9, Laws of 1989 1st ex. sess. The department must report to the legislature a summary of the grants distributed under this authority, for each year of the first biennium after the department receives authority to distribute grants under this section, and make it electronically available;

(6) Act for the state in the initiation of, or the participation in, any intergovernmental program to the purposes of chapter 9, Laws of 1989 1st ex. sess.; or

(7) Solicit and accept gifts, grants, bequests, devises, or other funds from public and private sources.

Passed by the House March 8, 2005.

Passed by the Senate April 5, 2005.

Approved by the Governor April 13, 2005.

Filed in Office of Secretary of State April 13, 2005.

CHAPTER 33

[Substitute House Bill 1569]

QUALITY ASSURANCE COMMITTEES

AN ACT Relating to quality assurance in boarding homes, nursing homes, hospitals, peer review organizations, and coordinated quality improvement plans; amending RCW 18.20.390, 4.24.250, 43.70.510, and 70.41.200; reenacting and amending RCW 42.17.310; adding a new section to chapter 74.42 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that facilitation of the quality assurance process in licensed boarding homes and nursing homes will promote safe patient care. The legislature also finds that communication and quality assurance efforts by boarding homes and nursing homes will achieve the goal of providing high quality of care to citizens residing in licensed boarding homes and nursing homes, and may reduce property and liability insurance premium costs for such facilities. The legislature further finds that sharing of quality assurance information between boarding homes, nursing homes, coordinated quality improvement plans, peer review organizations, and hospitals will promote safe patient care and ensure consistency of care across organizations and practices.

Sec. 2. RCW 18.20.390 and 2004 c 144 s 2 are each amended to read as follows:

(1) To ensure the proper delivery of services and the maintenance and improvement in quality of care through self-review, any boarding home licensed under this chapter may maintain a quality assurance committee that, at a minimum, includes:

(a) A licensed registered nurse under chapter 18.79 RCW;

(b) The administrator; and

(c) Three other members from the staff of the boarding home.

(2) When established, the quality assurance committee shall meet at least quarterly to identify issues that may adversely affect quality of care and services to residents and to develop and implement plans of action to correct identified quality concerns or deficiencies in the quality of care provided to residents.

(3) To promote quality of care through self-review without the fear of reprisal, and to enhance the objectivity of the review process, the department shall not require, and the long-term care ombudsman program shall not request, disclosure of any quality assurance committee records or reports, unless the disclosure is related to the committee's compliance with this section, if:

(a) The records or reports are not maintained pursuant to statutory or regulatory mandate; and

(b) The records or reports are created for and collected and maintained by the committee.

(4) If the boarding home refuses to release records or reports that would otherwise be protected under this section, the department may then request only that information that is necessary to determine whether the boarding home has a quality assurance committee and to determine that it is operating in compliance with this section. However, if the boarding home offers the department documents generated by, or for, the quality assurance committee as evidence of compliance with boarding home requirements, the documents are ~~((not))~~ protected as quality assurance committee documents under subsections (6) and (8) of this section when in the possession of the department. The department is not liable for an inadvertent disclosure, a disclosure related to a required federal or state audit, or disclosure of documents incorrectly marked as quality assurance committee documents by the facility.

(5) Good faith attempts by the committee to identify and correct quality deficiencies shall not be used as a basis for sanctions.

~~(6) ((Any records that are created for and collected and maintained by the quality assurance committee shall not be discoverable or admitted into evidence in a civil action brought against a boarding home.~~

~~(7))~~ Information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, a quality assurance committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude:

(a) In any civil action, the discovery of the identity of persons involved in the care that is the basis of the civil action whose involvement was independent of any quality improvement committee activity;

(b) In any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of their participation in the quality assurance committee activities.

(7) A quality assurance committee under subsection (1) of this section, RCW 70.41.200, section 3 of this act, RCW 4.24.250, or 43.70.510 may share information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, the committee, with one or more other quality assurance committees created under subsection (1) of this section, RCW 70.41.200, section 3 of this act, RCW 4.24.250, or 43.70.510 for the improvement of the quality of care and services rendered to boarding home residents. Information and documents disclosed by one quality assurance committee to another quality assurance committee and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsections (6) and (8) of this section, RCW 43.70.510(4), 70.41.200(3), 4.24.250(1), and section 3 (7) and (9) of this act. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws.

(8) Information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, a quality assurance committee are exempt from disclosure under chapter 42.17 RCW.

(9) Notwithstanding any records created for the quality assurance committee, the facility shall fully set forth in the resident's records, available to the resident, the department, and others as permitted by law, the facts concerning any incident of injury or loss to the resident, the steps taken by the facility to address the resident's needs, and the resident outcome.

NEW SECTION. Sec. 3. A new section is added to chapter 74.42 RCW to read as follows:

(1) To ensure the proper delivery of services and the maintenance and improvement in quality of care through self-review, each facility may maintain a quality assurance committee that, at a minimum, includes:

- (a) The director of nursing services;
- (b) A physician designated by the facility; and
- (c) Three other members from the staff of the facility.

(2) When established, the quality assurance committee shall meet at least quarterly to identify issues that may adversely affect quality of care and services to residents and to develop and implement plans of action to correct identified quality concerns or deficiencies in the quality of care provided to residents.

(3) To promote quality of care through self-review without the fear of reprisal, and to enhance the objectivity of the review process, the department shall not require, and the long-term care ombudsman program shall not request, disclosure of any quality assurance committee records or reports, unless the disclosure is related to the committee's compliance with this section, if:

- (a) The records or reports are not maintained pursuant to statutory or regulatory mandate; and
- (b) The records or reports are created for and collected and maintained by the committee.

(4) The department may request only information related to the quality assurance committee that may be necessary to determine whether a facility has a quality assurance committee and that it is operating in compliance with this section.

(5) Good faith attempts by the committee to identify and correct quality deficiencies shall not be used as a basis for imposing sanctions.

(6) If the facility offers the department documents generated by, or for, the quality assurance committee as evidence of compliance with nursing facility requirements, the documents are protected as quality assurance committee documents under subsections (7) and (9) of this section when in the possession of the department. The department is not liable for an inadvertent disclosure, a disclosure related to a required federal or state audit, or disclosure of documents incorrectly marked as quality assurance committee documents by the facility.

(7) Information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, a quality assurance committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the care that is the basis of the civil action whose involvement was independent of any quality improvement committee activity; and (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of their participation in the quality assurance committee activities.

(8) A quality assurance committee under subsection (1) of this section, RCW 18.20.390, 70.41.200, 4.24.250, or 43.70.510 may share information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, the committee, with one or more other quality assurance committees created under subsection (1) of this section, RCW 18.20.390, 70.41.200, 4.24.250, or 43.70.510 for the improvement of the quality of care and services rendered to nursing facility residents. Information and documents disclosed by one quality assurance committee to another quality assurance committee and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsections (7) and (9) of this section, RCW 18.20.390 (6) and (8), 43.70.510(4), 70.41.200(3), and 4.24.250(1). The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws.

(9) Information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, a

quality assurance committee are exempt from disclosure under chapter 42.17 RCW.

(10) Notwithstanding any records created for the quality assurance committee, the facility shall fully set forth in the resident's records, available to the resident, the department, and others as permitted by law, the facts concerning any incident of injury or loss to the resident, the steps taken by the facility to address the resident's needs, and the resident outcome.

(11) A facility operated as part of a hospital licensed under chapter 70.41 RCW may maintain a quality assurance committee in accordance with this section which shall be subject to the provisions of subsections (1) through (10) of this section or may conduct quality improvement activities for the facility through a quality improvement committee under RCW 70.41.200 which shall be subject to the provisions of RCW 70.41.200(9).

Sec. 4. RCW 42.17.310 and 2003 c 277 s 3 and 2003 c 124 s 1 are each reenacted and amended to read as follows:

(1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) 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.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

(m) 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 (i) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (ii) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed prior to July 28, 1991, with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to export projects pursuant to RCW 43.23.035.

(p) Financial disclosures filed by private vocational schools under chapters 28B.85 and 28C.10 RCW.

(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.

(r) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 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.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

(t) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(u) The residential addresses or residential telephone numbers of employees or volunteers of a public agency which are held by any public agency in

personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency.

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order.

(w)(i) The federal social security number of individuals governed under chapter 18.130 RCW maintained in the files of the department of health, except this exemption does not apply to requests made directly to the department from federal, state, and local agencies of government, and national and state licensing, credentialing, investigatory, disciplinary, and examination organizations; (ii) the current residential address and current residential telephone number of a health care provider governed under chapter 18.130 RCW maintained in the files of the department, if the provider requests that this information be withheld from public inspection and copying, and provides to the department an accurate alternate or business address and business telephone number. On or after January 1, 1995, the current residential address and residential telephone number of a health care provider governed under RCW 18.130.040 maintained in the files of the department shall automatically be withheld from public inspection and copying unless the provider specifically requests the information be released, and except as provided for under RCW 42.17.260(9).

(x) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(y) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420.

(z) 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.

(aa) 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.

(bb) Financial and valuable trade information under RCW 51.36.120.

(cc) Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or 70.123.075 or a rape crisis center as defined in RCW 70.125.030.

(dd) Information that identifies a person who, while an agency employee: (i) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (ii) requests his or her identity or any identifying information not be disclosed.

(ee) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment.

(ff) Business related information protected from public inspection and copying under RCW 15.86.110.

(gg) 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.

(hh) Information and documents created specifically for, and collected and maintained by, a quality improvement committee pursuant to RCW 43.70.510 or 70.41.200, ~~((~~ff~~))~~ by a peer review committee under RCW 4.24.250, or by a quality assurance committee pursuant to section 3 of this act or RCW 18.20.390, regardless of which agency is in possession of the information and documents.

(ii) Personal information in files maintained in a data base created under RCW 43.07.360.

(jj) 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.

(kk) Names of individuals residing in emergency or transitional housing that are furnished to the department of revenue or a county assessor in order to substantiate a claim for property tax exemption under RCW 84.36.043.

(ll) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service. However, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides.

(mm) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons.

(nn) The personally identifying information of persons who acquire and use transit passes and other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose this information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media, or to the news media when reporting on public transportation or public safety. This information may also be disclosed at the agency's discretion to governmental agencies or groups concerned with public transportation or public safety.

(oo) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310. If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this section as exempt from disclosure. If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality.

(pp) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110.

(qq) Financial and commercial information supplied by or on behalf of a person, firm, corporation, or entity under chapter 28B.95 RCW relating to the purchase or sale of tuition units and contracts for the purchase of multiple tuition units.

(rr) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b).

(ss) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law.

(tt) 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 liquor license, gambling license, or lottery retail license.

(uu) Records maintained by the employment security department and subject to chapter 50.13 RCW if provided to another individual or organization for operational, research, or evaluation purposes.

(vv) Individually identifiable information received by the work force training and education coordinating board for research or evaluation purposes.

(ww) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(i) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and

(ii) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism.

(xx) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher providing the catch data. However, this information may be released to government agencies concerned with the management of fish and wildlife resources.

(yy) Sensitive wildlife data obtained by the department of fish and wildlife. However, sensitive wildlife data may be released to government agencies

concerned with the management of fish and wildlife resources. Sensitive wildlife data includes:

(i) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;

(ii) Radio frequencies used in, or locational data generated by, telemetry studies; or

(iii) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(A) The species has a known commercial or black market value;

(B) There is a history of malicious take of that species; or

(C) There is a known demand to visit, take, or disturb, and the species behavior or ecology renders it especially vulnerable or the species has an extremely limited distribution and concentration.

(zz) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW, except name, address of contact used by the department, and type of license, endorsement, or tag. However, the department of fish and wildlife may disclose personally identifying information to:

(i) Government agencies concerned with the management of fish and wildlife resources;

(ii) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and

(iii) Law enforcement agencies for the purpose of firearm possession enforcement under RCW 9.41.040.

(aaa)(i) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have not been commingled with other recorded documents. These records will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding that veteran's general power of attorney, or to anyone else designated in writing by that veteran to receive the records.

(ii) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have been commingled with other records, if the veteran has recorded a "request for exemption from public disclosure of discharge papers" with the county auditor. If such a request has been recorded, these records may be released only to the veteran filing the papers, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iii) Discharge papers of a veteran filed at the office of the county auditor after June 30, 2002, are not public records, but will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iv) For the purposes of this subsection (1)(aaa), next of kin of deceased veterans have the same rights to full access to the record. Next of kin are the veteran's widow or widower who has not remarried, son, daughter, father, mother, brother, and sister.

(bbb) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility or any individual's safety.

(ccc) Information compiled by school districts or schools in the development of their comprehensive safe school plans pursuant to RCW 28A.320.125, to the extent that they identify specific vulnerabilities of school districts and each individual school.

(ddd) Information regarding the infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities.

(eee) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW.

(fff) Proprietary data, trade secrets, or other information that relates to: (i) A vendor's unique methods of conducting business; (ii) data unique to the product or services of the vendor; or (iii) 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.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

Sec. 5. RCW 4.24.250 and 2004 c 145 s 1 are each amended to read as follows:

(1) Any health care provider as defined in RCW 7.70.020 (1) and (2) as now existing or hereafter amended who, in good faith, files charges or presents evidence against another member of their profession based on the claimed incompetency or gross misconduct of such person before a regularly constituted review committee or board of a professional society or hospital whose duty it is to evaluate the competency and qualifications of members of the profession, including limiting the extent of practice of such person in a hospital or similar institution, or before a regularly constituted committee or board of a hospital whose duty it is to review and evaluate the quality of patient care and any person or entity who, in good faith, shares any information or documents with one or more other committees, boards, or programs under subsection (2) of this section, shall be immune from civil action for damages arising out of such activities. For the purposes of this section, sharing information is presumed to be in good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading. The proceedings, reports, and written records of such committees or boards, or of a member, employee, staff person, or investigator of such a committee or board, shall not be subject to subpoena or discovery proceedings in any civil action, except actions arising out of the recommendations of such committees or boards involving the restriction or revocation of the clinical or staff privileges of a health care provider as defined above.

(2) A coordinated quality improvement program maintained in accordance with RCW 43.70.510 or 70.41.200 (~~and~~), a quality assurance committee maintained in accordance with RCW 18.20.390 or section 3 of this act, or any committee(s) or board(s) under subsection (1) of this section may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a coordinated quality improvement committee or committees or boards under subsection (1) of this section, with one or more other coordinated quality improvement programs or committees or boards under subsection (1) of this section for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program or committee or board under subsection (1) of this section to another coordinated quality improvement program or committee or board under subsection (1) of this section and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (1) of this section and by RCW 43.70.510(4) (~~and~~), 70.41.200(3), 18.20.390 (6) and (8), and section 3 (7) and (9) of this act.

Sec. 6. RCW 43.70.510 and 2004 c 145 s 2 are each amended to read as follows:

(1)(a) Health care institutions and medical facilities, other than hospitals, that are licensed by the department, professional societies or organizations, health care service contractors, health maintenance organizations, health carriers approved pursuant to chapter 48.43 RCW, and any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the jurisdiction and regulation of any state agency or any subdivision thereof may maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice as set forth in RCW 70.41.200.

(b) All such programs shall comply with the requirements of RCW 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to reflect the structural organization of the institution, facility, professional societies or organizations, health care service contractors, health maintenance organizations, health carriers, or any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the jurisdiction and regulation of any state agency or any subdivision thereof, unless an alternative quality improvement program substantially equivalent to RCW 70.41.200(1)(a) is developed. All such programs, whether complying with the requirement set forth in RCW 70.41.200(1)(a) or in the form of an alternative program, must be approved by the department before the discovery limitations provided in subsections (3) and (4) of this section and the exemption under RCW 42.17.310(1)(hh) and subsection (5) of this section shall apply. In reviewing plans submitted by licensed entities that are associated with physicians' offices, the department shall ensure that the exemption under RCW 42.17.310(1)(hh) and the discovery limitations of this section are applied only to information and documents related specifically to quality improvement activities undertaken by the licensed entity.

(2) Health care provider groups of five or more providers may maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice as set forth in RCW 70.41.200. All such programs shall comply with the requirements of RCW 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to reflect the structural organization of the health care provider group. All such programs must be approved by the department before the discovery limitations provided in subsections (3) and (4) of this section and the exemption under RCW 42.17.310(1)(hh) and subsection (5) of this section shall apply.

(3) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (6) of this section is not subject to an action for civil damages or other relief as a result of the activity or its consequences. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(4) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by a quality improvement committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts that form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action challenging the termination of a contract by a state agency with any entity maintaining a coordinated quality improvement program under this section if the termination was on the basis of quality of care concerns, introduction into evidence of information created, collected, or maintained by the quality improvement committees of the subject entity, which may be under terms of a protective order as specified by the court; (e) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (f) in any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department of health to be made regarding the care and treatment received.

(5) Information and documents created specifically for, and collected and maintained by a quality improvement committee are exempt from disclosure under chapter 42.17 RCW.

(6) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or with RCW 70.41.200, a quality assurance committee maintained in accordance with RCW 18.20.390 or section 3 of this act, or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information

and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (4) of this section and RCW 4.24.250.

(7) The department of health shall adopt rules as are necessary to implement this section.

Sec. 7. RCW 70.41.200 and 2004 c 145 s 3 are each amended to read as follows:

(1) Every hospital shall maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The program shall include at least the following:

(a) The establishment of a quality improvement committee with the responsibility to review the services rendered in the hospital, both retrospectively and prospectively, in order to improve the quality of medical care of patients and to prevent medical malpractice. The committee shall oversee and coordinate the quality improvement and medical malpractice prevention program and shall ensure that information gathered pursuant to the program is used to review and to revise hospital policies and procedures;

(b) A medical staff privileges sanction procedure through which credentials, physical and mental capacity, and competence in delivering health care services are periodically reviewed as part of an evaluation of staff privileges;

(c) The periodic review of the credentials, physical and mental capacity, and competence in delivering health care services of all persons who are employed or associated with the hospital;

(d) A procedure for the prompt resolution of grievances by patients or their representatives related to accidents, injuries, treatment, and other events that may result in claims of medical malpractice;

(e) The maintenance and continuous collection of information concerning the hospital's experience with negative health care outcomes and incidents injurious to patients, patient grievances, professional liability premiums, settlements, awards, costs incurred by the hospital for patient injury prevention, and safety improvement activities;

(f) The maintenance of relevant and appropriate information gathered pursuant to (a) through (e) of this subsection concerning individual physicians within the physician's personnel or credential file maintained by the hospital;

(g) Education programs dealing with quality improvement, patient safety, medication errors, injury prevention, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with patients, and causes of malpractice claims for staff personnel engaged in patient care activities; and

(h) Policies to ensure compliance with the reporting requirements of this section.

(2) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or

boards under subsection (8) of this section is not subject to an action for civil damages or other relief as a result of the activity. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(3) Information and documents, including complaints and incident reports, created specifically for, and collected(;) and maintained by, a quality improvement committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

(4) Each quality improvement committee shall, on at least a semiannual basis, report to the governing board of the hospital in which the committee is located. The report shall review the quality improvement activities conducted by the committee, and any actions taken as a result of those activities.

(5) The department of health shall adopt such rules as are deemed appropriate to effectuate the purposes of this section.

(6) The medical quality assurance commission or the board of osteopathic medicine and surgery, as appropriate, may review and audit the records of committee decisions in which a physician's privileges are terminated or restricted. Each hospital shall produce and make accessible to the commission or board the appropriate records and otherwise facilitate the review and audit. Information so gained shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section. Failure of a hospital to comply with this subsection is punishable by a civil penalty not to exceed two hundred fifty dollars.

(7) The department, the joint commission on accreditation of health care organizations, and any other accrediting organization may review and audit the records of a quality improvement committee or peer review committee in connection with their inspection and review of hospitals. Information so obtained shall not be subject to the discovery process, and confidentiality shall

be respected as required by subsection (3) of this section. Each hospital shall produce and make accessible to the department the appropriate records and otherwise facilitate the review and audit.

(8) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or ~~((with))~~ RCW 43.70.510, a quality assurance committee maintained in accordance with RCW 18.20.390 or section 3 of this act, or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section, RCW 18.20.390 (6) and (8), section 3 (7) and (9) of this act, and RCW 4.24.250.

(9) A hospital that operates a nursing home as defined in RCW 18.51.010 may conduct quality improvement activities for both the hospital and the nursing home through a quality improvement committee under this section, and such activities shall be subject to the provisions of subsections (2) through (8) of this section.

(10) Violation of this section shall not be considered negligence per se.

Passed by the House March 9, 2005.

Passed by the Senate April 4, 2005.

Approved by the Governor April 13, 2005.

Filed in Office of Secretary of State April 13, 2005.

CHAPTER 34

[House Bill 1838]

SHORELINE AND POLLUTION CONTROL HEARINGS BOARDS

AN ACT Relating to increasing the threshold for short board appeals before the shorelines and pollution control hearings boards to fifteen thousand dollars; and amending RCW 90.58.185 and 43.21B.305.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 90.58.185 and 1994 c 253 s 2 are each amended to read as follows:

(1) In the case of an appeal involving a single family residence or appurtenance to a single family residence, including a dock or pier designed to serve a single family residence, or of appeals involving a penalty of fifteen

thousand dollars or less, the request for review may be heard by a panel of three board members, at least one and not more than two of whom shall be members of the pollution control hearings board. Two members of the three must agree to issue a final decision of the board.

(2) The board shall define by rule alternative processes to expedite appeals, including those involving a single-family residence or appurtenance to a single-family residence, including a dock or pier designed to serve a single-family residence, or involving a penalty of fifteen thousand dollars or less. These alternatives may include: Mediation, upon agreement of all parties; submission of testimony by affidavit; or other forms that may lead to less formal and faster resolution of appeals.

Sec. 2. RCW 43.21B.305 and 1994 c 253 s 5 are each amended to read as follows:

In an appeal that involves a penalty of (~~five~~) fifteen thousand dollars or less, the appeal may be heard by one member of the board, whose decision shall be the final decision of the board. The board shall define by rule alternative procedures to expedite (~~small~~) appeals involving penalties of fifteen thousand dollars or less. These alternatives may include: Mediation, upon agreement of all parties; submission of testimony by affidavit; or other forms that may lead to less formal and faster resolution of appeals.

Passed by the House March 10, 2005.

Passed by the Senate April 4, 2005.

Approved by the Governor April 13, 2005.

Filed in Office of Secretary of State April 13, 2005.

CHAPTER 35

[House Bill 2088]

FIRE PROTECTION POLICY BOARD

AN ACT Relating to the state fire protection policy board; and amending RCW 43.43.932.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 43.43.932 and 1995 c 369 s 15 are each amended to read as follows:

There is created the state fire protection policy board consisting of (~~eight~~) nine members appointed by the governor:

- (1) One representative of fire chiefs;
- (2) One insurance industry representative;
- (3) One representative of cities and towns;
- (4) One representative of counties;
- (5) One full-time, paid, career fire fighter;
- (6) One volunteer fire fighter;
- (7) One representative of fire commissioners; (~~and~~)
- (8) One representative of fire control programs of the department of natural resources; and

(9) One representative of the state association of fire marshals.

In making the appointments required under subsections (1) through (~~(7)~~ ~~(8)~~) (9) of this section, the governor shall (a) seek the advice of and consult

with organizations involved in fire protection; and (b) ensure that racial minorities, women, and persons with disabilities are represented.

The terms of the appointed members of the board shall be three years and until a successor is appointed and qualified. However, initial board members shall be appointed as follows: Three members to terms of one year, three members to terms of two years, and ~~((four))~~ three members to terms of three years. In the case of a vacancy of a member appointed under subsections (1) through ~~((7)-(8)))~~ (9) of this section, the governor shall appoint a new representative to fill the unexpired term of the member whose office has become vacant. A vacancy shall occur whenever an appointed member ceases to be employed in the occupation the member was appointed to represent. ~~((The members of the board appointed pursuant to subsections (1) and (5) of this section and holding office on July 1, 1995, shall serve the remainder of their terms, and the reduction of the board required by section 15, chapter 369, Laws of 1995, shall occur upon the expiration of their terms.))~~

The appointed members of the board shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060.

The board shall select its own chairperson and shall meet at the request of the governor or the chairperson and at least four times per year.

Passed by the House March 9, 2005.

Passed by the Senate April 4, 2005.

Approved by the Governor April 13, 2005.

Filed in Office of Secretary of State April 13, 2005.

CHAPTER 36

[House Bill 2188]

STATE ART COLLECTION—CONSERVATION

AN ACT Relating to conservation of the state art collection; and amending RCW 28A.335.210, 28B.10.025, 28B.10.027, 43.17.200, 43.17.210, and 43.19.455.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28A.335.210 and 1983 c 204 s 7 are each amended to read as follows:

The state board of education and superintendent of public instruction shall allocate, as a nondeductible item, out of any moneys appropriated for state assistance to school districts for the original construction of any school plant facility the amount of one-half of one percent of the appropriation to be expended by the Washington state arts commission for the acquisition of works of art. The works of art may be placed in accordance with Article IX, sections 2 and 3 of the state Constitution on public lands, integral to or attached to a public building or structure, detached within or outside a public building or structure, part of a portable exhibition or collection, part of a temporary exhibition, or loaned or exhibited in other public facilities. The Washington state arts commission shall, in consultation with the superintendent of public instruction, determine the amount to be made available for the purchase of works of art under this section, and payments therefor shall be made in accordance with law. The designation of projects and sites, selection, contracting, purchase, commissioning, reviewing of design, execution and placement, acceptance,

maintenance, and sale, exchange, or disposition of works of art shall be the responsibility of the Washington state arts commission in consultation with the superintendent of public instruction and representatives of school district boards of directors. (~~However, the costs to carry out the Washington state arts commission's responsibility for maintenance shall not be funded from the moneys referred to under this section, RCW 43.17.200, 43.19.455, or 28B.10.025, but shall be contingent upon adequate appropriations being made for that purpose: PROVIDED, That~~) The superintendent of public instruction and the school district board of directors of the districts where the sites are selected shall have the right to:

(1) Waive its use of the one-half of one percent of the appropriation for the acquisition of works of art before the selection process by the Washington state arts commission;

(2) Appoint a representative to the body established by the Washington state arts commission to be part of the selection process with full voting rights;

(3) Reject the results of the selection process;

(4) Reject the placement of a completed work or works of art on school district premises if such works are portable.

Rejection at any point before or after the selection process shall not cause the loss of or otherwise endanger state construction funds available to the local school district. Any works of art rejected under this section shall be applied to the provision of works of art under this chapter, at the discretion of the Washington state arts commission, notwithstanding any contract or agreement between the affected school district and the artist involved. In addition to the cost of the works of art the one-half of one percent of the appropriation as provided herein shall be used to provide for the administration, including conservation of the state art collection, by the Washington state arts commission and all costs for installation of the work of art. For the purpose of this section building shall not include sheds, warehouses or other buildings of a temporary nature.

The executive director of the arts commission, the superintendent of public instruction and the Washington state school directors association shall appoint a study group to review the operations of the one-half of one percent for works of art under this section.

Sec. 2. RCW 28B.10.025 and 1990 c 33 s 557 are each amended to read as follows:

The Washington state arts commission shall, in consultation with the boards of regents of the University of Washington and Washington State University and with the boards of trustees of the regional universities, The Evergreen State College, and the community college districts, determine the amount to be made available for the purchases of art under RCW 28B.10.027, and payment therefor shall be made in accordance with law. The designation of projects and sites, the selection, contracting, purchase, commissioning, reviewing of design, execution and placement, acceptance, maintenance, and sale, exchange, or disposition of works of art shall be the responsibility of the Washington state arts commission in consultation with the board of regents or trustees. (~~However, the costs to carry out the Washington state arts commission's responsibility for maintenance shall not be funded from the moneys referred to under this section, RCW~~

~~43.17.200, 43.19.455, or 28A.335.210, but shall be contingent upon adequate appropriations being made for that purpose.)~~

Sec. 3. RCW 28B.10.027 and 1983 c 204 s 9 are each amended to read as follows:

All universities and colleges shall allocate as a nondeductible item, out of any moneys appropriated for the original construction or any major renovation or remodel work exceeding two hundred thousand dollars of any building, an amount of one-half of one percent of the appropriation to be expended by the Washington state arts commission with the approval of the board of regents or trustees for the acquisition of works of art. The works of art may be placed on public lands of institutions of higher education, integral to or attached to a public building or structure of institutions of higher education, detached within or outside a public building or structure of institutions of higher education, part of a portable exhibition or collection, part of a temporary exhibition, or loaned or exhibited in other public facilities.

In addition to the cost of the works of art, the one-half of one percent of the appropriation shall be used to provide for the administration of the visual arts program, including conservation of the state art collection, by the Washington state arts commission and all costs for installation of the work of art. For the purpose of this section building shall not include sheds, warehouses, and other buildings of a temporary nature.

Sec. 4. RCW 43.17.200 and 1983 c 204 s 4 are each amended to read as follows:

All state agencies including all state departments, boards, councils, commissions, and quasi public corporations shall allocate, as a nondeductible item, out of any moneys appropriated for the original construction of any public building, an amount of one-half of one percent of the appropriation to be expended by the Washington state arts commission for the acquisition of works of art. The works of art may be placed on public lands, integral to or attached to a public building or structure, detached within or outside a public building or structure, part of a portable exhibition or collection, part of a temporary exhibition, or loaned or exhibited in other public facilities. In addition to the cost of the works of art, the one-half of one percent of the appropriation as provided herein shall be used to provide for the administration of the visual arts program, including conservation of the state art collection, by the Washington state arts commission and all costs for installation of the works of art. For the purpose of this section building shall not include highway construction sheds, warehouses or other buildings of a temporary nature.

Sec. 5. RCW 43.17.210 and 1990 c 33 s 575 are each amended to read as follows:

The Washington state arts commission shall determine the amount to be made available for the purchase of art in consultation with the agency, except where another person or agency is specified under RCW 43.19.455, 28A.335.210, or 28B.10.025, and payments therefor shall be made in accordance with law. The designation of projects and sites, selection, contracting, purchase, commissioning, reviewing of design, execution and placement, acceptance, maintenance, and sale, exchange, or disposition of works of art shall be the responsibility of the Washington state arts commission in consultation with the

directors of the state agencies. (~~However, the costs to carry out the Washington state arts commission's responsibility for maintenance shall not be funded from the moneys referred to in RCW 43.17.200, 43.19.455, 28A.335.210, or 28B.10.025, but shall be contingent upon adequate appropriations being made for that purpose.~~)

Sec. 6. RCW 43.19.455 and 1990 c 33 s 576 are each amended to read as follows:

Except as provided under RCW 43.17.210, the Washington state arts commission shall determine the amount to be made available for the purchase of art under RCW 43.17.200 in consultation with the director of general administration, and payments therefor shall be made in accordance with law. The designation of projects and sites, selection, contracting, purchase, commissioning, reviewing of design, execution and placement, acceptance, maintenance, and sale, exchange, or disposition of works of art shall be the responsibility of the Washington state arts commission in consultation with the director of general administration. (~~However, the costs to carry out the Washington state arts commission's responsibility for maintenance shall not be funded from the moneys referred to under this section, RCW 43.17.200, 28A.335.210, or 28B.10.025, but shall be contingent upon adequate appropriations being made for that purpose.~~)

Passed by the House March 10, 2005.

Passed by the Senate April 5, 2005.

Approved by the Governor April 13, 2005.

Filed in Office of Secretary of State April 13, 2005.

CHAPTER 37

[Senate Bill 5135]

VOLUNTEER FIRE FIGHTERS AND RESERVE OFFICERS—RELIEF AND PENSIONS

AN ACT Relating to volunteer fire fighters' and reserve officers' relief and pensions; amending RCW 41.24.010 and 41.24.030; and adding a new section to chapter 41.24 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 41.24.010 and 1999 c 148 s 1 are each amended to read as follows:

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

(1) "Municipal corporation" or "municipality" includes any county, city, town or combination thereof, fire protection district, local law enforcement agency, or any emergency medical service district or other special district, authorized by law to protect life or property within its boundaries through a fire department, emergency workers, or reserve officers.

(2) "Fire department" means any regularly organized fire department or emergency medical service district consisting wholly of volunteer fire fighters, or any part-paid and part-volunteer fire department duly organized and maintained by any municipality: PROVIDED, That any such municipality wherein a part-paid fire department is maintained may by appropriate legislation permit the full-paid members of its department to come under the provisions of chapter 41.16 RCW.

(3) "Fire fighter" includes any fire fighter or emergency worker who is a member of any fire department of any municipality but shall not include ~~((full time, paid))~~ fire fighters who are ~~((members of))~~ eligible for participation in the Washington law enforcement officers' and fire fighters' retirement system or the Washington public employees' retirement system, with respect to periods of service rendered in such capacity.

(4) "Emergency worker" means any emergency medical service personnel, regulated by chapters 18.71 and 18.73 RCW, who is a member of an emergency medical service district but shall not include ~~((full time, paid))~~ emergency medical service personnel who are ~~((members of))~~ eligible for participation in the Washington public employees' retirement system, with respect to periods of service rendered in such capacity.

(5) "Performance of duty" or "performance of service" shall be construed to mean and include any work in and about company quarters, any fire station, any law enforcement office or precinct, or any other place under the direction or general orders of the chief or other officer having authority to order such member to perform such work; responding to, working at, or returning from an alarm of fire, emergency call, or law enforcement duties; drill or training; or any work performed of an emergency nature in accordance with the rules and regulations of the fire department or local law enforcement agency.

(6) "State board" means the state board for volunteer fire fighters and reserve officers.

(7) "Board of trustees" or "local board" means: (a) For matters affecting fire fighters, a fire fighter board of trustees created under RCW 41.24.060; (b) for matters affecting an emergency worker, an emergency medical service district board of trustees created under RCW 41.24.330; or (c) for matters affecting reserve officers, a reserve officer board of trustees created under RCW 41.24.460.

(8) "Appropriate legislation" means an ordinance when an ordinance is the means of legislating by any municipality, and resolution in all other cases.

(9) "Reserve officer" means the same as defined by the Washington state criminal justice training commission under chapter 43.101 RCW, but shall not include ~~((full time, paid law))~~ enforcement officers who are ~~((members of))~~ eligible for participation in the Washington law enforcement officers' and fire fighters' retirement system or the Washington public employees' retirement system, with respect to periods of service rendered in such capacity.

(10) "Participant" means: (a) For purposes of relief, any reserve officer who is or may become eligible for relief under this chapter or any fire fighter or emergency worker; and (b) for purposes of retirement pension, any fire fighter, emergency worker, or reserve officer who is or may become eligible to receive a benefit of any type under the retirement provisions of this chapter, or whose beneficiary may be eligible to receive any such benefit.

(11) "Relief" means all medical, death, and disability benefits available under this chapter that are made necessary from death, sickness, injury, or disability arising in the performance of duty, including benefits provided under RCW 41.24.110, 41.24.150, 41.24.160, 41.24.175, 41.24.220, and 41.24.230, but does not include retirement pensions provided under this chapter.

(12) "Retirement pension" means retirement payments for the performance of service, as provided under RCW 41.24.170, 41.24.172, 41.24.175, 41.24.180, and 41.24.185.

(13) "Principal fund" means the volunteer fire fighters' and reserve officers' relief and pension principal fund created under RCW 41.24.030.

(14) "Administrative fund" means the volunteer fire fighters' and reserve officers' administrative fund created under RCW 41.24.030.

Sec. 2. RCW 41.24.030 and 1999 c 148 s 3 are each amended to read as follows:

(1) The volunteer fire fighters' and reserve officers' relief and pension principal fund is created in the state treasury as a trust fund for the benefit of the participants covered by this chapter consisting of:

(a) All bequests, fees, gifts, emoluments, or donations given or paid to the fund.

(b) An annual fee for each member of its fire department to be paid by each municipal corporation for the purpose of affording relief provided in this chapter for fire fighters as follows:

(i) ~~((Ten))~~ Thirty dollars for each volunteer or part-paid member of its fire department;

(ii) A sum equal to one and one-half of one percent of the annual salary attached to the rank of each full-paid member of its fire department, prorated for 1970 on the basis of services prior to March 1, 1970.

(c) An annual fee for each emergency worker of an emergency medical service district paid by the district that is sufficient to pay the full costs of covering the emergency worker under the relief provisions of this chapter, including operating expenses. The state board shall determine the amount of this fee based on the latest actuarial valuation of the system.

(d) Where a municipal corporation has elected to make relief provisions of this chapter available to its reserve officers, an annual fee for each reserve officer paid by the municipal corporation that is sufficient to pay the full costs of covering the reserve officer under the relief provisions of this chapter, including operating expenses. The state board shall determine the amount of this fee based on the latest actuarial valuation of the system.

(e) Where a municipal corporation has elected to make the retirement pension provisions of this chapter available to members of its fire department, an annual fee of sixty dollars for each of its fire fighters electing to enroll, thirty dollars of which shall be paid by the municipality and thirty dollars of which shall be paid by the fire fighter. However, nothing in this section prohibits any municipality from voluntarily paying the fire fighters' fee for this retirement pension coverage.

(f) Where an emergency medical service district has elected to make the retirement pension provisions of this chapter available to its emergency workers, for each emergency worker electing to enroll: (i) An annual fee of thirty dollars shall be paid by the emergency worker; and (ii) an annual fee paid by the emergency medical service district that, together with the thirty-dollar fee per emergency worker, is sufficient to pay the full costs of covering the emergency worker under the retirement pension benefits provided under this chapter, including operating expenses. The state board shall determine the amount of this fee based on the latest actuarial valuation of the system. However, nothing in

this section prohibits any emergency medical service district from voluntarily paying the emergency workers' fees for this retirement pension coverage.

(g) Where a municipal corporation has elected to make the retirement pension provisions of this chapter available to its reserve officers, for each reserve officer electing to enroll: (i) An annual fee of thirty dollars shall be paid by the reserve officer; and (ii) an annual fee paid by the municipal corporation that, together with the thirty-dollar fee per reserve officer, is sufficient to pay the full costs of covering the reserve officer under the retirement pension benefits provided under this chapter, including operating expenses. The state board shall determine the amount of this fee based on the latest actuarial valuation of the system. However, nothing in this section prohibits any municipal corporation from voluntarily paying the reserve officers' fees for this retirement pension coverage.

(h) Moneys transferred from the administrative fund, as provided under subsection (4) of this section, which may only be used to pay relief and retirement pensions for fire fighters.

(i) Earnings from the investment of moneys in the principal fund.

(2) The state investment board, upon request of the state treasurer shall have full power to invest, reinvest, manage, contract, sell, or exchange investments acquired from that portion of the amounts credited to the principal fund as is not, in the judgment of the state board, required to meet current withdrawals. Investments shall be made in the manner prescribed by RCW 43.84.150 and not otherwise.

All bonds, investments, or other obligations purchased by the state investment board shall be placed in the custody of the state treasurer, and he or she shall collect the principal thereof and interest thereon when due.

The state investment board may sell any of the bonds, investments, or obligations so acquired and the proceeds thereof shall be paid to the state treasurer.

(3) The interest, earnings, and proceeds from the sale and redemption of any investments held by the principal fund and invested by the state investment board shall be credited to and form a part of the principal fund, less the allocation to the state investment board expense account pursuant to RCW 43.33A.160.

Subject to restrictions contained in this chapter, all amounts credited to the principal fund shall be available for making the benefit payments required by this chapter.

The state treasurer shall make an annual report showing the condition of the fund.

(4) The volunteer fire fighters' and reserve officers' administrative fund is created in the state treasury. Moneys in the fund, including unanticipated revenues under RCW 43.79.270, may be spent only after appropriation, and may be used only for operating expenses of the volunteer fire fighters' and reserve officers' relief and pension principal fund, the operating expenses of the volunteer fire fighters' and reserve officers' administrative fund, or for transfer from the administrative fund to the principal fund.

(a) Forty percent of all moneys received by the state from taxes on fire insurance premiums shall be paid into the state treasury and credited to the administrative fund.

(b) The state board shall compute a percentage of the amounts credited to the administrative fund to be paid into the principal fund.

(c) For the purpose of providing amounts to be used to defray the cost of administration of the principal and administrative funds, the state board shall ascertain at the beginning of each biennium and request from the legislature an appropriation from the administrative fund sufficient to cover estimated expenses for the biennium.

NEW SECTION, Sec. 3. A new section is added to chapter 41.24 RCW to read as follows:

(1) If an injured volunteer seeks damages from a third party, the state board may also seek recovery of actual costs from the responsible third party. A volunteer seeking damages from a third party is required to notify the state board about the legal proceeding.

(2) The state board is responsible for its proportionate share of the costs and attorneys' fees of the legal proceedings.

(3) Any recovery is subject to a lien by the state board for its share under this section.

(4) This section does not restrict or prohibit the state board's right to seek recovery from a third party when a volunteer fire fighter is injured.

Passed by the Senate March 16, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 13, 2005.

Filed in Office of Secretary of State April 13, 2005.

CHAPTER 38

[Senate Bill 5168]

VOLUNTEER AMBULANCE PERSONNEL

AN ACT Relating to volunteer ambulance personnel; and amending RCW 35A.11.110.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 35A.11.110 and 1993 c 303 s 2 are each amended to read as follows:

Notwithstanding any other provision of law, the legislative body of any code city, by resolution adopted by a two-thirds vote of the full legislative body, may authorize any of its members to serve as volunteer fire fighters, volunteer ambulance personnel, or reserve law enforcement officers, or ~~((both))~~ two or more of such positions, and to receive the same compensation, insurance, and other benefits as are applicable to other volunteer fire fighters, volunteer ambulance personnel, or reserve law enforcement officers employed by the code city.

Passed by the Senate March 15, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 13, 2005.

Filed in Office of Secretary of State April 13, 2005.

CHAPTER 39

[Substitute Senate Bill 5178]

SPECIALTY HOSPITALS

AN ACT Relating to licensing specialty hospitals; creating new sections; providing an expiration date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The federal government has established an eighteen-month moratorium on the exemption under 42 U.S.C. 1395nn that allows physicians to refer patients to physician-owned specialty hospitals. The moratorium effectively prevents the establishment of any new physician-owned specialty hospitals reimbursed under medicare and other federal health programs until the medicare payment advisory commission and the secretary of health and human services each conduct a study to assess physician-owned specialty hospitals. The legislature finds that imposing a similar moratorium on the licensing of any new physician-owned specialty hospital until the results of the medicare payment advisory commission and health and human services' studies are available is necessary to enable the legislature to determine the appropriate regulation of physician-owned specialty hospitals in Washington.

NEW SECTION. Sec. 2. (1) From January 1, 2005, until July 1, 2006, no specialty hospital in which a physician, or an immediate family member of a physician, has an ownership or investment interest shall be granted a license under chapter 70.41 RCW.

(2) For the purposes of this section:

(a) "Specialty hospital" means a subclass of hospital that is primarily or exclusively engaged in the care and treatment of one of the following categories: (i) Patients with a cardiac condition; (ii) patients with an orthopedic condition; (iii) patients receiving a surgical procedure; and (iv) any other specialized category of services that the secretary of health and human services designates as a specialty hospital.

(b) An ownership or investment interest in a specialty hospital may be through equity, debt, or other means and includes an interest in an entity that holds an ownership or investment interest in a specialty hospital.

NEW SECTION. Sec. 3. This act expires July 1, 2006.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate March 14, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 13, 2005.

Filed in Office of Secretary of State April 13, 2005.

CHAPTER 40

[Substitute Senate Bill 5190]

COMMERCIAL FEED—UNSAFE ANIMAL PROTEINS

AN ACT Relating to adulteration of commercial feed; amending RCW 15.53.902 and 15.53.904; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 15.53.902 and 1995 c 374 s 39 are each amended to read as follows:

It is unlawful for any person to distribute an adulterated feed. A commercial feed is deemed to be adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such commercial feed shall not be considered adulterated under this subsection if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health; or

(2) If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance which is unsafe within the meaning of section 406 of the federal food, drug, and cosmetic act (other than one which is (a) a pesticide chemical in or on a raw agricultural commodity; or (b) a food additive); or

(3) If it is, or it bears, or contains any food additive which is unsafe within the meaning of section 409 of the federal food, drug, and cosmetic act (21 U.S.C. Sec. 348); or

(4) If it is ruminant feed and is, bears, or contains any animal protein prohibited in ruminant feed that is unsafe within the meaning of federal regulations promulgated under section 409 of the federal food, drug, and cosmetic act (21 U.S.C. Sec. 348); or

(5) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408(a) of the federal food, drug, and cosmetic act: PROVIDED, That where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the Federal Food, Drug, and Cosmetic Act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of section 408(a) of the federal food, drug, and cosmetic act; or

~~((5))~~ (6) If it is, or it bears or contains any color additive which is unsafe within the meaning of section 706 of the federal food, drug, and cosmetic act; or

~~((6))~~ (7) If it is, or it bears or contains any new animal drug that is unsafe within the meaning of section 512 of the federal food, drug, and cosmetic act (21 U.S.C. Sec. 360b); or

~~((7))~~ (8) If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor; or

~~((8))~~ (9) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling; or

~~((9))~~ (10) If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice rules adopted by the department to assure

that the drug meets the requirements of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics that it purports or is represented to possess. In adopting such rules, the department shall adopt the current good manufacturing practice regulations for type A medicated articles and type B and type C medicated feeds established under authority of the federal food, drug, and cosmetic act, unless the department determines that they are not appropriate to the conditions that exist in this state; or

~~((10))~~ (11) If it contains viable, prohibited (primary) noxious weed seeds in excess of one per pound, or if it contains viable, restricted (secondary) noxious weed seeds in excess of twenty-five per pound. The primary and secondary noxious weed seeds shall be those as named pursuant to the provisions of chapter 15.49 RCW and rules adopted thereunder.

Sec. 2. RCW 15.53.904 and 1965 ex.s. c 31 s 17 are each amended to read as follows:

(1) Any person convicted of violating any of the provisions of this chapter or the rules and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent the department in the performance of its duty in connection with the provisions of this chapter, shall be adjudged guilty of a misdemeanor ~~((and shall be fined not less than fifty dollars nor more than one hundred dollars for the first violation, and not less than two hundred dollars nor more than five hundred dollars for a subsequent violation))~~ as provided in RCW 9A.20.021. In all prosecutions under this chapter involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the department shall be accepted as prima facie evidence of the composition.

(2) Any person convicted of intentionally violating RCW 15.53.902(4) or the rules issued thereunder is guilty of a gross misdemeanor as provided in RCW 9A.20.021.

(3) Nothing in this chapter shall be construed as requiring the department to report for prosecution or for the institution of seizure proceedings as a result of minor violations of this chapter when it believes that the public interest will be best served by a suitable notice of warning in writing.

~~((3))~~ (4) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the department reports a violation for such prosecution, an opportunity shall be given the distributor to present ~~((his))~~ the distributor's view in writing or orally to the department.

~~((4))~~ (5) The department is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under this chapter notwithstanding the existence of other remedies at law. Said injunction to be issued without bond.

Passed by the Senate March 8, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 13, 2005.

Filed in Office of Secretary of State April 13, 2005.

CHAPTER 41

[Senate Bill 5198]

MEDICARE SUPPLEMENTAL INSURANCE—FEDERAL REQUIREMENTS

AN ACT Relating to the implementation of changes to medicare supplement insurance requirements as mandated by the medicare modernization act of 2003 and other federal requirements; amending RCW 48.66.020, 48.66.045, 48.66.055, and 48.66.130; adding a new section to chapter 48.66 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. This act is intended to satisfy the directive from the centers for medicare and medicaid services requiring states to implement changes to their medicare supplement insurance requirements to comply with the standards prescribed by the medicare modernization act that are consistent with amendments to the national association of insurance commissioners medicare supplement insurance minimum standards model act along with other corrections to be compliant with federal requirements.

NEW SECTION. Sec. 2. A new section is added to chapter 48.66 RCW to read as follows:

(1) An issuer may not deny or condition the issuance or effectiveness of any medicare supplement policy or certificate available for sale in this state, or discriminate in the pricing of a policy or certificate, because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six-month period beginning with the first day of the first month in which an individual is both sixty-five years of age or older and is enrolled for benefits under medicare part B. Each medicare supplement policy and certificate currently available from an insurer must be made available to all applicants who qualify under this subsection without regard to age.

(2) If an applicant qualifies under this section and submits an application during the time period referenced in subsection (1) of this section and, as of the date of application, has had a continuous period of creditable coverage of at least three months, the issuer may not exclude benefits based on a preexisting condition.

(3) If an applicant qualified under this section submits an application during the time period referenced in subsection (1) of this section and, as of the date of application, has had a continuous period of creditable coverage that is less than three months, the issuer must reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date.

Sec. 3. RCW 48.66.020 and 1996 c 269 s 1 are each amended to read as follows:

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

(1) "Medicare supplemental insurance" or "medicare supplement insurance policy" refers to a group or individual policy of disability insurance or a subscriber contract of a health care service contractor, a health maintenance organization, or a fraternal benefit society, which relates its benefits to medicare, or which is advertised, marketed, or designed primarily as a supplement to

reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare. Such term does not include:

(a) A policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations; or

(b) A policy issued pursuant to a contract under section 1876 of the federal social security act (42 U.S.C. Sec. 1395 et seq.), or an issued policy under a demonstration specified in 42 U.S.C. Sec. 1395(g)(1); or

~~(c) ((Insurance policies or health care benefit plans, including group conversion policies, provided to medicare eligible persons, that are not marketed or held to be medicare supplement policies or benefit plans))~~ Medicare advantage plans established under medicare part C; or

(d) Outpatient prescription drug plans established under medicare part D; or

(e) Any health care prepayment plan that provides benefits pursuant to an agreement under section 1833(a)(1)(A) of the federal social security act.

(2) "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(3) "Medicare advantage plan" means a plan of coverage for health benefits under medicare part C as defined in 42 U.S.C. Sec. 1395w-28(b), and includes:

(a) Coordinated care plans which provide health care services, including but not limited to health maintenance organization plans (with or without a point-of-service option), plans offered by provider-sponsored organizations, and preferred provider organization plans;

(b) Medical savings account plans coupled with a contribution into a medicare advantage plan medical savings account; and

(c) Medicare advantage private fee-for-service plans.

(4) "Medicare eligible expenses" means health care expenses of the kinds covered by medicare parts A and B, to the extent recognized as reasonable and medically necessary by medicare.

~~((4))~~ (5) "Applicant" means:

(a) In the case of an individual medicare supplement insurance policy or subscriber contract, the person who seeks to contract for insurance benefits; and

(b) In the case of a group medicare supplement insurance policy or subscriber contract, the proposed certificate holder.

~~((5))~~ (6) "Certificate" means any certificate delivered or issued for delivery in this state under a group medicare supplement insurance policy.

~~((6))~~ (7) "Loss ratio" means the incurred claims as a percentage of the earned premium computed under rules adopted by the insurance commissioner.

~~((7))~~ (8) "Preexisting condition" means a covered person's medical condition that caused that person to have received medical advice or treatment during a specified time period immediately prior to the effective date of coverage.

~~((8))~~ (9) "Disclosure form" means the form designated by the insurance commissioner which discloses medicare benefits, the supplemental benefits offered by the insurer, and the remaining amount for which the insured will be responsible.

~~((9))~~ (10) "Issuer" includes insurance companies, health care service contractors, health maintenance organizations, fraternal benefit societies, and any other entity delivering or issuing for delivery medicare supplement policies or certificates to a resident of this state.

(11) "Bankruptcy" means when a medicare advantage organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.

(12) "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than sixty-three days.

(13)(a) "Creditable coverage" means, with respect to an individual, coverage of the individual provided under any of the following:

(i) A group health plan;

(ii) Health insurance coverage;

(iii) Part A or part B of Title XVIII of the social security act (medicare);

(iv) Title XIX of the social security act (medicaid), other than coverage consisting solely of benefits under section 1928;

(v) Chapter 55 of Title 10 U.S.C. (CHAMPUS);

(vi) A medical care program of the Indian health service or of a tribal organization;

(vii) A state health benefits risk pool;

(viii) A health plan offered under chapter 89 of Title 5 U.S.C. (federal employees health benefits program);

(ix) A public health plan as defined in federal regulation; and

(x) A health benefit plan under section 5(e) of the peace corps act (22 U.S.C. Sec. 2504(e)).

(b) "Creditable coverage" does not include one or more, or any combination, of the following:

(i) Coverage only for accident or disability income insurance, or any combination thereof;

(ii) Coverage issued as a supplement to liability insurance;

(iii) Liability insurance, including general liability insurance and automobile liability insurance;

(iv) Worker's compensation or similar insurance;

(v) Automobile medical payment insurance;

(vi) Credit-only insurance;

(vii) Coverage for on-site medical clinics; and

(viii) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

(c) "Creditable coverage" does not include the following benefits if they are provided under a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the plan:

(i) Limited scope dental or vision benefits;

(ii) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and

(iii) Other similar, limited benefits as are specified in federal regulations.

(d) "Creditable coverage" does not include the following benefits if offered as independent, noncoordinated benefits:

(i) Coverage only for a specified disease or illness; and

(ii) Hospital indemnity or other fixed indemnity insurance.

(e) "Creditable coverage" does not include the following if it is offered as a separate policy, certificate, or contract of insurance:

(i) Medicare supplemental health insurance as defined under section 1882(g)(1) of the social security act;

(ii) Coverage supplemental to the coverage provided under chapter 55 of Title 10 U.S.C.; and

(iii) Similar supplemental coverage provided to coverage under a group health plan.

(14) "Employee welfare benefit plan" means a plan, fund, or program of employee benefits as defined in 29 U.S.C. Sec. 1002 (employee retirement income security act).

(15) "Insolvency" means when an issuer, licensed to transact the business of insurance in this state, has had a final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile.

Sec. 4. RCW 48.66.045 and 2004 c 83 s 1 are each amended to read as follows:

Every issuer of a medicare supplement insurance policy or certificate providing coverage to a resident of this state issued on or after January 1, 1996, shall:

(1) Unless otherwise provided for in RCW 48.66.055, issue coverage under its standardized benefit plans B, C, D, E, F, (~~and~~) G, K, and L without evidence of insurability to any resident of this state who is eligible for both medicare hospital and physician services by reason of age or by reason of disability or end-stage renal disease, if the medicare supplement policy replaces another medicare supplement standardized benefit plan policy or certificate B, C, D, E, F, (~~or~~) G, K, or L, or other more comprehensive coverage than the replacing policy;

(2) Unless otherwise provided for in RCW 48.66.055, issue coverage under its standardized plans A, H, I, and J without evidence of insurability to any resident of this state who is eligible for both medicare hospital and physician services by reason of age or by reason of disability or end-stage renal disease, if the medicare supplement policy replaces another medicare supplement policy or certificate which is the same standardized plan as the replaced policy. After December 31, 2005, plans H, I, and J may be replaced only by the same plan if that plan has been modified to remove outpatient prescription drug coverage; and

(3) Set rates only on a community-rated basis. Premiums shall be equal for all policyholders and certificate holders under a standardized medicare supplement benefit plan form, except that an issuer may vary premiums based on spousal discounts, frequency of payment, and method of payment including automatic deposit of premiums and may develop no more than two rating pools that distinguish between an insured's eligibility for medicare by reason of:

(a) Age; or

(b) Disability or end-stage renal disease.

Sec. 5. RCW 48.66.055 and 2002 c 300 s 4 are each amended to read as follows:

(1) Under this section, persons eligible for a medicare supplement policy or certificate are those individuals described in subsection (3) of this section who, subject to subsection (3)(b)(ii) of this section, apply to enroll under the policy not later than sixty-three days after the date of the termination of enrollment described in subsection (3) of this section, and who submit evidence of the date of termination or disenrollment, or medicare part D enrollment, with the application for a medicare supplement policy.

(2) With respect to eligible persons, an issuer may not deny or condition the issuance or effectiveness of a medicare supplement policy described in subsection (4) of this section that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a medicare supplement policy.

(3) "Eligible persons" means an individual that meets the requirements of (a), (b), (c), (d), (e), or (f) of this subsection, as follows:

(a) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under medicare; and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual;

(b)(i) The individual is enrolled with a (~~(medicare+choice)~~) medicare advantage organization under a (~~(medicare+choice)~~) medicare advantage plan under part C of medicare, and any of the following circumstances apply, or the individual is sixty-five years of age or older and is enrolled with a program of all inclusive care for the elderly (PACE) provider under section 1894 of the social security act, and there are circumstances similar to those described in this subsection (3)(b) that would permit discontinuance of the individual's enrollment with the provider if the individual were enrolled in a (~~(medicare+choice)~~) medicare advantage plan:

(A) The certification of the organization or plan (~~(under this subsection (3)(b))~~) has been terminated(~~(, or the organization or plan has notified the individual of an impending termination of such a certification)~~);

(B) The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides(~~(, or has notified the individual of an impending termination or discontinuance of such a plan)~~);

(C) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the secretary of the United States department of health and human services, but not including termination of the individual's enrollment on the basis described in section 1851(g)(3)(B) of the federal social security act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under section 1856 of the federal social security act), or the plan is terminated for all individuals within a residence area;

(D) The individual demonstrates, in accordance with guidelines established by the secretary of the United States department of health and human services, that:

(I) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(II) The organization, an agent, or other entity acting on the organization's behalf materially misrepresented the plan's provisions in marketing the plan to the individual; or

(E) The individual meets other exceptional conditions as the secretary of the United States department of health and human services may provide.

(ii)(A) An individual described in (b)(i) of this subsection may elect to apply (a) of this subsection by substituting, for the date of termination of enrollment, the date on which the individual was notified by the ~~((medicare+choice))~~ medicare advantage organization of the impending termination or discontinuance of the ~~((medicare+choice))~~ medicare advantage plan it offers in the area in which the individual resides, but only if the individual disenrolls from the plan as a result of such notification.

(B) In the case of an individual making the election under (b)(ii)(A) of this subsection, the issuer involved shall accept the application of the individual submitted before the date of termination of enrollment, but the coverage under subsection (1) of this section ~~((shall))~~ is only ~~((become))~~ effective upon termination of coverage under the ~~((medicare+choice))~~ medicare advantage plan involved;

(c)(i) The individual is enrolled with:

(A) An eligible organization under a contract under section 1876 (medicare risk or cost);

(B) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(C) An organization under an agreement under section 1833(a)(1)(A) (health care prepayment plan); or

(D) An organization under a medicare select policy; and

(ii) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under (b)(i) of this subsection;

(d) The individual is enrolled under a medicare supplement policy and the enrollment ceases because:

(i)(A) Of the insolvency of the issuer or bankruptcy of the nonissuer organization; or

(B) Of other involuntary termination of coverage or enrollment under the policy;

(ii) The issuer of the policy substantially violated a material provision of the policy; or

(iii) The issuer, an agent, or other entity acting on the issuer's behalf materially misrepresented the policy's provisions in marketing the policy to the individual;

(e)(i) The individual was enrolled under a medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any ~~((medicare+choice))~~ medicare advantage organization under a

~~((medicare+choice))~~ medicare advantage plan under part C of medicare, any eligible organization under a contract under section 1876 (medicare risk or cost), any similar organization operating under demonstration project authority, any PACE program under section 1894 of the social security act ~~((an organization under an agreement under section 1833(a)(1)(A) (health care prepayment plan))~~), or a medicare select policy; and

(ii) The subsequent enrollment under (e)(i) of this subsection is terminated by the enrollee during any period within the first twelve months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under section 1851(e) of the federal social security act); ~~((or))~~

(f) The individual, upon first becoming eligible for benefits under part A of medicare at age sixty-five, enrolls in a ~~((medicare+choice))~~ medicare advantage plan under part C of medicare, or in a PACE program under section 1894, and disenrolls from the plan or program by not later than twelve months after the effective date of enrollment; or

(g) The individual enrolls in a medicare part D plan during the initial enrollment period and, at the time of enrollment in part D, was enrolled under a medicare supplement policy that covers outpatient prescription drugs, and the individual terminates enrollment in the medicare supplement policy and submits evidence of enrollment in medicare part D along with the application for a policy described in subsection (4)(d) of this section.

(4) An eligible person under subsection (3) of this section is entitled to a medicare supplement policy as follows:

(a) A person eligible under subsection (3)(a), (b), (c), and (d) of this section is entitled to a medicare supplement policy that has a benefit package classified as plan A through ~~((G))~~ F (including F with a high deductible), K, or L, offered by any issuer;

~~(b)(i) Subject to (b)(ii) of this subsection, a person eligible under subsection (3)(e) of this section is entitled to the same medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in (a) of this subsection; ((and))~~

(ii) After December 31, 2005, if the individual was most recently enrolled in a medicare supplement policy with an outpatient prescription drug benefit, a medicare supplement policy described in this subsection (4)(b)(ii) is:

(A) The policy available from the same issuer but modified to remove outpatient prescription drug coverage; or

(B) At the election of the policyholder, an A, B, C, F (including F with a high deductible), K, or L policy that is offered by any issuer;

(c) A person eligible under subsection (3)(f) of this section is entitled to any medicare supplement policy offered by any issuer; and

(d) A person eligible under subsection (3)(g) of this section is entitled to a medicare supplement policy that has a benefit package classified as plan A, B, C, F (including F with a high deductible), K, or L and that is offered and is available for issuance to new enrollees by the same issuer that issued the individual's medicare supplement policy with outpatient prescription drug coverage.

(5)(a) At the time of an event described in subsection (3) of this section, and because of which an individual loses coverage or benefits due to the termination of a contract, agreement, policy, or plan, the organization that terminates the

contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, must notify the individual of his or her rights under this section, and of the obligations of issuers of medicare supplement policies under subsection (1) of this section. The notice must be communicated contemporaneously with the notification of termination.

(b) At the time of an event described in subsection (3) of this section, and because of which an individual ceases enrollment under a contract, agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, must notify the individual of his or her rights under this section, and of the obligations of issuers of medicare supplement policies under subsection (1) of this section. The notice must be communicated within ten working days of the issuer receiving notification of disenrollment.

(6) Guaranteed issue time periods:

(a) In the case of an individual described in subsection (3)(a) of this section, the guaranteed issue period begins on the later of: (i) The date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of a termination or cessation), or (ii) the date that the applicable coverage terminates or ceases, and ends sixty-three days thereafter;

(b) In the case of an individual described in subsection (3)(b), (c), (e), or (f) of this section whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends sixty-three days after the date the applicable coverage is terminated;

(c) In the case of an individual described in subsection (3)(d)(i) of this section, the guaranteed issue period begins on the earlier of: (i) The date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any, and (ii) the date that the applicable coverage is terminated, and ends on the date that is sixty-three days after the date the coverage is terminated;

(d) In the case of an individual described in subsection (3)(b), (d)(ii) and (iii), (e), or (f) of this section, who disenrolls voluntarily, the guaranteed issue period begins on the date that is sixty days before the effective date of the disenrollment and ends on the date that is sixty-three days after the effective date;

(e) In the case of an individual described in subsection (3)(g) of this section, the guaranteed issue period begins on the date the individual receives notice pursuant to section 1882(v)(2)(B) of the federal social security act from the medicare supplement issuer during the sixty-day period immediately preceding the initial part D enrollment period and ends on the date that is sixty-three days after the effective date of the individual's coverage under medicare part D; and

(f) In the case of an individual described in subsection (3) of this section but not described in the preceding provisions of this subsection, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is sixty-three days after the effective date.

(7) In the case of an individual described in subsection (3)(e) of this section whose enrollment with an organization or provider described in subsection (3)(e)(i) of this section is involuntarily terminated within the first twelve months

of enrollment, and who, without an intervening enrollment, enrolls with another organization or provider, the subsequent enrollment is an initial enrollment as described in subsection (3)(e) of this section.

(8) In the case of an individual described in subsection (3)(f) of this section whose enrollment with a plan or in a program described in subsection (3)(f) of this section is involuntarily terminated within the first twelve months of enrollment, and who, without an intervening enrollment, enrolls in another plan or program, the subsequent enrollment is an initial enrollment as described in subsection (3)(f) of this section.

(9) For purposes of subsection (3)(e) and (f) of this section, an enrollment of an individual with an organization or provider described in subsection (3)(e)(i) of this section, or with a plan or in a program described in subsection (3)(f) of this section is not an initial enrollment under this subsection after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan, or program.

Sec. 6. RCW 48.66.130 and 2002 c 300 s 3 are each amended to read as follows:

(1) On or after January 1, 1996, and notwithstanding any other provision of Title 48 RCW, a medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than three months from the effective date of coverage because it involved a preexisting condition.

(2) On or after January 1, 1996, a medicare supplement policy or certificate shall not define a preexisting condition more restrictively than as a condition for which medical advice was given or treatment was recommended by or received from a physician, or other health care provider acting within the scope of his or her license, within three months before the effective date of coverage.

(3) If a medicare supplement insurance policy or certificate contains any limitations with respect to preexisting conditions, such limitations must appear as a separate paragraph of the policy or certificate and be labeled as "Preexisting Condition Limitations."

(4) No exclusion or limitation of preexisting conditions may be applied to policies or certificates replaced in accordance with the provisions of RCW 48.66.045 if the policy or certificate replaced had been in effect for at least three months.

(5) If a medicare supplement policy or certificate replaces another medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods in the new medicare supplement policy or certificate for similar benefits to the extent such time was spent under the original policy.

(6) If a medicare supplement policy or certificate replaces another medicare supplement policy or certificate which has been in effect for at least three months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods for benefits similar to those contained in the original policy or certificate.

Passed by the Senate March 8, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 13, 2005.
Filed in Office of Secretary of State April 13, 2005.

CHAPTER 42

[Substitute Senate Bill 5230]

LICENSE PLATES—WASHINGTON'S WILDLIFE

AN ACT Relating to Washington's Wildlife license plate collection; amending RCW 77.12.170; reenacting and amending RCW 46.16.313; and adding new sections to chapter 46.16 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 46.16 RCW to read as follows:

(1) The legislature recognizes that the Washington's Wildlife license plate collection, to include three distinct designs including bear, deer, and elk, has been reviewed by the special license plate review board under RCW 46.16.725 and was found to fully comply with all provisions of RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate collection displaying a symbol or artwork, approved by the special license plate review board and the legislature, recognizing Washington's wildlife, that may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department.

NEW SECTION. Sec. 2. A new section is added to chapter 46.16 RCW to read as follows:

For the purposes of RCW 46.16.313 and section 1 of this act, the term "Washington's Wildlife license plate collection" means the collection of three separate license plate designs issued under section 1 of this act. Each license plate design displays a distinct symbol or artwork recognizing the wildlife of Washington, to include bear, deer, and elk.

Sec. 3. RCW 46.16.313 and 2004 c 221 s 3, 2004 c 48 s 3, and 2004 c 35 s 3 are each reenacted and amended to read as follows:

(1) The department may establish a fee of no more than forty dollars for each type of special license plates issued under RCW 46.16.301(1) (a), (b), or (c), as existing before amendment by section 5, chapter 291, Laws of 1997, in an amount calculated to offset the cost of production of the special license plates and the administration of this program. This fee is in addition to all other fees required to register and license the vehicle for which the plates have been requested. All such additional special license plate fees collected by the department shall be deposited in the state treasury and credited to the motor vehicle fund.

(2) In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a collegiate license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying

detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(3) In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a collegiate license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(4) In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a special baseball stadium license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds, minus the cost of plate production, shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(5) In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a special baseball stadium license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(6) Effective with vehicle registrations due or to become due on January 1, 2005, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a professional fire fighters and paramedics license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the professional fire fighters and paramedics license plates. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Washington State Council of Fire Fighters benevolent fund established under RCW 46.16.30902.

(7) Effective with annual renewals due or to become due on January 1, 2006, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a professional fire fighters and paramedics license plate shall, upon application, pay a fee of thirty dollars. The department

shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the professional fire fighters and paramedics special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Washington State Council of Fire Fighters benevolent fund established under RCW 46.16.30902.

(8) Effective with vehicle registrations due or to become due on November 1, 2004, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Helping Kids Speak" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Helping Kids Speak" account established under RCW 46.16.30904.

(9) Effective with annual renewals due or to become due on November 1, 2005, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Helping Kids Speak" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Helping Kids Speak" account established under RCW 46.16.30904.

(10) Effective with vehicle registrations due or to become due on January 1, 2005, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "law enforcement memorial" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the law enforcement memorial special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the

proceeds to the law enforcement memorial account established under RCW 46.16.30906.

(11) Effective with annual renewals due or to become due on January 1, 2006, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "law enforcement memorial" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the law enforcement memorial special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the law enforcement memorial account established under RCW 46.16.30906.

(12)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a Washington's Wildlife collection license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the Washington's Wildlife license plate collection. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the state wildlife account. Proceeds credited to the state wildlife account from the sale of the Washington's Wildlife license plate collection may be used only for the department of fish and wildlife's game species management activities.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a Washington's Wildlife collection license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the Washington's Wildlife license plate collection. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the state wildlife account. Proceeds credited to the state wildlife account from the sale of the Washington's Wildlife license plate collection may be used only for the department of fish and wildlife's game species management activities.

Sec. 4. RCW 77.12.170 and 2004 c 248 s 4 are each amended to read as follows:

(1) There is established in the state treasury the state wildlife fund which consists of moneys received from:

(a) Rentals or concessions of the department;
 (b) The sale of real or personal property held for department purposes;
 (c) The sale of licenses, permits, tags, and stamps required by chapter 77.32 RCW and RCW 77.65.490, except annual resident adult saltwater and all annual razor clam and shellfish licenses, which shall be deposited into the state general fund;

(d) Fees for informational materials published by the department;
 (e) Fees for personalized vehicle license plates and Washington's Wildlife license plate collection as provided in chapter 46.16 RCW;

(f) Articles or wildlife sold by the director under this title;
 (g) Compensation for damage to department property or wildlife losses or contributions, gifts, or grants received under RCW 77.12.320;

(h) Excise tax on anadromous game fish collected under chapter 82.27 RCW;

(i) The sale of personal property seized by the department for fish, shellfish, or wildlife violations;

(j) The department's share of revenues from auctions and raffles authorized by the commission; and

(k) The sale of watchable wildlife decals under RCW 77.32.560.

(2) State and county officers receiving any moneys listed in subsection (1) of this section shall deposit them in the state treasury to be credited to the state wildlife fund.

Passed by the Senate March 12, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 13, 2005.

Filed in Office of Secretary of State April 13, 2005.

CHAPTER 43

[Senate Bill 5268]

WATER-SEWER DISTRICTS—ASSUMPTION BY CODE CITIES

AN ACT Relating to assumption by a code city with a population greater than one hundred thousand of a water-sewer district with fewer than two hundred fifty customers; and adding a new section to chapter 35.13A RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 35.13A RCW to read as follows:

The board of commissioners of a water-sewer district, with fewer than two hundred fifty customers on the effective date of this act, and the city council of a code city with a population greater than one hundred thousand on the effective date of this act, may provide for assumption by the city of the district in accordance with RCW 35.13A.020, except as provided herein, pursuant to the terms and conditions of a contract executed in accordance with RCW 35.13A.070. None of the territory of the water-sewer district need be included within the territory of the city. The contract and assumption shall be approved

by resolution of the board of commissioners and ordinance of the city council. If the water-sewer district has no indebtedness or monetary obligations on the date of assumption, the city shall use any surplus funds only for water services delivered to and water facilities constructed in the former territory of the district, unless provided otherwise in the contract. In connection with the assumption, the water-sewer district or the city, or both, may provide for dissolution of the district pursuant to RCW 35.13A.080.

Passed by the Senate March 2, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 13, 2005.

Filed in Office of Secretary of State April 13, 2005.

CHAPTER 44

[Substitute Senate Bill 5316]

LICENSE PLATES—PARKS AND RECREATION COMMISSION

AN ACT Relating to Washington state parks and recreation commission special license plates; reenacting and amending RCW 46.16.313; adding new sections to chapter 46.16 RCW; and adding a new section to chapter 79A.05 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 46.16 RCW to read as follows:

(1) The legislature recognizes that the Washington state parks and recreation commission license plate application has been reviewed by the special license plate review board under RCW 46.16.725 and was found to fully comply with all provisions of RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying a symbol or artwork, approved by the special license plate review board and the legislature, recognizing Washington state parks as premier destinations of uncommon quality that preserve significant natural, cultural, historical, and recreational resources, that may be used in lieu of regular or personalized license plates for vehicles required to display one and two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department.

NEW SECTION. Sec. 2. A new section is added to chapter 46.16 RCW to read as follows:

For the purposes of RCW 46.16.313, "Washington state parks and recreation commission special license plate" means license plates issued under section 1 of this act that display a symbol or artwork recognizing the efforts of state parks and recreation in Washington state.

Sec. 3. RCW 46.16.313 and 2004 c 221 s 3, 2004 c 48 s 3, and 2004 c 35 s 3 are each reenacted and amended to read as follows:

(1) The department may establish a fee of no more than forty dollars for each type of special license plates issued under RCW 46.16.301(1) (a), (b), or (c), as existing before amendment by section 5, chapter 291, Laws of 1997, in an amount calculated to offset the cost of production of the special license plates and the administration of this program. This fee is in addition to all other fees required to register and license the vehicle for which the plates have been

requested. All such additional special license plate fees collected by the department shall be deposited in the state treasury and credited to the motor vehicle fund.

(2) In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a collegiate license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(3) In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a collegiate license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(4) In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a special baseball stadium license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds, minus the cost of plate production, shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(5) In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a special baseball stadium license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(6) Effective with vehicle registrations due or to become due on January 1, 2005, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a professional fire fighters and paramedics license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department

determines that the state has been reimbursed for the cost of implementing the professional fire fighters and paramedics license plates. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Washington State Council of Fire Fighters benevolent fund established under RCW 46.16.30902.

(7) Effective with annual renewals due or to become due on January 1, 2006, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a professional fire fighters and paramedics license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the professional fire fighters and paramedics special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Washington State Council of Fire Fighters benevolent fund established under RCW 46.16.30902.

(8) Effective with vehicle registrations due or to become due on November 1, 2004, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Helping Kids Speak" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Helping Kids Speak" account established under RCW 46.16.30904.

(9) Effective with annual renewals due or to become due on November 1, 2005, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Helping Kids Speak" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Helping Kids Speak" account established under RCW 46.16.30904.

(10) Effective with vehicle registrations due or to become due on January 1, 2005, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "law enforcement memorial" license plate shall pay an initial fee of forty dollars. The department shall deduct an

amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the law enforcement memorial special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the law enforcement memorial account established under RCW 46.16.30906.

(11) Effective with annual renewals due or to become due on January 1, 2006, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "law enforcement memorial" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the law enforcement memorial special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the law enforcement memorial account established under RCW 46.16.30906.

(12)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a Washington state parks and recreation commission special license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the Washington state parks and recreation commission special license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the state parks education and enhancement account established in section 4 of this act.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a Washington state parks and recreation commission special license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the Washington state parks and recreation commission

special license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the state parks education and enhancement account established in section 4 of this act.

NEW SECTION. Sec. 4. A new section is added to chapter 79A.05 RCW to read as follows:

The state parks education and enhancement account is created in the custody of the state treasurer. All receipts from the sale of Washington state parks and recreation commission special license plates, after the deductions permitted by RCW 46.16.313(12), must be deposited into the account. Expenditures from the account may only be used to provide public educational opportunities and enhancement of Washington state parks. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

Passed by the Senate March 12, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 13, 2005.

Filed in Office of Secretary of State April 13, 2005.

CHAPTER 45

[Senate Bill 5358]

SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

AN ACT Relating to speech-language pathologists and audiologists; and amending RCW 18.35.010, 18.35.020, 18.35.060, and 18.35.195.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 18.35.010 and 2002 c 310 s 1 are each amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Assistive listening device or system" means an amplification system that is specifically designed to improve the signal to noise ratio for the listener, reduce interference from noise in the background, and enhance hearing levels at a distance by picking up sound from as close to source as possible and sending it directly to the ear of the listener, excluding hearing instruments as defined in this chapter.

(2) "Licensed audiologist" means a person who is licensed by the department to engage in the practice of audiology and meets the qualifications in this chapter.

(3) "Audiology" means the application of principles, methods, and procedures related to hearing and the disorders of hearing and to related language and speech disorders, whether of organic or nonorganic origin, peripheral or central, that impede the normal process of human communication including, but not limited to, disorders of auditory sensitivity, acuity, function, processing, or vestibular function, the application of aural habilitation, rehabilitation, and appropriate devices including fitting and dispensing of hearing instruments, and cerumen management to treat such disorders.

(4) "Board" means the board of hearing and speech.

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

~~((6))~~ ("Direct supervision" means that the supervisor is physically present and in the same room with the interim permit holder, observing the nondiagnostic testing, fitting, and dispensing activities at all times.

((7)) "Establishment" means any permanent site housing a person engaging in the practice of fitting and dispensing of hearing instruments by a hearing instrument fitter/dispenser or audiologist; where the client can have personal contact and counsel during the firm's business hours; where business is conducted; and the address of which is given to the state for the purpose of bonding.

~~((8))~~ ((7)) "Facility" means any permanent site housing a person engaging in the practice of speech-language pathology and/or audiology, excluding the sale, lease, or rental of hearing instruments.

~~((9))~~ ((8)) "Fitting and dispensing of hearing instruments" means the sale, lease, or rental or attempted sale, lease, or rental of hearing instruments together with the selection and modification of hearing instruments and the administration of nondiagnostic tests as specified by RCW 18.35.110 and the use of procedures essential to the performance of these functions; and includes recommending specific hearing instrument systems, specific hearing instruments, or specific hearing instrument characteristics, the taking of impressions for ear molds for these purposes, the use of nondiagnostic procedures and equipment to verify the appropriateness of the hearing instrument fitting, and hearing instrument orientation. The fitting and dispensing of hearing instruments as defined by this chapter may be equally provided by a licensed hearing instrument fitter/dispenser or licensed audiologist.

~~((10))~~ ((9)) "Good standing" means a licensed hearing instrument fitter/dispenser, licensed audiologist, or licensed speech-language pathologist whose license has not been subject to sanctions pursuant to chapter 18.130 RCW or sanctions by other states, territories, or the District of Columbia in the last two years.

~~((11))~~ ((10)) "Hearing instrument" means any wearable prosthetic instrument or device designed for or represented as aiding, improving, compensating for, or correcting defective human hearing and any parts, attachments, or accessories of such an instrument or device, excluding batteries and cords, ear molds, and assistive listening devices.

~~((12))~~ ((11)) "Hearing instrument fitter/dispenser" means a person who is licensed to engage in the practice of fitting and dispensing of hearing instruments and meets the qualifications of this chapter.

~~((13))~~ ((12)) "Interim permit holder" means a person who holds the permit created under RCW 18.35.060 and who practices under the ~~((direct))~~ supervision of a licensed hearing instrument fitter/dispenser, licensed speech-language pathologist, or licensed audiologist.

~~((14))~~ ((13)) "Secretary" means the secretary of health.

~~((15))~~ ((14)) "Licensed speech-language pathologist" means a person who is licensed by the department to engage in the practice of speech-language pathology and meets the qualifications of this chapter.

~~((16))~~ ((15)) "Speech-language pathology" means the application of principles, methods, and procedures related to the development and disorders, whether of organic or nonorganic origin, that impede oral, pharyngeal, or

laryngeal sensorimotor competencies and the normal process of human communication including, but not limited to, disorders and related disorders of speech, articulation, fluency, voice, verbal and written language, auditory comprehension, cognition/communication, and the application of augmentative communication treatment and devices for treatment of such disorders.

Sec. 2. RCW 18.35.020 and 2002 c 310 s 2 are each amended to read as follows:

(1) No person shall engage in the fitting and dispensing of hearing instruments or imply or represent that he or she is engaged in the fitting and dispensing of hearing instruments unless he or she is a licensed hearing instrument fitter/dispenser or a licensed audiologist or holds an interim permit issued by the department as provided in this chapter and is an owner or employee of an establishment that is bonded as provided by RCW 18.35.240. The owner or manager of an establishment that dispenses hearing instruments is responsible under this chapter for all transactions made in the establishment name or conducted on its premises by agents or persons employed by the establishment engaged in fitting and dispensing of hearing instruments. Every establishment that fits and dispenses shall have in its employ at least one licensed hearing instrument fitter/dispenser or licensed audiologist at all times, and shall annually submit proof that all testing equipment at that establishment that is required by the board to be calibrated has been properly calibrated.

(2) Effective January 1, 2003, no person shall engage in the practice of audiology or imply or represent that he or she is engaged in the practice of audiology unless he or she is a licensed audiologist or holds an audiology interim permit issued by the department as provided in this chapter. Audiologists who are certified as educational staff associates by the state board of education are excluded unless they elect to become licensed under this chapter. However, a person certified by the state board of education as an educational staff associate who practices outside the school setting must be a licensed audiologist.

(3) Effective January 1, 2003, no person shall engage in the practice of speech-language pathology or imply or represent that he or she is engaged in the practice of speech-language pathology unless he or she is a licensed speech-language pathologist or holds a speech-language pathology interim permit issued by the department as provided in this chapter. Speech-language pathologists who are certified as educational staff associates by the state board of education are excluded unless they elect to become licensed under this chapter. However, a person certified by the state board of education as an educational staff associate who practices outside the school setting must be a licensed speech-language pathologist.

Sec. 3. RCW 18.35.060 and 2002 c 310 s 6 are each amended to read as follows:

The department, upon approval by the board, shall issue an interim permit authorizing an applicant for speech-language pathologist licensure or audiologist licensure who, except for the postgraduate professional experience and the examination requirements, meets the academic and practicum requirements of RCW 18.35.040(2) to practice under (~~direct~~) supervision. The interim permit

is valid for a period of one year from date of issuance. The board shall determine conditions for the interim permit.

Sec. 4. RCW 18.35.195 and 2002 c 310 s 21 are each amended to read as follows:

(1) This chapter shall not apply to military or federal government employees.

(2) This chapter does not prohibit or regulate:

(a) Fitting or dispensing by students enrolled in a board-approved program who are directly supervised by a licensed hearing instrument fitter/dispenser, a licensed audiologist under the provisions of this chapter, or an instructor at a two-year hearing instrument fitter/dispenser degree program that is approved by the board;

(b) Hearing instrument fitter/dispensers, speech-language pathologists, or audiologists of other states, territories, or countries, or the District of Columbia while appearing as clinicians of bona fide educational seminars sponsored by speech-language pathology, audiology, hearing instrument fitter/dispenser, medical, or other healing art professional associations so long as such activities do not go beyond the scope of practice defined by this chapter; and

(c) The practice of audiology or speech-language pathology by persons certified by the state board of education as educational staff associates, except for those persons electing to be licensed under this chapter. However, a person certified by the state board of education as an educational staff associate who practices outside the school setting must be a licensed audiologist or licensed speech-language pathologist.

Passed by the Senate March 9, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 13, 2005.

Filed in Office of Secretary of State April 13, 2005.

CHAPTER 46

[Senate Bill 5391]

TRICARE SUPPLEMENTAL INSURANCE

AN ACT Relating to the public employees' benefits board offering a tricare supplemental insurance policy to employees who are eligible for this policy, but not eligible for medicare parts A and B; and adding a new section to chapter 41.05 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 41.05 RCW to read as follows:

(1) Notwithstanding any other provisions of this chapter or rules or procedures adopted by the authority under this chapter, the authority may make available a tricare supplemental insurance policy, 32 C.F.R. Sec. 199.17 (2004), to employees who are eligible. This supplemental policy may be offered as one of the board's health coverage options. Employee selection of this supplemental policy is exclusive of selecting any other medical coverage offered through the board. If offered by the board, this supplemental policy shall be made available to employees, and retired or disabled employees, eligible for coverage available under the authority, but not eligible for medicare parts A and B.

(2) The administrator may adopt rules to carry out the purposes of this section.

Passed by the Senate March 8, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 13, 2005.

Filed in Office of Secretary of State April 13, 2005.

CHAPTER 47

[Substitute Senate Bill 5406]

MEDICARE SUPPLEMENTAL INSURANCE

AN ACT Relating to making medicare supplemental insurance policies administered under chapter 41.05 RCW conform to federal law; amending RCW 41.05.195 and 41.05.197; and repealing RCW 41.05.190.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 41.05.195 and 1993 c 492 s 222 are each amended to read as follows:

Notwithstanding any other provisions of this ~~((title))~~ chapter or rules or procedures adopted by the authority, the authority shall make available to retired or disabled employees who are ~~((eligible for))~~ enrolled in parts A and B of medicare ~~((at least two))~~ one or more medicare supplemental insurance policies that conform to the requirements of chapter 48.66 RCW. ~~((One policy shall include coverage for prescription drugs.))~~ The policies shall be chosen in consultation with the public employees' benefits board. These policies shall be made available to retired or disabled state employees ~~((, or))~~; retired or disabled school district employees; retired employees of county, municipal, or other political subdivisions eligible for coverage available under the authority; or surviving spouses of emergency service personnel killed in the line of duty. ~~((All offerings shall be made available not later than January 1, 1994.))~~

Sec. 2. RCW 41.05.197 and 1993 c 492 s 223 are each amended to read as follows:

~~((If a waiver of the medicare statute, Title XVIII of the federal social security act, sufficient to meet the requirements of chapter 492, Laws of 1993 is not granted on or before January 1, 1995,))~~ The medicare supplemental insurance policies authorized under RCW 41.05.195 shall be made available to any resident of the state ~~((eligible for medicare benefits. Except for those retired state or school district employees eligible to purchase medicare supplemental benefits through the authority, persons))~~ who:

(1) Is enrolled in parts A and B of medicare; and

(2) Is not eligible to purchase coverage as a retired or disabled employee under RCW 41.05.195. State residents purchasing a medicare supplemental insurance policy under this section shall be required to pay the full cost of any such policy.

NEW SECTION. Sec. 3. RCW 41.05.190 (Medicare supplemental insurance plan) and 1998 c 245 s 37 & 1993 c 492 s 221 are each repealed.

Passed by the Senate March 9, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 13, 2005.
Filed in Office of Secretary of State April 13, 2005.

CHAPTER 48

[Senate Bill 5424]

LICENSE PLATES—WASHINGTON LIGHTHOUSES

AN ACT Relating to the "Washington Lighthouses" special license plate; reenacting and amending RCW 46.16.313; adding new sections to chapter 46.16 RCW; and adding a new section to chapter 46.04 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 46.16 RCW to read as follows:

(1) The legislature recognizes that the "Washington Lighthouses" license plate has been reviewed by the special license plate review board under RCW 46.16.725, and found to fully comply with RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying a symbol or artwork, approved by the special license plate review board and the legislature, recognizing an organization that supports selected Washington state lighthouses and provides environmental education programs. The special license plate may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department.

NEW SECTION. Sec. 2. A new section is added to chapter 46.04 RCW to read as follows:

"Washington Lighthouses license plates" means license plates issued under section 1 of this act that display a symbol or artwork recognizing the efforts of lighthouse environmental programs in Washington state.

Sec. 3. RCW 46.16.313 and 2004 c 221 s 3, 2004 c 48 s 3, and 2004 c 35 s 3 are each reenacted and amended to read as follows:

(1) The department may establish a fee of no more than forty dollars for each type of special license plates issued under RCW 46.16.301(1) (a), (b), or (c), as existing before amendment by section 5, chapter 291, Laws of 1997, in an amount calculated to offset the cost of production of the special license plates and the administration of this program. This fee is in addition to all other fees required to register and license the vehicle for which the plates have been requested. All such additional special license plate fees collected by the department shall be deposited in the state treasury and credited to the motor vehicle fund.

(2) In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a collegiate license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(3) In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a collegiate license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(4) In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a special baseball stadium license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds, minus the cost of plate production, shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(5) In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a special baseball stadium license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(6) Effective with vehicle registrations due or to become due on January 1, 2005, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a professional fire fighters and paramedics license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the professional fire fighters and paramedics license plates. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Washington State Council of Fire Fighters benevolent fund established under RCW 46.16.30902.

(7) Effective with annual renewals due or to become due on January 1, 2006, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a professional fire fighters and paramedics license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The

remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the professional fire fighters and paramedics special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Washington State Council of Fire Fighters benevolent fund established under RCW 46.16.30902.

(8) Effective with vehicle registrations due or to become due on November 1, 2004, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Helping Kids Speak" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Helping Kids Speak" account established under RCW 46.16.30904.

(9) Effective with annual renewals due or to become due on November 1, 2005, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Helping Kids Speak" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Helping Kids Speak" account established under RCW 46.16.30904.

(10) Effective with vehicle registrations due or to become due on January 1, 2005, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "law enforcement memorial" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the law enforcement memorial special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the law enforcement memorial account established under RCW 46.16.30906.

(11) Effective with annual renewals due or to become due on January 1, 2006, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "law enforcement memorial" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the law enforcement memorial special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the law enforcement memorial account established under RCW 46.16.30906.

(12)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Washington Lighthouses" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Washington Lighthouses" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the lighthouse environmental programs account established under section 4 of this act.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Washington Lighthouses" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Washington Lighthouses" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the lighthouse environmental programs account established under section 4 of this act.

NEW SECTION. Sec. 4. A new section is added to chapter 46.16 RCW to read as follows:

(1) The lighthouse environmental programs account is created in the custody of the state treasurer. Upon the department's determination that the state had been reimbursed for the cost of implementing the "Washington Lighthouses" special license plate, all receipts, except as provided in RCW 46.16.313(12) (a) and (b), from "Washington Lighthouses" license plates must be deposited into the account. Only the director of the department of licensing or the director's

designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Funds in the account must be disbursed subject to the following conditions and limitations:

(a) Under the requirements set out in RCW 46.16.765, the department must contract with a qualified nonprofit organization to support selected Washington state lighthouses that are accessible to the public and staffed by volunteers; to provide environmental education programs; and to provide grants for other Washington lighthouses to assist in funding infrastructure preservation and restoration and to encourage and support interpretive programs by lighthouse docents.

(b) For the purpose of this section, a "qualified nonprofit organization" means a not-for-profit corporation incorporated and of tax exempt status under section 501(c)(3) of the federal internal revenue code. The organization must have been established for the express purposes of supporting selected Washington state lighthouses that are open to the public and staffed by volunteers; providing environmental education programs; and encouraging and supporting interpretive programs by lighthouse docents.

(c) The qualified nonprofit organization must meet all requirements set out in RCW 46.16.765.

Passed by the Senate March 12, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 13, 2005.

Filed in Office of Secretary of State April 13, 2005.

CHAPTER 49

[Substitute Senate Bill 5488]

FRUIT AND VEGETABLE DISTRICT FUND

AN ACT Relating to fruit and vegetable district fund; and amending RCW 15.17.243.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 15.17.243 and 2003 c 14 s 1 are each amended to read as follows:

The district manager for district two as defined in WAC 16-458-075 is authorized to transfer two hundred thousand dollars from the fruit and vegetable district fund to the plant pest account within the agricultural local fund. The amount transferred is to be derived from fees collected for state inspections of tree fruits and is to be used solely for activities related to the control of *Rhagoletis pomonella* in district two. The transfer of funds shall occur by June 1, 1997. On June 30, ((2005)) 2009, any unexpended portion of the two hundred thousand dollars shall be transferred to the fruit and vegetable inspection account and deposited in the district account for the district that includes Yakima county.

Passed by the Senate March 10, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 13, 2005.

Filed in Office of Secretary of State April 13, 2005.

CHAPTER 50

[Engrossed House Bill 1246]

VEHICLE SOUND SYSTEM EQUIPMENT

AN ACT Relating to vehicle sound system equipment; adding a new section to chapter 46.37 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 46.37 RCW to read as follows:

(1) All vehicle sound system components, including any supplemental speaker systems or components, must be securely attached to the vehicle regardless of where the components are located, so that the components cannot become dislodged or loose during operation of the vehicle.

(2) Enforcement of this section by law enforcement officers may be accomplished only as a secondary action when a driver of a vehicle has been detained for a suspected violation of this title or an equivalent local ordinance or some other offense.

(3) The Washington state traffic safety commission shall create and implement a statewide educational program regarding the safety risks of unsecured vehicle sound system components, including supplemental speaker systems or components. The educational program shall include information regarding securely attaching sound system components to the vehicle, regardless of where the components are located, so that the components do not become dislodged or loose during the operation of the vehicle. The commission shall create and implement this program within the commission's existing budget.

NEW SECTION. Sec. 2. This act shall be known as the Courtney Amisson Act.

Passed by the House March 8, 2005.

Passed by the Senate April 5, 2005.

Approved by the Governor April 14, 2005.

Filed in Office of Secretary of State April 14, 2005.

CHAPTER 51

[House Bill 1759]

STATE MARINE MAMMAL

AN ACT Relating to designating the orca as the state marine mammal; adding a new section to chapter 1.20 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that many people visit Washington state to watch orcas, the orca is a significant symbol for the Native American culture, there are pods of orcas that migrate annually through Puget Sound, and the orca is easily recognizable because of its distinct markings. The legislature intends to promote orca awareness and to encourage protection of the natural marine habitat by designating the orca as the official marine mammal of the state of Washington.

NEW SECTION. Sec. 2. A new section is added to chapter 1.20 RCW to read as follows:

The orca, *Orcinus orca*, is hereby designated as the official marine mammal of the state of Washington.

Passed by the House March 8, 2005.

Passed by the Senate April 5, 2005.

Approved by the Governor April 14, 2005.

Filed in Office of Secretary of State April 14, 2005.

CHAPTER 52

[House Bill 1048]

LOCAL GOVERNMENT TAX ESTIMATES—COUNTY SUBMISSION

AN ACT Relating to the submittal of local government tax estimates to counties; and amending RCW 84.52.020.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 84.52.020 and 1994 c 81 s 85 are each amended to read as follows:

It shall be the duty of the city council or other governing body of every city, other than a city having a population of three hundred thousand or more, the board of directors of school districts of the first class, the superintendent of each educational service district for each constituent second class school district, commissioners of port districts, commissioners of metropolitan park districts, and of all officials or boards of taxing districts within or coextensive with any county required by law to certify to the county legislative authority, for the purpose of levying district taxes, budgets or estimates of the amounts to be raised by taxation on the assessed valuation of the property in the city or district, through their chair and clerk, or secretary, to make and file such certified budget or estimates with the clerk of the county legislative authority on or before the (~~fifteenth~~) thirtieth day of November.

Passed by the House February 11, 2005.

Passed by the Senate April 5, 2005.

Approved by the Governor April 14, 2005.

Filed in Office of Secretary of State April 14, 2005.

CHAPTER 53

[Substitute House Bill 1097]

LICENSE PLATES—KEEP KIDS SAFE

AN ACT Relating to the "Keep Kids Safe" license plate series; amending RCW 43.121.100; reenacting and amending RCW 46.16.313; adding a new section to chapter 46.16 RCW; and adding a new section to chapter 46.04 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. **Sec. 1.** A new section is added to chapter 46.16 RCW to read as follows:

(1) The legislature recognizes that the "Keep Kids Safe" license plate has been reviewed and approved by the special license plate review board under RCW 46.16.725, and found to fully comply with all provisions of RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying artwork, approved by the special license plate review board, recognizing efforts to prevent child abuse and neglect. The special license plate may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department.

NEW SECTION. Sec. 2. A new section is added to chapter 46.04 RCW to read as follows:

"Keep Kids Safe license plates" means license plates issued under section 1 of this act that display artwork recognizing efforts to prevent child abuse and neglect in Washington state.

Sec. 3. RCW 46.16.313 and 2004 c 221 s 3, 2004 c 48 s 3, and 2004 c 35 s 3 are each reenacted and amended to read as follows:

(1) The department may establish a fee of no more than forty dollars for each type of special license plates issued under RCW 46.16.301(1) (a), (b), or (c), as existing before amendment by section 5, chapter 291, Laws of 1997, in an amount calculated to offset the cost of production of the special license plates and the administration of this program. This fee is in addition to all other fees required to register and license the vehicle for which the plates have been requested. All such additional special license plate fees collected by the department shall be deposited in the state treasury and credited to the motor vehicle fund.

(2) In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a collegiate license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(3) In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a collegiate license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(4) In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a special baseball stadium license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds, minus the cost of plate production, shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being

collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(5) In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a special baseball stadium license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(6) Effective with vehicle registrations due or to become due on January 1, 2005, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a professional fire fighters and paramedics license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the professional fire fighters and paramedics license plates. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Washington State Council of Fire Fighters benevolent fund established under RCW 46.16.30902.

(7) Effective with annual renewals due or to become due on January 1, 2006, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a professional fire fighters and paramedics license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the professional fire fighters and paramedics special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Washington State Council of Fire Fighters benevolent fund established under RCW 46.16.30902.

(8) Effective with vehicle registrations due or to become due on November 1, 2004, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Helping Kids Speak" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the

state has been reimbursed for the cost of implementing the "Helping Kids Speak" special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Helping Kids Speak" account established under RCW 46.16.30904.

(9) Effective with annual renewals due or to become due on November 1, 2005, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Helping Kids Speak" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Helping Kids Speak" account established under RCW 46.16.30904.

(10) Effective with vehicle registrations due or to become due on January 1, 2005, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "law enforcement memorial" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the law enforcement memorial special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the law enforcement memorial account established under RCW 46.16.30906.

(11) Effective with annual renewals due or to become due on January 1, 2006, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "law enforcement memorial" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the law enforcement memorial special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the law enforcement memorial account established under RCW 46.16.30906.

(12)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Keep Kids Safe" license plate shall pay an initial fee of forty-five dollars. The department shall

deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Keep Kids Safe" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the children's trust fund established under RCW 43.121.100.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Keep Kids Safe" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Keep Kids Safe" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the children's trust fund established under RCW 43.121.100.

Sec. 4. RCW 43.121.100 and 1987 c 351 s 5 are each amended to read as follows:

The council may accept contributions, grants, or gifts in cash or otherwise, including funds generated by the sale of "heirloom" birth certificates under chapter 70.58 RCW from persons, associations, or corporations and funds generated through the issuance of the "Keep Kids Safe" license plate under chapter 46.16 RCW. All moneys received by the council or any employee thereof from contributions, grants, or gifts and not through appropriation by the legislature shall be deposited in a depository approved by the state treasurer to be known as the children's trust fund. Disbursements of such funds shall be on the authorization of the council or a duly authorized representative thereof and only for the purposes stated in RCW 43.121.050. In order to maintain an effective expenditure and revenue control, such funds shall be subject in all respects to chapter 43.88 RCW, but no appropriation shall be required to permit expenditure of such funds.

Passed by the House March 15, 2005.

Passed by the Senate April 5, 2005.

Approved by the Governor April 14, 2005.

Filed in Office of Secretary of State April 14, 2005.

CHAPTER 54

[House Bill 1140]

HEALTH CARE DISPUTES—INDEPENDENT REVIEWS—FEES

AN ACT Relating to fees for performing independent reviews of health care disputes; and amending RCW 43.70.235.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 43.70.235 and 2000 c 5 s 12 are each amended to read as follows:

(1) The department shall adopt rules providing a procedure and criteria for certifying one or more organizations to perform independent review of health care disputes described in RCW 48.43.535.

(2) The rules must require that the organization ensure:

(a) The confidentiality of medical records transmitted to an independent review organization for use in independent reviews;

(b) That each health care provider, physician, or contract specialist making review determinations for an independent review organization is qualified. Physicians, other health care providers, and, if applicable, contract specialists must be appropriately licensed, certified, or registered as required in Washington state or in at least one state with standards substantially comparable to Washington state. Reviewers may be drawn from nationally recognized centers of excellence, academic institutions, and recognized leading practice sites. Expert medical reviewers should have substantial, recent clinical experience dealing with the same or similar health conditions. The organization must have demonstrated expertise and a history of reviewing health care in terms of medical necessity, appropriateness, and the application of other health plan coverage provisions;

(c) That any physician, health care provider, or contract specialist making a review determination in a specific review is free of any actual or potential conflict of interest or bias. Neither the expert reviewer, nor the independent review organization, nor any officer, director, or management employee of the independent review organization may have any material professional, familial, or financial affiliation with any of the following: The health carrier; professional associations of carriers and providers; the provider; the provider's medical or practice group; the health facility at which the service would be provided; the developer or manufacturer of a drug or device under review; or the enrollee;

(d) The fairness of the procedures used by the independent review organization in making the determinations;

(e) That each independent review organization make its determination:

(i) Not later than the earlier of:

(A) The fifteenth day after the date the independent review organization receives the information necessary to make the determination; or

(B) The twentieth day after the date the independent review organization receives the request that the determination be made. In exceptional circumstances, when the independent review organization has not obtained information necessary to make a determination, a determination may be made by the twenty-fifth day after the date the organization received the request for the determination; and

(ii) In cases of a condition that could seriously jeopardize the enrollee's health or ability to regain maximum function, not later than the earlier of:

(A) Seventy-two hours after the date the independent review organization receives the information necessary to make the determination; or

(B) The eighth day after the date the independent review organization receives the request that the determination be made;

(f) That timely notice is provided to enrollees of the results of the independent review, including the clinical basis for the determination;

(g) That the independent review organization has a quality assurance mechanism in place that ensures the timeliness and quality of review and communication of determinations to enrollees and carriers, and the qualifications, impartiality, and freedom from conflict of interest of the organization, its staff, and expert reviewers; and

(h) That the independent review organization meets any other reasonable requirements of the department directly related to the functions the organization is to perform under this section and RCW 48.43.535, and related to assessing fees to carriers in a manner consistent with the maximum fee schedule developed under this section.

(3) To be certified as an independent review organization under this chapter, an organization must submit to the department an application in the form required by the department. The application must include:

(a) For an applicant that is publicly held, the name of each stockholder or owner of more than five percent of any stock or options;

(b) The name of any holder of bonds or notes of the applicant that exceed one hundred thousand dollars;

(c) The name and type of business of each corporation or other organization that the applicant controls or is affiliated with and the nature and extent of the affiliation or control;

(d) The name and a biographical sketch of each director, officer, and executive of the applicant and any entity listed under (c) of this subsection and a description of any relationship the named individual has with:

(i) A carrier;

(ii) A utilization review agent;

(iii) A nonprofit or for-profit health corporation;

(iv) A health care provider;

(v) A drug or device manufacturer; or

(vi) A group representing any of the entities described by (d)(i) through (v) of this subsection;

(e) The percentage of the applicant's revenues that are anticipated to be derived from reviews conducted under RCW 48.43.535;

(f) A description of the areas of expertise of the health care professionals and contract specialists making review determinations for the applicant; and

(g) The procedures to be used by the independent review organization in making review determinations regarding reviews conducted under RCW 48.43.535.

(4) If at any time there is a material change in the information included in the application under subsection (3) of this section, the independent review organization shall submit updated information to the department.

(5) An independent review organization may not be a subsidiary of, or in any way owned or controlled by, a carrier or a trade or professional association of health care providers or carriers.

(6) An independent review organization, and individuals acting on its behalf, are immune from suit in a civil action when performing functions under chapter 5, Laws of 2000. However, this immunity does not apply to an act or omission made in bad faith or that involves gross negligence.

(7) Independent review organizations must be free from interference by state government in its functioning except as provided in subsection (8) of this section.

(8) The rules adopted under this section shall include provisions for terminating the certification of an independent review organization for failure to comply with the requirements for certification. The department may review the operation and performance of an independent review organization in response to complaints or other concerns about compliance. No later than January 1, 2006, the department shall develop a reasonable maximum fee schedule that independent review organizations shall use to assess carriers for conducting reviews authorized under RCW 48.43.535.

(9) In adopting rules for this section, the department shall take into consideration standards for independent review organizations adopted by national accreditation organizations. The department may accept national accreditation or certification by another state as evidence that an organization satisfies some or all of the requirements for certification by the department as an independent review organization.

Passed by the House March 3, 2005.

Passed by the Senate April 5, 2005.

Approved by the Governor April 14, 2005.

Filed in Office of Secretary of State April 14, 2005.

CHAPTER 55

[Substitute House Bill 1171]

MARRIAGE DISSOLUTION—PREGNANCY

AN ACT Relating to dissolution; and amending RCW 26.09.030.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 26.09.030 and 1996 c 23 s 1 are each amended to read as follows:

When a party who (1) is a resident of this state, or (2) is a member of the armed forces and is stationed in this state, or (3) is married to a party who is a resident of this state or who is a member of the armed forces and is stationed in this state, petitions for a dissolution of marriage, and alleges that the marriage is irretrievably broken and when ninety days have elapsed since the petition was filed and from the date when service of summons was made upon the respondent or the first publication of summons was made, the court shall proceed as follows:

~~((1))~~ (a) If the other party joins in the petition or does not deny that the marriage is irretrievably broken, the court shall enter a decree of dissolution.

~~((2))~~ (b) If the other party alleges that the petitioner was induced to file the petition by fraud, or coercion, the court shall make a finding as to that allegation and, if it so finds shall dismiss the petition.

~~((3))~~ (c) If the other party denies that the marriage is irretrievably broken the court shall consider all relevant factors, including the circumstances that gave rise to the filing of the petition and the prospects for reconciliation and shall:

~~((a))~~ (i) Make a finding that the marriage is irretrievably broken and enter a decree of dissolution of the marriage; or

~~((b))~~ (ii) At the request of either party or on its own motion, transfer the cause to the family court, refer them to another counseling service of their choice, and request a report back from the counseling service within sixty days, or continue the matter for not more than sixty days for hearing. If the cause is returned from the family court or at the adjourned hearing, the court shall:

~~((c))~~ (A) Find that the parties have agreed to reconciliation and dismiss the petition; or

~~((d))~~ (B) Find that the parties have not been reconciled, and that either party continues to allege that the marriage is irretrievably broken. When such facts are found, the court shall enter a decree of dissolution of the marriage.

~~((e))~~ (d) If the petitioner requests the court to decree legal separation in lieu of dissolution, the court shall enter the decree in that form unless the other party objects and petitions for a decree of dissolution or declaration of invalidity.

(e) In considering a petition for dissolution of marriage, a court shall not use a party's pregnancy as the sole basis for denying or delaying the entry of a decree of dissolution of marriage. Granting a decree of dissolution of marriage when a party is pregnant does not affect further proceedings under the uniform parentage act, chapter 26.26 RCW.

Passed by the House February 28, 2005.

Passed by the Senate April 6, 2005.

Approved by the Governor April 14, 2005.

Filed in Office of Secretary of State April 14, 2005.

CHAPTER 56

[Substitute House Bill 1502]

TAX ABATEMENT—DESTROYED PROPERTY

AN ACT Relating to tax abatements for property damaged or destroyed by natural disasters; and amending RCW 84.70.010.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 84.70.010 and 2001 c 187 s 26 are each amended to read as follows:

(1) If, on or before December 31 in any calendar year, any real or personal property placed upon the assessment roll of that year is destroyed in whole or in part, or is in an area that has been declared a disaster area by the governor or the county legislative authority and has been reduced in value by more than twenty percent as a result of a natural disaster, the true and fair value of such property shall be reduced for that assessment year by an amount determined by taking the true and fair value of such taxable property before destruction or reduction in value and deduct therefrom the true and fair value of the remaining property after destruction or reduction in value.

(2) Taxes levied for collection in the year in which the true and fair value has been reduced under subsection (1) of this section shall be abated in whole or in part as provided in this subsection. The amount of taxes to be abated shall be determined by first multiplying the amount deducted from the true and fair value under subsection (1) of this section by the rate of levy applicable to the property in the tax year. Then divide the product by the number of days in the year and multiply the quotient by the number of days remaining in the calendar year after

the date of the destruction or reduction in value of the property. If taxes abated under this section have been paid, the amount paid shall be refunded under RCW 84.69.020. ~~((For taxes levied for collection in 1998 and 1999, this subsection (2) applies to property that is destroyed in whole or in part, or is in an area that has been declared a disaster area by the governor and has been reduced in value by more than twenty percent as a result of a natural disaster. For taxes levied for collection in 2000 through 2004, this subsection (2) applies to property that is destroyed in whole or in part, or is in an area that has been declared a federal disaster area and has been reduced in value by more than twenty percent as a result of a natural disaster. This subsection (2) does not apply to taxes levied for collection in 2005 and thereafter.))~~ The tax relief provided for in this section for the tax year in which the damage or destruction occurred does not apply to property damaged or destroyed voluntarily.

(3) No reduction in the true and fair value or abatements shall be made more than three years after the date of destruction or reduction in value.

(4) The assessor shall make such reduction on his or her own motion; however, the taxpayer may make application for reduction on forms prepared by the department and provided by the assessor. The assessor shall notify the taxpayer of the amount of reduction.

(5) If destroyed property is replaced prior to the valuation dates contained in RCW 36.21.080 and 36.21.090, the total taxable value for that assessment year shall not exceed the value as of the appropriate valuation date in RCW 36.21.080 or 36.21.090, whichever is appropriate.

(6) The taxpayer may appeal the amount of reduction to the county board of equalization in accordance with the provisions of RCW 84.40.038. The board shall reconvene, if necessary, to hear the appeal.

Passed by the House March 11, 2005.

Passed by the Senate April 5, 2005.

Approved by the Governor April 14, 2005.

Filed in Office of Secretary of State April 14, 2005.

CHAPTER 57

[House Bill 1554]

PROPERTY TAXATION—FARM AND AGRICULTURAL LAND

AN ACT Relating to the definition of "farm and agricultural land" for purposes of current use property taxation; and amending RCW 84.34.020.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 84.34.020 and 2004 c 217 s 1 are each amended to read as follows:

As used in this chapter, unless a different meaning is required by the context:

(1) "Open space land" means (a) any land area so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly, or (b) any land area, the preservation of which in its present use would (i) conserve and enhance natural or scenic resources, or (ii) protect streams or water supply, or (iii) promote conservation of soils, wetlands, beaches or tidal marshes, or (iv) enhance the value to the public of abutting or

neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space, or (v) enhance recreation opportunities, or (vi) preserve historic sites, or (vii) preserve visual quality along highway, road, and street corridors or scenic vistas, or (viii) retain in its natural state tracts of land not less than one acre situated in an urban area and open to public use on such conditions as may be reasonably required by the legislative body granting the open space classification, or (c) any land meeting the definition of farm and agricultural conservation land under subsection (8) of this section. As a condition of granting open space classification, the legislative body may not require public access on land classified under (b)(iii) of this subsection for the purpose of promoting conservation of wetlands.

(2) "Farm and agricultural land" means:

(a) Any parcel of land that is twenty or more acres or multiple parcels of land that are contiguous and total twenty or more acres:

(i) Devoted primarily to the production of livestock or agricultural commodities for commercial purposes;

(ii) Enrolled in the federal conservation reserve program or its successor administered by the United States department of agriculture; or

(iii) Other similar commercial activities as may be established by rule;

(b)(i) Any parcel of land that is five acres or more but less than twenty acres devoted primarily to agricultural uses, which has produced a gross income from agricultural uses equivalent to, as of January 1, 1993:

((+)) (A) One hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter for all parcels of land that are classified under this subsection or all parcels of land for which an application for classification under this subsection is made with the granting authority prior to January 1, 1993; and

((+)) (B) On or after January 1, 1993, two hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter;

(ii) For the purposes of (b)(i) of this subsection, "gross income from agricultural uses" includes, but is not limited to, the wholesale value of agricultural products donated to nonprofit food banks or feeding programs;

(c) Any parcel of land of less than five acres devoted primarily to agricultural uses which has produced a gross income as of January 1, 1993, of:

(i) One thousand dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter for all parcels of land that are classified under this subsection or all parcels of land for which an application for classification under this subsection is made with the granting authority prior to January 1, 1993; and

(ii) On or after January 1, 1993, fifteen hundred dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter.

Parcels of land described in (b)(i)(A) and (c)(i) of this subsection shall, upon any transfer of the property excluding a transfer to a surviving spouse, be subject to the limits of (b)((+)) (i)(B) and (c)(ii) of this subsection;

(d) Any lands including incidental uses as are compatible with agricultural purposes, including wetlands preservation, provided such incidental use does not exceed twenty percent of the classified land and the land on which

appurtenances necessary to the production, preparation, or sale of the agricultural products exist in conjunction with the lands producing such products. Agricultural lands shall also include any parcel of land of one to five acres, which is not contiguous, but which otherwise constitutes an integral part of farming operations being conducted on land qualifying under this section as "farm and agricultural lands"; or

(e) The land on which housing for employees and the principal place of residence of the farm operator or owner of land classified pursuant to (a) of this subsection is sited if: The housing or residence is on or contiguous to the classified parcel; and the use of the housing or the residence is integral to the use of the classified land for agricultural purposes.

(3) "Timber land" means any parcel of land that is five or more acres or multiple parcels of land that are contiguous and total five or more acres which is or are devoted primarily to the growth and harvest of timber for commercial purposes. Timber land means the land only and does not include a residential homesite. The term includes land used for incidental uses that are compatible with the growing and harvesting of timber but no more than ten percent of the land may be used for such incidental uses. It also includes the land on which appurtenances necessary for the production, preparation, or sale of the timber products exist in conjunction with land producing these products.

(4) "Current" or "currently" means as of the date on which property is to be listed and valued by the assessor.

(5) "Owner" means the party or parties having the fee interest in land, except that where land is subject to real estate contract "owner" shall mean the contract vendee.

(6) "Contiguous" means land adjoining and touching other property held by the same ownership. Land divided by a public road, but otherwise an integral part of a farming operation, shall be considered contiguous.

(7) "Granting authority" means the appropriate agency or official who acts on an application for classification of land pursuant to this chapter.

(8) "Farm and agricultural conservation land" means either:

(a) Land that was previously classified under subsection (2) of this section, that no longer meets the criteria of subsection (2) of this section, and that is reclassified under subsection (1) of this section; or

(b) Land that is traditional farmland that is not classified under chapter 84.33 or 84.34 RCW, that has not been irrevocably devoted to a use inconsistent with agricultural uses, and that has a high potential for returning to commercial agriculture.

Passed by the House March 8, 2005.

Passed by the Senate April 6, 2005.

Approved by the Governor April 14, 2005.

Filed in Office of Secretary of State April 14, 2005.

CHAPTER 58

[Substitute House Bill 1657]

BRIDGES OR TRESTLES—CONSTRUCTION—ADMINISTRATIVE COSTS

AN ACT Relating to construction of bridges and trestles; and amending RCW 79.91.100.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 79.91.100 and 1982 1st ex.s. c 21 s 57 are each amended to read as follows:

(1) Counties, cities, towns, and other municipalities shall have the right to construct bridges and trestles across waterways heretofore or hereafter laid out under the authority of the state of Washington, and over and across any ~~((tide or shore lands and harbor areas of))~~ tidelands, shorelands, bedlands, or harbor areas owned and managed by the state adjacent thereto over which the projected line or lines of highway will run, if such bridges or trestles are constructed in good faith for the purpose of being made a part of the constructed line of such a highway, ~~((upon payment for any such right of way and))~~ upon payment for any natural resource damages to those aquatic lands affected not already covered by an approved state or federal regulatory mitigation plan. Such a right shall be granted by easement and no charge may be made to the county, city, town, or other municipality, for such an easement. The department may recover only its reasonable direct administrative costs incurred in processing and approving the request or application, and reviewing plans for construction of the bridge or trestle.

(2) For purposes of this section, "direct administrative costs" means the cost of hours worked directly on an application or request, based on salaries and benefits, plus travel reimbursement and other actual out-of-pocket costs. Direct administrative costs recovered by the department must be deposited into the resource management cost account.

(3) By December 1, 2008, the department must deliver a report to the legislature regarding the collection of administrative fees as described in this section.

Passed by the House March 10, 2005.

Passed by the Senate April 5, 2005.

Approved by the Governor April 14, 2005.

Filed in Office of Secretary of State April 14, 2005.

CHAPTER 59

[Substitute House Bill 1891]

RECLAIMED WATER PERMITS—PRIVATE UTILITIES

AN ACT Relating to issuing reclaimed water permits to private utilities; and amending RCW 90.46.030 and 90.46.040.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 90.46.030 and 2002 c 329 s 4 are each amended to read as follows:

(1) The department of health shall, in coordination with the department of ecology, adopt a single set of standards, procedures, and guidelines on or before August 1, 1993, for the industrial and commercial use of reclaimed water.

(2) The department of health may issue a reclaimed water permit for industrial and commercial uses of reclaimed water to the generator of reclaimed water who may then distribute the water, subject to provisions in the permit governing the location, rate, water quality, and purposes of use.

(3) The department of health in consultation with the advisory committee established in RCW 90.46.050, shall develop recommendations for a fee structure for permits issued under subsection (2) of this section. Fees shall be established in amounts to fully recover, and not exceed, expenses incurred by the department of health in processing permit applications and modifications, monitoring and evaluating compliance with permits, and conducting inspections and supporting the reasonable overhead expenses that are directly related to these activities. Permit fees may not be used for research or enforcement activities. The department of health shall not issue permits under this section until a fee structure has been established.

(4) A permit under this section for use of reclaimed water may be issued only to:

- (a) A municipal, quasi-municipal, or other governmental entity ((or to));
- (b) A private utility as defined in RCW 36.94.010; or
- (c) The holder of a waste discharge permit issued under chapter 90.48 RCW.

(5) The authority and duties created in this section are in addition to any authority and duties already provided in law with regard to sewage and wastewater collection, treatment, and disposal for the protection of health and safety of the state's waters. Nothing in this section limits the powers of the state or any political subdivision to exercise such authority.

(6) The department of health may implement the requirements of this section through the department of ecology by execution of a formal agreement between the departments. Upon execution of such an agreement, the department of ecology may issue reclaimed water permits for industrial and commercial uses of reclaimed water by issuance of permits under chapter 90.48 RCW, and may establish and collect fees as required for permits issued under chapter 90.48 RCW.

(7) Before deciding whether to issue a permit under this section to a private utility, the department of health may require information that is reasonable and necessary to determine whether the private utility has the financial and other resources to assure the reliability, continuity, and supervision of the reclaimed water facility.

Sec. 2. RCW 90.46.040 and 1992 c 204 s 5 are each amended to read as follows:

(1) The department of ecology shall, in coordination with the department of health, adopt a single set of standards, procedures, and guidelines, on or before August 1, 1993, for land applications of reclaimed water.

(2) A permit is required for any land application of reclaimed water. The department of ecology may issue a reclaimed water permit under chapter 90.48 RCW to the generator of reclaimed water who may then distribute the water, subject to provisions in the permit governing the location, rate, water quality, and purpose of use. The department of ecology shall not issue more than one permit for any individual land application of reclaimed water to a single generator.

(3) In cases where the department of ecology determines, in land applications of reclaimed water, that a significant risk to the public health exists, the department shall refer the application to the department of health for review and consultation and the department of health may require fees appropriate for review and consultation from the applicant pursuant to RCW 43.70.250.

(4) A permit under this section for use of reclaimed water may be issued only to:

(a) A municipal, quasi-municipal, or other governmental entity ((or to));

(b) A private utility as defined under RCW 36.94.010; or

(c) The holder of a waste discharge permit issued under chapter 90.48 RCW.

(5) The authority and duties created in this section are in addition to any authority and duties already provided in law. Nothing in this section limits the powers of the state or any political subdivision to exercise such authority.

(6) Before deciding whether to issue a permit under this section to a private utility, the department of ecology may require information that is reasonable and necessary to determine whether the private utility has the financial and other resources to assure the reliability, continuity, and supervision of the reclaimed water facility.

Passed by the House March 10, 2005.

Passed by the Senate April 5, 2005.

Approved by the Governor April 14, 2005.

Filed in Office of Secretary of State April 14, 2005.

CHAPTER 60

[House Bill 2166]

JOINT LEGISLATIVE COMMITTEE ON WATER SUPPLY DURING DROUGHT

AN ACT Relating to the joint legislative committee on water supply during drought; adding a new chapter to Title 90 RCW; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The joint legislative committee on water supply during drought is created.

NEW SECTION. Sec. 2. The committee shall consist of four senators and four representatives who shall be selected biennially as follows:

(1) The president of the senate shall appoint four members from the senate to serve on the committee, including the chair of the committee responsible for water resource issues. Two members from each major political party must be appointed.

(2) The speaker of the house of representatives shall appoint four members from the house of representatives to serve on the committee, including the chair of the committee responsible for water resource issues. Two members from each major political party must be appointed.

(3) The committee shall elect a chair and a vice-chair. The chair shall be a member of the house of representatives in even-numbered years and a member of the senate in odd-numbered years.

(4) The presiding officer of the appropriate legislative chamber shall fill any vacancies occurring on the committee by appointment from the same political party as the departing member.

(5) Members shall serve until their successors are appointed as provided in this section, or until they are no longer members of the legislature, whichever is sooner.

NEW SECTION. Sec. 3. (1) The joint legislative committee on water supply during drought shall convene from time to time at the call of the chair

when a drought conditions order under RCW 43.83B.405 is in effect, or when the chair determines, in consultation with the department of ecology, that it is likely that such an order will be issued within the next year.

(2) The committee may request and review information relating to water supply conditions in the state, and economic, environmental, and other impacts relating to decreased water supply being experienced or anticipated. The governor's executive water emergency committee, the department of ecology, the water supply advisory committee, and other state agencies with water management or related responsibilities shall cooperate in responding to requests from the committee.

(3) During drought conditions in which an order issued under RCW 43.83B.405 is in effect, the department of ecology shall provide to the committee no less than monthly a report describing drought response activities of the department and other state and federal agencies participating on the water supply availability committee. The report shall include information regarding applications for, and approvals and denials of emergency water withdrawals and temporary changes or transfers of, water rights under RCW 43.83B.410.

(4) The committee from time to time shall make recommendations to the senate and house of representatives on budgetary and legislative actions that will improve the state's drought response programs and planning.

NEW SECTION. Sec. 4. Sections 1 through 3 of this act constitute a new chapter in Title 90 RCW.

NEW SECTION. Sec. 5. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House March 8, 2005.

Passed by the Senate April 5, 2005.

Approved by the Governor April 14, 2005.

Filed in Office of Secretary of State April 14, 2005.

CHAPTER 61

[House Bill 1260]

DRIVER'S LICENSE EXAMINATIONS

AN ACT Relating to driver's license examinations; amending RCW 46.20.120; adding new sections to chapter 46.20 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature recognizes the importance of global markets to our state and national economy. As a leader among states in international commerce, Washington houses many multinational corporations. Competition among states for foreign businesses and personnel is fierce and it is necessary to Washington's future economic viability to eliminate a significant regulatory barrier to efficient personnel exchange, resulting in a more attractive business climate in Washington. The legislature recognizes that more than twenty other states have entered into informal reciprocal agreements with other nations to waive driver's license testing requirements in order to ease the transition of personnel to and from those states. By removing an unnecessary

barrier to efficient personnel mobility it is the intent of the legislature to strengthen and diversify Washington's economy.

Sec. 2. RCW 46.20.120 and 2004 c 249 s 6 are each amended to read as follows:

An applicant for a new or renewed driver's license must successfully pass a driver licensing examination to qualify for a driver's license. The department shall give examinations at places and times reasonably available to the people of this state.

(1) **Waiver.** The department may waive:

(a) All or any part of the examination of any person applying for the renewal of a driver's license unless the department determines that the applicant is not qualified to hold a driver's license under this title; or

(b) ~~((The actual demonstration of the ability to operate))~~ All or any part of the examination involving operating a motor vehicle if the applicant:

(i) Surrenders a valid driver's license issued by the person's previous home state; ~~((and))~~ or

(ii) Provides for verification a valid driver's license issued by a foreign driver licensing jurisdiction with which the department has an informal agreement under section 3 of this act; and

(iii) Is otherwise qualified to be licensed.

(2) **Fee.** Each applicant for a new license must pay an examination fee of ten dollars.

(a) The examination fee is in addition to the fee charged for issuance of the license.

(b) "New license" means a license issued to a driver:

(i) Who has not been previously licensed in this state; or

(ii) Whose last previous Washington license has been expired for more than five years.

(3) An application for driver's license renewal may be submitted by means of:

(a) Personal appearance before the department; or

(b) Mail or electronic commerce, if permitted by rule of the department and if the applicant did not renew his or her license by mail or by electronic commerce when it last expired. However, the department may accept an application for renewal of a driver's license submitted by means of mail or electronic commerce only if specific authority and funding is provided for this purpose by June 30, 2004, in the omnibus transportation appropriations act.

(4) A person whose license expired or will expire while he or she is living outside the state, may:

(a) Apply to the department to extend the validity of his or her license for no more than twelve months. If the person establishes to the department's satisfaction that he or she is unable to return to Washington before the date his or her license expires, the department shall extend the person's license. The department may grant consecutive extensions, but in no event may the cumulative total of extensions exceed twelve months. An extension granted under this section does not change the expiration date of the license for purposes of RCW 46.20.181. The department shall charge a fee of five dollars for each license extension;

(b) Apply to the department to renew his or her license by mail or, if permitted by rule of the department, by electronic commerce even if subsection (3)(b) of this section would not otherwise allow renewal by that means. If the person establishes to the department's satisfaction that he or she is unable to return to Washington within twelve months of the date that his or her license expires, the department shall renew the person's license by mail or, if permitted by rule of the department, by electronic commerce.

(5) If a qualified person submits an application for renewal under subsection (3)(b) or (4)(b) of this section, he or she is not required to pass an examination nor provide an updated photograph. A license renewed by mail or by electronic commerce that does not include a photograph of the licensee must be labeled "not valid for identification purposes."

NEW SECTION. Sec. 3. A new section is added to chapter 46.20 RCW to read as follows:

(1) The department may enter into an informal agreement with one or more other licensing jurisdictions to waive the requirement for the examination involving operating a motor vehicle by licensed drivers, age eighteen years or older, from that jurisdiction.

(2) The department may only enter into an agreement with a jurisdiction if:

(a) The jurisdiction has procedures in place to verify the validity of the drivers' licenses it issues; and

(b) The jurisdiction has agreed to waive all or any part of the driver's license examination requirements for Washington licensed drivers applying for a driver's license in that jurisdiction.

NEW SECTION. Sec. 4. A new section is added to chapter 46.20 RCW to read as follows:

The department may make rules to carry out the purposes of sections 2 and 3 of this act.

Passed by the House March 10, 2005.

Passed by the Senate April 5, 2005.

Approved by the Governor April 15, 2005.

Filed in Office of Secretary of State April 15, 2005.

CHAPTER 62

[House Bill 1319]

LEOFF RETIREMENT SYSTEM—SURVIVOR BENEFITS

AN ACT Relating to survivor benefits for ex spouses in the law enforcement officers' and fire fighters' retirement system, plan 1; and amending RCW 41.26.160, 41.26.161, and 41.26.162.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 41.26.160 and 2002 c 158 s 1 are each amended to read as follows:

(1) In the event of the duty connected death of any member who is in active service, or who has vested under the provisions of RCW 41.26.090 with twenty or more service credit years of service, or who is on duty connected disability leave or retired for duty connected disability, the surviving spouse shall become entitled, subject to RCW 41.26.162(~~((2))~~), to receive a monthly allowance equal to fifty percent of the final average salary at the date of death if active, or the

amount of retirement allowance the vested member would have received at age fifty, or the amount of the retirement allowance such retired member was receiving at the time of death if retired for duty connected disability. The amount of this allowance will be increased five percent of final average salary for each child as defined in RCW 41.26.030(7), subject to a maximum combined allowance of sixty percent of final average salary: PROVIDED, That if the child or children is or are in the care of a legal guardian, payment of the increase attributable to each child will be made to the child's legal guardian or, in the absence of a legal guardian and if the member has created a trust for the benefit of the child or children, payment of the increase attributable to each child will be made to the trust.

(2) If at the time of the duty connected death of a vested member with twenty or more service credit years of service as provided in subsection (1) of this section or a member retired for duty connected disability, the surviving spouse has not been lawfully married to such member for one year prior to retirement or separation from service if a vested member, the surviving spouse shall not be eligible to receive the benefits under this section: PROVIDED, That if a member dies as a result of a disability incurred in the line of duty, then if he or she was married at the time he or she was disabled, the surviving spouse shall be eligible to receive the benefits under this section.

(3) If there be no surviving spouse eligible to receive benefits at the time of such member's duty connected death, then the child or children of such member shall receive a monthly allowance equal to thirty percent of final average salary for one child and an additional ten percent for each additional child subject to a maximum combined payment, under this subsection, of sixty percent of final average salary. When there cease to be any eligible children as defined in RCW 41.26.030(7), there shall be paid to the legal heirs of the member the excess, if any, of accumulated contributions of the member at the time of death over all payments made to survivors on his or her behalf under this chapter: PROVIDED, That payments under this subsection to children shall be prorated equally among the children, if more than one. If the member has created a trust for the benefit of the child or children, the payment shall be made to the trust.

(4) In the event that there is no surviving spouse eligible to receive benefits under this section, and that there be no child or children eligible to receive benefits under this section, then the accumulated contributions shall be paid to the estate of the member.

(5) If a surviving spouse receiving benefits under this section remarries after June 13, 2002, the surviving spouse shall continue to receive the benefits under this section.

(6) If a surviving spouse receiving benefits under the provisions of this section thereafter dies and there are children as defined in RCW 41.26.030(7), payment to the spouse shall cease and the child or children shall receive the benefits as provided in subsection (3) of this section.

(7) The payment provided by this section shall become due the day following the date of death and payments shall be retroactive to that date.

Sec. 2. RCW 41.26.161 and 2002 c 158 s 2 are each amended to read as follows:

(1) In the event of the nonduty connected death of any member who is in active service, or who has vested under the provisions of RCW 41.26.090 with

twenty or more service credit years of service, or who is on disability leave or retired, whether for nonduty connected disability or service, the surviving spouse shall become entitled, subject to RCW 41.26.162(~~((2))~~), to receive a monthly allowance equal to fifty percent of the final average salary at the date of death if active, or the amount of retirement allowance the vested member would have received at age fifty, or the amount of the retirement allowance such retired member was receiving at the time of death if retired for service or nonduty connected disability. The amount of this allowance will be increased five percent of final average salary for each child as defined in RCW 41.26.030(7), subject to a maximum combined allowance of sixty percent of final average salary: PROVIDED, That if the child or children is or are in the care of a legal guardian, payment of the increase attributable to each child will be made to the child's legal guardian or, in the absence of a legal guardian and if the member has created a trust for the benefit of the child or children, payment of the increase attributable to each child will be made to the trust.

(2) If at the time of the death of a vested member with twenty or more service credit years of service as provided in subsection (1) of this section or a member retired for service or disability, the surviving spouse has not been lawfully married to such member for one year prior to retirement or separation from service if a vested member, the surviving spouse shall not be eligible to receive the benefits under this section.

(3) If there be no surviving spouse eligible to receive benefits at the time of such member's death, then the child or children of such member shall receive a monthly allowance equal to thirty percent of final average salary for one child and an additional ten percent for each additional child subject to a maximum combined payment, under this subsection, of sixty percent of final average salary. When there cease to be any eligible children as defined in RCW 41.26.030(7), there shall be paid to the legal heirs of the member the excess, if any, of accumulated contributions of the member at the time of death over all payments made to survivors on his or her behalf under this chapter: PROVIDED, That payments under this subsection to children shall be prorated equally among the children, if more than one. If the member has created a trust for the benefit of the child or children, the payment shall be made to the trust.

(4) In the event that there is no surviving spouse eligible to receive benefits under this section, and that there be no child or children eligible to receive benefits under this section, then the accumulated contributions shall be paid to the estate of said member.

(5) If a surviving spouse receiving benefits under this section remarries after June 13, 2002, the surviving spouse shall continue to receive the benefits under this section.

(6) If a surviving spouse receiving benefits under the provisions of this section thereafter dies and there are children as defined in RCW 41.26.030(7), payment to the spouse shall cease and the child or children shall receive the benefits as provided in subsection (3) of this section.

(7) The payment provided by this section shall become due the day following the date of death and payments shall be retroactive to that date.

Sec. 3. RCW 41.26.162 and 2002 c 158 s 3 are each amended to read as follows:

~~(1)((a))~~ An ex spouse of a law enforcement officers' and fire fighters' retirement system retiree shall qualify as surviving spouse under RCW 41.26.160 or 41.26.161 if the ex spouse(~~:~~

~~(i))~~ has been provided benefits under any currently effective court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation ~~((entered after the member's retirement and prior to December 31, 1979; and~~

~~(ii) Was married to the retiree for at least thirty years, including at least twenty years prior to the member's retirement or separation from service if a vested member.~~

~~(b) If two or more persons are eligible for a surviving spouse benefit under this subsection, benefits shall be divided between the surviving spouses based on the percentage of total service credit the member accrued during each marriage.~~

~~(c) This subsection shall apply retroactively.~~

~~(2)(a) An ex spouse of a law enforcement officers' and fire fighters' retirement system plan 1 retiree who:~~

~~(i) Divorces the member before separation from service; and~~

~~(ii) Entered into the court order or court-approved property settlement agreement incident to the divorce of the member and ex spouse after July 1, 2003;~~

~~may be awarded a portion of the member's benefit and a portion of any spousal survivor's benefit pursuant to RCW 41.26.160 or 41.26.161 after the member's death if specified in the court order or court approved property settlement.~~

~~(b) This subsection shall not apply retroactively.~~

~~(3)(a) An ex spouse of a law enforcement officers' and fire fighters' retirement system plan 1 member with at least thirty years of service who:~~

~~(i) Divorced the member after being married to the member for at least twenty five years; and~~

~~(ii) Entered into a court order or court approved property settlement agreement incident to the divorce that awarded a portion of the member's benefits to the ex spouse after June 13, 2002;))~~ Such an ex spouse shall continue to receive ~~((that))~~ the court-awarded portion of the member's benefit after the member's death as if the member was still alive.

~~((b) This subsection shall apply only to a divorce entered into after January 1, 1997. However, no payments shall be made to an ex spouse of a deceased member qualifying under this subsection for any period prior to June 13, 2002:))~~

(2) An ex spouse whose benefit resumes as a result of this act shall receive an initial payment equivalent to that portion of the member's benefit received prior to its suspension. The benefit will not be adjusted under RCW 41.26.240 for the period the allowance was suspended.

(3) This act shall not result in the payment of benefits for the period during which benefits were suspended.

(4) This section shall apply retroactively.

Passed by the House March 10, 2005.

Passed by the Senate April 5, 2005.

Approved by the Governor April 15, 2005.

Filed in Office of Secretary of State April 15, 2005.

CHAPTER 63

[Senate Bill 5701]

REGIONAL LAW LIBRARIES

AN ACT Relating to regional law libraries; and amending RCW 27.24.062 and 27.24.020.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 27.24.062 and 1992 c 62 s 4 are each amended to read as follows:

Two or more counties each with a population of from eight thousand to less than one hundred twenty-five thousand at the time of creation of the regional law library may, by agreement of the respective law library boards of trustees as described in RCW 27.24.020(2), create a regional law library and establish and maintain one principal law library at such location as the regional board of trustees may determine will best suit the needs of the users: PROVIDED, HOWEVER, That there shall be at all times a law library in such size as the board of trustees may determine necessary to be located at the courthouse where each superior court is located.

Sec. 2. RCW 27.24.020 and 1992 c 62 s 2 are each amended to read as follows:

(1) Unless a regional law library is created pursuant to RCW 27.24.062, every county with a population of three hundred thousand or more must have a board of law library trustees consisting of five members to be constituted as follows: The chairman of the county legislative authority is an ex officio trustee, the judges of the superior court of the county shall choose two of their number to be trustees, and the members of the county bar association shall choose two members of the bar of the county to be trustees.

(2) Unless a regional law library is created pursuant to RCW 27.24.062, every county with a population of eight thousand or more but less than three hundred thousand must have a board of law library trustees consisting of five members to be constituted as follows: The chairman of the county legislative authority is an ex officio trustee, the judges of the superior court of the county shall choose one of their number to be a trustee, and the members of the county bar association shall choose three members of the county to be trustees. If there is no county bar association, then the lawyers of the county shall choose three of their number to be trustees.

(3) If a county has a population of less than eight thousand, then the provisions contained in RCW 27.24.068 shall apply to the establishment and operation of the county law library.

(4) If a regional law library is created pursuant to RCW 27.24.062, then it shall be governed by one board of trustees. The board shall consist of the following representatives from each county: The judges of the superior court of the county shall choose one of their number to be a trustee, the county legislative authority shall choose one of their number to be a trustee, and the members of the county bar association shall choose one member of the bar of the county to be a trustee. If there is no county bar association, then the lawyers of the county shall choose one of their number to be a trustee.

(5) The term of office of a member of the board who is a judge is for as long as he or she continues to be a judge, and the term of a member who is from the bar is four years. Vacancies shall be filled as they occur and in the manner

directed in this section. The office of trustee shall be without salary or other compensation. The board shall elect one of their number president and the librarian shall act as secretary, except that in counties with a population of eight thousand or more but less than three hundred thousand, the board shall elect one of their number to act as secretary if no librarian is appointed. Meetings shall be held at least once per year, and if more often, then at such times as may be prescribed by rule.

Passed by the Senate March 9, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 15, 2005.

Filed in Office of Secretary of State April 15, 2005.

CHAPTER 64

[House Bill 1325]

RETIREMENT SYSTEMS—MILITARY SERVICE CREDITS

AN ACT Relating to interruptive military service credit within the public employees' retirement system, the school employees' retirement system, the teachers' retirement system, the law enforcement officers' and fire fighters' retirement system plan 2, the Washington state patrol retirement system, and the public safety employees' retirement system; amending RCW 41.40.170, 41.40.710, 41.40.805, 41.35.470, 41.35.650, 41.32.260, 41.32.810, 41.32.865, 41.26.520, 43.43.260, and 41.37.260; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 41.40.170 and 2002 c 27 s 2 are each amended to read as follows:

(1) A member who has served or shall serve on active federal service in the military or naval forces of the United States and who left or shall leave an employer to enter such service shall be deemed to be on military leave of absence if he or she has resumed or shall resume employment as an employee within one year from termination thereof.

(2) If he or she has applied or shall apply for reinstatement of employment, within one year from termination of the military service, and is refused employment for reasons beyond his or her control, he or she shall, upon resumption of service within ten years have such service credited to him or her.

(3) In any event, after completing twenty-five years of creditable service, any member may have service in the armed forces credited to him or her as a member whether or not he or she left the employ of an employer to enter the armed service: PROVIDED, That in no instance, described in this section, shall military service in excess of five years be credited: AND PROVIDED FURTHER, That in each instance the member must restore all withdrawn accumulated contributions, which restoration must be completed within five years of membership service following the first resumption of employment or complete twenty-five years of creditable service: AND PROVIDED FURTHER, That this section will not apply to any individual, not a veteran within the meaning of RCW 41.04.005.

(4) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to

the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(a) Provides to the director proof of the member's death while serving in the uniformed services; and

(b) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death.

(5) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(a) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services; and

(b) The member provides to the director proof of honorable discharge from the uniformed services.

Sec. 2. RCW 41.40.710 and 2000 c 247 s 1106 are each amended to read as follows:

(1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.40.610 through 41.40.740.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The compensation earnable reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if:

(a) The member makes both the plan 2 employer and member contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner; or

(b) If not within five years of resumption of service but prior to retirement, pay the amount required under RCW 41.50.165(2).

The contributions required under (a) of this subsection shall be based on the average of the member's compensation earnable at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the ~~((armed forces))~~ uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection

shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the uniformed services of the United States (~~(armed forces)~~), the member applies for reemployment with the employer who employed the member immediately prior to the member entering the (~~United States armed forces~~) uniformed services; and

(ii) The member makes the employee contributions required under RCW 41.45.061 and 41.45.067 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2).

(b) Upon receipt of member contributions under (a)(ii), (d)(iii), or (e)(iii) of this subsection, the department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.45.060, 41.45.061, and 41.45.067 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii), (d)(iii), or (e)(iii) of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(d) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first.

(e) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first.

Sec. 3. RCW 41.40.805 and 2000 c 247 s 306 are each amended to read as follows:

(1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The earnable compensation reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if:

(a) The member makes the contribution on behalf of the employer, plus interest, as determined by the department; and

(b) The member makes the employee contribution, plus interest, as determined by the department, to the defined contribution portion.

The contributions required shall be based on the average of the member's earnable compensation at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the ~~((armed forces))~~ uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service if within ninety days of the member's honorable discharge from the uniformed services of the United States ~~((armed forces))~~, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the ~~((United States armed forces))~~ uniformed services. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

The department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.45.060 and 41.45.067 for the period of military service, plus interest as determined by the department. Service credit under this subsection may be obtained only if the member makes the employee contribution to the defined contribution portion as determined by the department.

The contributions required shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(a) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under this subsection within five years of the date of death or prior to the distribution of any benefit, whichever comes first.

(b) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under this subsection within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first.

Sec. 4. RCW 41.35.470 and 1998 c 341 s 108 are each amended to read as follows:

(1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.35.400 through 41.35.599.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The compensation earnable reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if:

(a) The member makes both the plan 2 employer and member contributions plus interest as determined by the department for the period of the authorized

leave of absence within five years of resumption of service or prior to retirement whichever comes sooner; or

(b) If not within five years of resumption of service but prior to retirement, pay the amount required under RCW 41.50.165(2).

The contributions required under (a) of this subsection shall be based on the average of the member's compensation earnable at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the (~~(armed forces)~~) uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the uniformed services of the United States (~~(armed forces)~~), the member applies for reemployment with the employer who employed the member immediately prior to the member entering the (~~(United States armed forces)~~) uniformed services; and

(ii) The member makes the employee contributions required under RCW 41.35.430 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2).

(b) Upon receipt of member contributions under (a)(ii), (d)(iii), or (e)(iii) of this subsection, the department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.35.430 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii), (d)(iii), or (e)(iii) of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(d) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first.

(e) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued

employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first.

Sec. 5. RCW 41.35.650 and 1998 c 341 s 206 are each amended to read as follows:

(1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The earnable compensation reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if:

(a) The member makes the contribution on behalf of the employer, plus interest, as determined by the department; and

(b) The member makes the employee contribution, plus interest, as determined by the department, to the defined contribution portion.

The contributions required shall be based on the average of the member's earnable compensation at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the (~~armed forces~~) uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service if within ninety days of the member's honorable discharge from the uniformed services of the United States (~~armed forces~~), the member applies for reemployment with the employer who employed the member immediately prior to the member entering the (~~United States armed forces~~) uniformed services. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

The department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.35.720 for the period of military service, plus interest as determined by the department. Service credit

under this subsection may be obtained only if the member makes the employee contribution to the defined contribution portion as determined by the department.

The contributions required shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(a) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under this subsection within five years of the date of death or prior to the distribution of any benefit, whichever comes first.

(b) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under this subsection within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first.

Sec. 6. RCW 41.32.260 and 1992 c 212 s 8 are each amended to read as follows:

Any member whose public school service is interrupted by active service to the United States as a member of its (~~military, naval or air service~~) uniformed services, or to the state of Washington, as a member of the legislature, may upon becoming reemployed in the public schools, receive credit for that service upon presenting satisfactory proof, and contributing to the member reserve, either in a lump sum or installments, amounts determined by the director. Except that no military service credit in excess of five years shall be established or reestablished after July 1, 1961, unless the service was actually rendered during time of war. This section shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(1) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States

and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(a) Provides to the director proof of the member's death while serving in the uniformed services;

(b) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(c) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first.

(2) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(a) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(b) The member provides to the director proof of honorable discharge from the uniformed services; and

(c) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first.

Sec. 7. RCW 41.32.810 and 1996 c 61 s 2 are each amended to read as follows:

(1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.32.755 through 41.32.825.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The earnable compensation reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (6) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if the member makes both the employer and member contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner.

(4) If a member fails to meet the time limitations of subsection (3) of this section, the member may receive a maximum of two years of service credit during a member's working career for those periods when a member is on unpaid leave of absence authorized by an employer. This may be done by paying the amount required under RCW 41.50.165(2) prior to retirement.

(5) For the purpose of subsection (3) of this section, the contribution shall not include the contribution for the unfunded supplemental present value as required by RCW 41.32.775. The contributions required shall be based on the average of the member's earnable compensation at both the time the authorized leave of absence was granted and the time the member resumed employment.

(6) A member who leaves the employ of an employer to enter the ~~((armed forces))~~ uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the uniformed services of the United States ~~((armed forces))~~, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the ~~((United States armed forces))~~ uniformed services; and

(ii) The member makes the employee contributions required under RCW 41.32.775 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2).

(b) Upon receipt of member contributions under (a)(ii), ~~(d)(iii), or (e)(iii)~~ of this subsection, the department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.32.775 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii), ~~(d)(iii), or (e)(iii)~~ of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(d) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first.

(e) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first.

Sec. 8. RCW 41.32.865 and 1996 c 61 s 3 are each amended to read as follows:

(1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The earnable compensation reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if:

(a) The member makes the contribution on behalf of the employer, plus interest, as determined by the department; and

(b) The member makes the employee contribution, plus interest, as determined by the department, to the defined contribution portion.

The contributions required shall be based on the average of the member's earnable compensation at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the ~~((armed forces))~~ uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service if within ninety days of the member's honorable discharge from the uniformed services of the United States ~~((armed forces))~~, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the ~~((United States armed forces))~~ uniformed services. This subsection shall be

administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

The department shall establish the member's service credit and shall bill the employer for its contribution required under chapter 239, Laws of 1995 for the period of military service, plus interest as determined by the department. Service credit under this subsection may be obtained only if the member makes the employee contribution to the defined contribution portion as determined by the department.

The contributions required shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(a) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under this subsection within five years of the date of death or prior to the distribution of any benefit, whichever comes first.

(b) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under this subsection within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first.

Sec. 9. RCW 41.26.520 and 2002 c 28 s 1 are each amended to read as follows:

(1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.26.410 through 41.26.550.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if

the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The basic salary reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (7) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if the member makes the employer, member, and state contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner.

(4) A law enforcement member may be authorized by an employer to work part time and to go on a part-time leave of absence. During a part-time leave of absence a member is prohibited from any other employment with their employer. A member is eligible to receive credit for any portion of service credit not earned during a month of part-time leave of absence if the member makes the employer, member, and state contributions, plus interest, as determined by the department for the period of the authorized leave within five years of resumption of full-time service or prior to retirement whichever comes sooner. Any service credit purchased for a part-time leave of absence is included in the two-year maximum provided in subsection (3) of this section.

(5) If a member fails to meet the time limitations of subsection (3) or (4) of this section, the member may receive a maximum of two years of service credit during a member's working career for those periods when a member is on unpaid leave of absence authorized by an employer. This may be done by paying the amount required under RCW 41.50.165(2) prior to retirement.

(6) For the purpose of subsection (3) or (4) of this section the contribution shall not include the contribution for the unfunded supplemental present value as required by RCW 41.45.060, 41.45.061, and 41.45.067. The contributions required shall be based on the average of the member's basic salary at both the time the authorized leave of absence was granted and the time the member resumed employment.

(7) A member who leaves the employ of an employer to enter the (~~armed forces~~) uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the uniformed services of the United States (~~armed forces~~), the member applies for reemployment with the employer who employed the member immediately prior to the member entering the (~~United States armed forces~~) uniformed services; and

(ii) The member makes the employee contributions required under RCW 41.45.060, 41.45.061, and 41.45.067 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2).

(b) Upon receipt of member contributions under (a)(ii), (d)(iii), or (e)(iii) of this subsection, the department shall establish the member's service credit and shall bill the employer and the state for their respective contributions required under RCW 41.26.450 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii), (d)(iii), or (e)(iii) of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(d) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first.

(e) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first.

(8) A member receiving benefits under Title 51 RCW who is not receiving benefits under this chapter shall be deemed to be on unpaid, authorized leave of absence.

Sec. 10. RCW 43.43.260 and 2002 c 27 s 3 are each amended to read as follows:

Upon retirement from service as provided in RCW 43.43.250, a member shall be granted a retirement allowance which shall consist of:

(1) A prior service allowance which shall be equal to two percent of the member's average final salary multiplied by the number of years of prior service rendered by the member.

(2) A current service allowance which shall be equal to two percent of the member's average final salary multiplied by the number of years of service rendered while a member of the retirement system.

(3)(a) Any member commissioned prior to January 1, 2003, with twenty-five years service in the Washington state patrol may have the member's service in the (~~(armed forces)~~) uniformed services credited as a member whether or not the individual left the employ of the Washington state patrol to enter such (~~(armed forces)~~) uniformed services: PROVIDED, That in no instance shall military service in excess of five years be credited: AND PROVIDED FURTHER, That in each instance, a member must restore all withdrawn accumulated contributions, which restoration must be completed on the date of the member's retirement, or as provided under RCW 43.43.130, whichever occurs first: AND PROVIDED FURTHER, That this section shall not apply to any individual, not a veteran within the meaning of RCW 41.06.150.

(b) A member who leaves the Washington state patrol to enter the (~~(armed forces)~~) uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(i) The member qualifies for service credit under this subsection if:

(A) Within ninety days of the member's honorable discharge from the uniformed services of the United States (~~(armed forces)~~), the member applies for reemployment with the employer who employed the member immediately prior to the member entering the (~~(United States armed forces)~~) uniformed services; and

(B) The member makes the employee contributions required under RCW 41.45.0631 and 41.45.067 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(C) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2).

(ii) Upon receipt of member contributions under (b)(i)(B), (b)(iv)(C), and (b)(v)(C) of this subsection, the department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.45.060 for the period of military service, plus interest as determined by the department.

(iii) The contributions required under (b)(i)(B), (b)(iv)(C), and (b)(v)(C) of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(iv) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall

establish the deceased member's service credit if the surviving spouse or eligible child or children:

(A) Provides to the director proof of the member's death while serving in the uniformed services;

(B) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(C) If the member was commissioned on or after January 1, 2003, pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first.

(v) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(A) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(B) The member provides to the director proof of honorable discharge from the uniformed services; and

(C) If the member was commissioned on or after January 1, 2003, the member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first.

(4) In no event shall the total retirement benefits from subsections (1), (2), and (3) of this section, of any member exceed seventy-five percent of the member's average final salary.

(5) Beginning July 1, 2001, and every year thereafter, the department shall determine the following information for each retired member or beneficiary whose retirement allowance has been in effect for at least one year:

(a) The original dollar amount of the retirement allowance;

(b) The index for the calendar year prior to the effective date of the retirement allowance, to be known as "index A";

(c) The index for the calendar year prior to the date of determination, to be known as "index B"; and

(d) The ratio obtained when index B is divided by index A.

The value of the ratio obtained shall be the annual adjustment to the original retirement allowance and shall be applied beginning with the July payment. In no event, however, shall the annual adjustment:

(i) Produce a retirement allowance which is lower than the original retirement allowance;

(ii) Exceed three percent in the initial annual adjustment; or

(iii) Differ from the previous year's annual adjustment by more than three percent.

For the purposes of this section, "index" means, for any calendar year, that year's average consumer price index for the Seattle-Tacoma-Bremerton Washington area for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

The provisions of this section shall apply to all members presently retired and to all members who shall retire in the future.

Sec. 11. RCW 41.37.260 and 2004 c 242 s 32 are each amended to read as follows:

(1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under RCW 41.37.190 through 41.37.290.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The compensation earnable reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. This credit may be obtained only if:

(a) The member makes both the employer and member contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner; or

(b) If not within five years of resumption of service but prior to retirement, pay the amount required under RCW 41.50.165(2).

The contributions required under (a) of this subsection shall be based on the average of the member's compensation earnable at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the (~~armed forces~~) uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the uniformed services of the United States (~~armed forces~~), the member applies for reemployment with the employer who employed the member immediately prior to the member entering the (~~United States armed forces~~) uniformed services; and

(ii) The member makes the employee contributions required under RCW 41.37.220 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2).

(b) Upon receipt of member contributions under (a)(ii), ~~(d)(iii)~~, or (e)(iii) of this subsection, the department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.37.220 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii), ~~(d)(iii)~~, or (e)(iii) of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(d) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first.

(e) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first.

NEW SECTION. Sec. 12. Section 11 of this act takes effect July 1, 2006.

Passed by the House March 8, 2005.

Passed by the Senate April 5, 2005.

Approved by the Governor April 15, 2005.

Filed in Office of Secretary of State April 15, 2005.

CHAPTER 65

[House Bill 1327]

TEACHERS' RETIREMENT SYSTEM—ADDITIONAL SERVICE CREDIT PURCHASE

AN ACT Relating to permitting members of the teachers' retirement system plan 2 and plan 3 who qualify for early retirement or alternate early retirement to make a one-time purchase of

additional service credit; adding new sections to chapter 41.32 RCW; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 41.32 RCW under the subchapter heading "plan 2" to read as follows:

(1) A member eligible to retire under RCW 41.32.765 (2) or (3) may, at the time of filing a written application for retirement with the department, apply to the department to make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(4) Additional service credit purchased under this section is not membership service, and may not be used to qualify a member for retirement under RCW 41.32.765.

NEW SECTION. Sec. 2. A new section is added to chapter 41.32 RCW under the subchapter heading "plan 3" to read as follows:

(1) A member eligible to retire under RCW 41.32.875 (2) or (3) may, at the time of filing a written application for retirement with the department, apply to the department to make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(4) Additional service credit purchased under this section is not membership service, and may not be used to qualify for retirement under RCW 41.32.875.

NEW SECTION. Sec. 3. This act takes effect July 1, 2006.

Passed by the House March 8, 2005.

Passed by the Senate April 5, 2005.

Approved by the Governor April 15, 2005.

Filed in Office of Secretary of State April 15, 2005.

CHAPTER 66

[House Bill 1328]

CITY AND COUNTY DISABILITY BOARDS

AN ACT Relating to city and county disability boards; amending RCW 41.26.110; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 41.26.110 and 2003 c 30 s 3 are each amended to read as follows:

(1) All claims for disability shall be acted upon and either approved or disapproved by either type of disability board authorized to be created in this section.

(a) Each city having a population of twenty thousand or more shall establish a disability board having jurisdiction over all members employed by those cities and composed of the following five members: Two members of the city legislative body to be appointed by the mayor; one active or retired fire fighter employed by or retired from the city to be elected by the fire fighters employed by or retired from the city who are subject to the jurisdiction of the board; one active or retired law enforcement officer employed by or retired from the city to be elected by the law enforcement officers employed by or retired from the city who are subject to the jurisdiction of the board; and one member from the public at large who resides within the city to be appointed by the other four members designated in this subsection. Only those active or retired fire fighters and law enforcement officers who are subject to the jurisdiction of the board have the right to elect under this section. All fire fighters and law enforcement officers employed by or retired from the city are eligible for election. Each of the elected members shall serve a two year term. The members appointed pursuant to this subsection shall serve for two year terms: PROVIDED, That cities of the first class only, shall retain existing firemen's pension boards established pursuant to RCW 41.16.020 and existing boards of trustees of the relief and pension fund of the police department as established pursuant to RCW 41.20.010 which such boards shall have authority to act upon and approve or disapprove claims for disability by fire fighters or law enforcement officers as provided under the Washington law enforcement officers' and fire fighters' retirement system act.

(b) Each county shall establish a disability board having jurisdiction over all members (~~residing in the county~~) employed by or retired from an employer within the county and not employed by a city in which a disability board is established. The county disability board so created shall be composed of five members to be chosen as follows: One member of the legislative body of the county to be appointed by the county legislative body; one member of a city or town legislative body located within the county which does not contain a city disability board established pursuant to subsection (1)(a) of this section to be chosen by a majority of the mayors of such cities and towns within the county which does not contain a city disability board; one active fire fighter or retired

fire fighter employed by or retired from an employer within the county to be elected by the fire fighters employed or retired (~~((#))~~) from an employer within the county who are not employed by or retired from a city in which a disability board is established and who are subject to the jurisdiction of (~~((the))~~) that board; one law enforcement officer or retired law enforcement officer employed by or retired from an employer within the county to be elected by the law enforcement officers employed in or retired from an employer within the county who are not employed by or retired from a city in which a disability board is established and who are subject to the jurisdiction of (~~((the))~~) that board; and one member from the public at large who resides within the county but does not reside within a city in which a city disability board is established, to be appointed by the other four members designated in this subsection. However, in counties with a population less than sixty thousand, the member of the disability board appointed by a majority of the mayors of the cities and towns within the county that do not contain a city disability board must be a resident of one of the cities and towns but need not be a member of a city or town legislative body. Only those active or retired fire fighters and law enforcement officers who are subject to the jurisdiction of the board have the right to elect under this section. All fire fighters and law enforcement officers employed by or retired from an employer within the county who are not employed by or retired from a city in which a disability board is established are eligible for election. All members appointed or elected pursuant to this subsection shall serve for two year terms. If there are no fire fighters under the jurisdiction of the board eligible to vote, a second eligible employee representative shall be elected by the law enforcement officers eligible to vote. If there are no law enforcement officers under the jurisdiction of the board eligible to vote, a second eligible representative shall be elected by the fire fighters eligible to vote.

(2) The members of both the county and city disability boards shall not receive compensation for their service upon the boards but the members shall be reimbursed by their respective county or city for all expenses incidental to such service as to the amount authorized by law.

(3) The disability boards authorized for establishment by this section shall perform all functions, exercise all powers, and make all such determinations as specified in this chapter.

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House February 28, 2005.

Passed by the Senate April 5, 2005.

Approved by the Governor April 15, 2005.

Filed in Office of Secretary of State April 15, 2005.

CHAPTER 67

[House Bill 1329]

LEOFF RETIREMENT SYSTEM—RETIREMENT ALLOWANCE

AN ACT Relating to choosing a reduced retirement allowance under the law enforcement officers' and fire fighters' retirement system, plan 1; amending RCW 41.26.164; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 41.26.164 and 2002 c 158 s 4 are each amended to read as follows:

(1) No later than July 1, (~~2003~~) 2005, the department shall adopt rules to allow a member who meets the criteria set forth in subsection (2) of this section to choose an actuarially equivalent benefit that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of a spouse ineligible for survivor benefits under RCW 41.26.160 or 41.26.161.

(2) To choose an actuarially equivalent benefit according to subsection (1) of this section, a member shall:

(a) Have a portion of the retirement allowance payable to the retiree that is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670; and

(b) (~~Have no qualified ex spouse under RCW 41.26.162(1); and~~

~~(c))~~ Choose an actuarially reduced benefit equivalent to that portion not subject to periodic payments under (a) of this subsection during a one-year period beginning one year after the date of marriage to the survivor benefit-ineligible spouse.

(3) A member who married a spouse ineligible for survivor benefits under RCW 41.26.160 or 41.26.161 prior to the effective date of the rules adopted under this section and satisfies (~~the conditions of~~) subsection (2)(a) (~~and (b))~~) of this section has one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(4) No benefit provided to a child survivor beneficiary under RCW 41.26.160 or 41.26.161 is affected or reduced by the member's selection of the actuarially reduced spousal survivor benefit provided by this section.

(5)(a) Any member who chose to receive a reduced retirement allowance under subsection (1) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection if:

(i) The retiree's survivor spouse designated in subsection (1) of this section predeceases the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree from the beginning of the month following the date of the (~~beneficiaries [beneficiary's])~~ beneficiary's death shall be increased by the following:

(i) One hundred percent multiplied by the result of (b)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor.

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House March 10, 2005.

Passed by the Senate April 5, 2005.

Approved by the Governor April 15, 2005.
 Filed in Office of Secretary of State April 15, 2005.

CHAPTER 68

[Senate Bill 5477]

SENTENCING REFORM ACT

AN ACT Relating to sentencing outside the standard sentence range; amending RCW 9.94A.530 and 9.94A.535; adding a new section to chapter 9.94A RCW; creating new sections; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature intends to conform the sentencing reform act, chapter 9.94A RCW, to comply with the ruling in *Blakely v. Washington*, 542 U.S. ... (2004). In that case, the United States supreme court held that a criminal defendant has a Sixth Amendment right to have a jury determine beyond a reasonable doubt any aggravating fact, other than the fact of a prior conviction, that is used to impose greater punishment than the standard range or standard conditions. The legislature intends that aggravating facts, other than the fact of a prior conviction, will be placed before the jury. The legislature intends that the sentencing court will then decide whether or not the aggravating fact is a substantial and compelling reason to impose greater punishment. The legislature intends to create a new criminal procedure for imposing greater punishment than the standard range or conditions and to codify existing common law aggravating factors, without expanding or restricting existing statutory or common law aggravating circumstances. The legislature does not intend the codification of common law aggravating factors to expand or restrict currently available statutory or common law aggravating circumstances. The legislature does not intend to alter how mitigating facts are to be determined under the sentencing reform act, and thus intends that mitigating facts will be found by the sentencing court by a preponderance of the evidence.

While the legislature intends to bring the sentencing reform act into compliance as previously indicated, the legislature recognizes the need to restore the judicial discretion that has been limited as a result of the *Blakely* decision.

Sec. 2. RCW 9.94A.530 and 2002 c 290 s 18 are each amended to read as follows:

(1) The intersection of the column defined by the offender score and the row defined by the offense seriousness score determines the standard sentence range (see RCW 9.94A.510, (Table 1) and RCW 9.94A.517, (Table 3)). The additional time for deadly weapon findings or for ~~((those offenses enumerated))~~ other adjustments as specified in RCW 9.94A.533~~((4) that were committed in a state correctional facility or county jail))~~ shall be added to the entire standard sentence range. The court may impose any sentence within the range that it deems appropriate. All standard sentence ranges are expressed in terms of total confinement.

(2) In determining any sentence other than a sentence above the standard range, the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing, or proven pursuant to section 4 of this act. Acknowledgement includes not objecting to information stated in the presentence reports. Where

the defendant disputes material facts, the court must either not consider the fact or grant an evidentiary hearing on the point. The facts shall be deemed proved at the hearing by a preponderance of the evidence, except as otherwise specified in section 4 of this act.

(3) In determining any sentence above the standard sentence range, the court shall follow the procedures set forth in section 4 of this act. Facts that establish the elements of a more serious crime or additional crimes may not be used to go outside the standard sentence range except upon stipulation or when specifically provided for in RCW 9.94A.535(2) (d), (e), (g), and (h).

Sec. 3. RCW 9.94A.535 and 2003 c 267 s 4 are each amended to read as follows:

The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence. Facts supporting aggravated sentences, other than the fact of a prior conviction, shall be determined pursuant to the provisions of section 4 of this act.

Whenever a sentence outside the standard sentence range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard sentence range shall be a determinate sentence ~~((unless it is imposed on an offender sentenced under RCW 9.94A.712. An exceptional sentence imposed on an offender sentenced under RCW 9.94A.712 shall be to a minimum term set by the court and a maximum term equal to the statutory maximum sentence for the offense of conviction under chapter 9A.20 RCW)).~~

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

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

~~((The following are illustrative factors which the court may consider in the exercise of its discretion to impose an exceptional sentence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.))~~

(1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Except for circumstances listed in subsection (2) of this section, the following circumstances are an exclusive list of factors that can support a sentence above the standard range. Such facts should be determined by procedures specified in section 4 of this act.

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

(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance (~~(due to extreme youth, advanced age, disability, or ill health)~~).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) At any time prior to trial or entry of the guilty plea if substantial rights of the defendant are not prejudiced, the state may give notice that it is seeking a sentence above the standard sentencing range. The notice shall state aggravating circumstances upon which the requested sentence will be based.

(2) The facts supporting aggravating circumstances shall be proved to a jury beyond a reasonable doubt. The jury's verdict on the aggravating factor must be unanimous, and by special interrogatory. If a jury is waived, proof shall be to the court beyond a reasonable doubt, unless the defendant stipulates to the aggravating facts.

(3) Evidence regarding any facts supporting aggravating circumstances under RCW 9.94A.535(3) (a) through (y), shall be presented to the jury during the trial of the alleged crime, unless the state alleges the aggravating circumstances listed in RCW 9.94A.535(3) (e)(iv), (h)(i), (o), or (t). If one of these aggravating circumstances is alleged, the trial court may conduct a

separate proceeding if the evidence supporting the aggravating fact is not part of the res geste of the charged crime, if the evidence is not otherwise admissible in trial of the charged crime, and if the court finds that the probative value of the evidence to the aggravated fact is substantially outweighed by its prejudicial effect on the jury's ability to determine guilt or innocence for the underlying crime.

(4) If the court conducts a separate proceeding to determine the existence of aggravating circumstances, the proceeding shall immediately follow the trial on the underlying conviction, if possible. If any person who served on the jury is unable to continue, the court shall substitute an alternate juror.

(5) If the jury finds, unanimously and beyond a reasonable doubt, one or more of the facts alleged by the state in support of an aggravated sentence, the court may sentence the offender pursuant to RCW 9.94A.535 to a term of confinement up to the maximum allowed under RCW 9A.20.021 for the underlying conviction if it finds, considering the purposes of this chapter, that the facts found are substantial and compelling reasons justifying an exceptional sentence.

NEW SECTION. Sec. 5. (1) The sentencing guidelines commission shall review the sentencing reform act as it relates to the sentencing grid, all provisions providing for exceptional sentences both above and below the standard sentencing ranges, and judicial discretion in sentencing. As part of its review, the commission shall:

(a) Study the relevant provisions of the sentencing reform act, including the provisions in this act;

(b) Consider how to restore the judicial discretion which has been limited as a result of the *Blakely* decision;

(c) Consider the use of advisory sentencing guidelines for all or any group of crimes;

(d) Draft proposed legislation that seeks to address the limitations placed on judicial discretion in sentencing as a result of the *Blakely* decision; and

(e) Determine the fiscal impact of any proposed legislation.

(2) The commission shall submit its findings and proposed legislation to the legislature no later than December 1, 2005.

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

NEW SECTION. Sec. 7. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate April 14, 2005.

Passed by the House April 12, 2005.

Approved by the Governor April 15, 2005.

Filed in Office of Secretary of State April 15, 2005.

CHAPTER 69

[Substitute Senate Bill 5862]

ASSOCIATION OF WASHINGTON GENERALS

AN ACT Relating to creating the association of Washington generals; and adding a new chapter to Title 43 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) The association of Washington generals is organized as a private, nonprofit, nonpartisan, corporation in accordance with chapter 24.03 RCW and this section.

(2) The purpose of the association of Washington generals is to:

(a) Provide the state a means of extending formal recognition for an individual's outstanding services to the state; and

(b) Bring together those individuals to serve the state as ambassadors of trade, tourism, and international goodwill.

(3) The association of Washington generals may conduct activities in support of their mission, including but not limited to:

(a) Establishing selection criteria for selecting Washington generals;

(b) Operating a statewide essay competition;

(c) Training Washington generals as ambassadors of the state of Washington, nationally and internationally; and

(d) Promoting Washington generals as ambassadors of the state of Washington.

(4) The association of Washington generals is governed by a board of directors. The board is composed of the governor, lieutenant governor, and the secretary of state, who serve as ex officio, nonvoting members, and other officers and members as the association of Washington generals designates. The board shall:

(a) Review nominations for and be responsible for the selection of Washington generals; and

(b) Establish the title of honorary Washington general to honor worthy individuals from outside the state of Washington.

(5) The lieutenant governor's office may provide technical and financial assistance for the association of Washington generals.

(6) The legislature may make appropriations in support of the Washington generals subject to the availability of funds.

NEW SECTION. Sec. 2. The association of Washington generals may use the image of the Washington state flag to promote the mission of the organization as set forth under section 1 of this act. The association retains any revenue generated by the use of the image, when the usage is consistent with the purposes under section 1 of this act.

NEW SECTION. Sec. 3. Sections 1 and 2 of this act constitute a new chapter in Title 43 RCW.

Passed by the Senate March 11, 2005.

Passed by the House April 7, 2005.

Approved by the Governor April 18, 2005.

Filed in Office of Secretary of State April 18, 2005.

CHAPTER 70

[Senate Bill 5974]

DRUG TREATMENT PROGRAMS—PREGNANCY INFORMATION

AN ACT Relating to drug use among pregnant women; amending RCW 70.96A.090; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that drug use among pregnant women is a significant and growing concern statewide. The legislature further finds that methadone, although an effective alternative to other substance use treatments, can result in babies who are exposed to methadone while in utero being born addicted and facing the painful effects of withdrawal.

It is the intent of the legislature to notify all pregnant mothers who are receiving methadone treatment of the risks and benefits methadone could have on their baby during pregnancy through birth and to inform them of the potential need for the newborn baby to be taken care of in a hospital setting or in a specialized supportive environment designed specifically to address newborn addiction problems.

Sec. 2. RCW 70.96A.090 and 1995 c 312 s 46 are each amended to read as follows:

(1) The department shall adopt rules establishing standards for approved treatment programs, the process for the review and inspection program applying to the department for certification as an approved treatment program, and fixing the fees to be charged by the department for the required inspections. The standards may concern the health standards to be met and standards of services and treatment to be afforded patients.

(2) The department may suspend, revoke, limit, restrict, or modify an approval, or refuse to grant approval, for failure to meet the provisions of this chapter, or the standards adopted under this chapter. RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(3) No treatment program may advertise or represent itself as an approved treatment program if approval has not been granted, has been denied, suspended, revoked, or canceled.

(4) Certification as an approved treatment program is effective for one calendar year from the date of issuance of the certificate. The certification shall specify the types of services provided by the approved treatment program that meet the standards adopted under this chapter. Renewal of certification shall be made in accordance with this section for initial approval and in accordance with the standards set forth in rules adopted by the secretary.

(5) Approved treatment programs shall not provide alcoholism or other drug addiction treatment services for which the approved treatment program has not been certified. Approved treatment programs may provide services for which approval has been sought and is pending, if approval for the services has not been previously revoked or denied.

(6) The department periodically shall inspect approved public and private treatment programs at reasonable times and in a reasonable manner.

(7) The department shall maintain and periodically publish a current list of approved treatment programs.

(8) Each approved treatment program shall file with the department on request, data, statistics, schedules, and information the department reasonably requires. An approved treatment program that without good cause fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent returns thereof, may be removed from the list of approved treatment programs, and its certification revoked or suspended.

(9) The department shall use the data provided in subsection (8) of this section to evaluate each program that admits children to inpatient treatment upon application of their parents. The evaluation shall be done at least once every twelve months. In addition, the department shall randomly select and review the information on individual children who are admitted on application of the child's parent for the purpose of determining whether the child was appropriately placed into treatment based on an objective evaluation of the child's condition and the outcome of the child's treatment.

(10) Upon petition of the department and after a hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the department authorizing him or her to enter and inspect at reasonable times, and examine the books and accounts of, any approved public or private treatment program refusing to consent to inspection or examination by the department or which the department has reasonable cause to believe is operating in violation of this chapter.

(11)(a) All approved opiate substitution treatment programs that provide services to women who are pregnant are required to disseminate up-to-date and accurate health education information to all their pregnant clients concerning the possible addiction and health risks that their opiate substitution treatment may have on their baby. All pregnant clients must also be advised of the risks to both them and their baby associated with not remaining on the opiate substitute program. The information must be provided to these clients both verbally and in writing. The health education information provided to the pregnant clients must include referral options for the addicted baby.

(b) The department shall adopt rules that require all opiate treatment programs to educate all pregnant women in their program on the benefits and risks of methadone treatment to their fetus before they are provided these medications, as part of their addiction treatment. The department shall meet the requirements under this subsection within the appropriations provided for opiate treatment programs. The department, working with treatment providers and medical experts, shall develop and disseminate the educational materials to all certified opiate treatment programs.

Passed by the Senate March 9, 2005.

Passed by the House April 7, 2005.

Approved by the Governor April 18, 2005.

Filed in Office of Secretary of State April 18, 2005.

CHAPTER 71

[Senate Bill 5977]

LICENSE PLATES—WE LOVE OUR PETS

AN ACT Relating to the "we love our pets" special license plates; reenacting and amending RCW 46.16.313; adding new sections to chapter 46.16 RCW; and adding a new section to chapter 46.04 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 46.16 RCW to read as follows:

(1) The legislature recognizes that the "we love our pets" license plate has been reviewed by the special license plate review board under RCW 46.16.725, and found to fully comply with all provisions of RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying a symbol or artwork, approved by the special license plate review board, recognizing an organization that assists local member agencies of the federation of animal welfare and control agencies to promote and perform spay/neuter surgery on Washington state pets, in order to reduce pet overpopulation. The special license plate may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department.

NEW SECTION. Sec. 2. A new section is added to chapter 46.04 RCW to read as follows:

"We love our pets license plates" means license plates issued under section 1 of this act that display a symbol or artwork recognizing the efforts of the Washington state federation of animal care and control agencies in Washington state that assists local member agencies of the federation to promote and perform spay/neuter surgery of Washington state pets, in order to reduce pet overpopulation.

Sec. 3. RCW 46.16.313 and 2004 c 221 s 3, 2004 c 48 s 3, and 2004 c 35 s 3 are each reenacted and amended to read as follows:

(1) The department may establish a fee of no more than forty dollars for each type of special license plates issued under RCW 46.16.301(1) (a), (b), or (c), as existing before amendment by section 5, chapter 291, Laws of 1997, in an amount calculated to offset the cost of production of the special license plates and the administration of this program. This fee is in addition to all other fees required to register and license the vehicle for which the plates have been requested. All such additional special license plate fees collected by the department shall be deposited in the state treasury and credited to the motor vehicle fund.

(2) In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a collegiate license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying

detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(3) In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a collegiate license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(4) In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a special baseball stadium license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds, minus the cost of plate production, shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(5) In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a special baseball stadium license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(6) Effective with vehicle registrations due or to become due on January 1, 2005, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a professional fire fighters and paramedics license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the professional fire fighters and paramedics license plates. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Washington State Council of Fire Fighters benevolent fund established under RCW 46.16.30902.

(7) Effective with annual renewals due or to become due on January 1, 2006, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a professional fire fighters and paramedics license plate shall, upon application, pay a fee of thirty dollars. The department

shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the professional fire fighters and paramedics special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Washington State Council of Fire Fighters benevolent fund established under RCW 46.16.30902.

(8) Effective with vehicle registrations due or to become due on November 1, 2004, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Helping Kids Speak" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Helping Kids Speak" account established under RCW 46.16.30904.

(9) Effective with annual renewals due or to become due on November 1, 2005, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Helping Kids Speak" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Helping Kids Speak" account established under RCW 46.16.30904.

(10) Effective with vehicle registrations due or to become due on January 1, 2005, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "law enforcement memorial" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the law enforcement memorial special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the

proceeds to the law enforcement memorial account established under RCW 46.16.30906.

(11) Effective with annual renewals due or to become due on January 1, 2006, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "law enforcement memorial" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the law enforcement memorial special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the law enforcement memorial account established under RCW 46.16.30906.

(12)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "we love our pets" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administrative and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "we love our pets" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the we love our pets account established under section 4 of this act.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "we love our pets" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "we love our pets" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the we love our pets account established under section 4 of this act.

NEW SECTION. Sec. 4. A new section is added to chapter 46.16 RCW to read as follows:

(1) The we love our pets account is created in the custody of the state treasurer. Upon the department's determination that the state has been reimbursed for the cost of implementing the we love our pets special license plate, all receipts, except as provided in RCW 46.16.313(12) (a) and (b), from we love our pets license plates must be deposited into the account. Only the

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

(2) Funds in the account must be disbursed subject to the following conditions and limitations:

(a) Pursuant to the requirements set out in RCW 46.16.765, the department must contract with a qualified nonprofit organization to support and to enable the Washington federation of animal welfare and control agencies to promote and perform spay/neuter surgery of Washington state pets, in order to reduce pet overpopulation.

(b) For the purposes of this section, a "qualified nonprofit organization" means a not-for-profit corporation incorporated and operating exclusively in Washington that has received a determination of tax exempt status under section 501(c)(3) of the federal internal revenue code. The organization must have been established for the express purpose of assisting local member agencies of the federation of animal welfare and control agencies to promote and perform spay/neuter surgery on Washington state pets, in order to reduce pet overpopulation.

(c) The qualified nonprofit organization must meet all requirements set out in RCW 46.16.765.

Passed by the Senate March 12, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 18, 2005.

Filed in Office of Secretary of State April 18, 2005.

CHAPTER 72

[Substitute Senate Bill 6078]

STATE EXPENDITURE LIMITS

AN ACT Relating to state expenditure limitations; amending RCW 43.135.010, 43.135.025, 43.135.035, and 43.135.045; reenacting and amending RCW 43.135.035; creating a new section; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that the citizens of the state benefit from a state expenditure limit that ensures that the state budget operates with stability and predictability, while encouraging the establishment of budget priorities and a periodic review of state programs and the delivery of state services. A state expenditure limit can prevent budgeting crises that can occur because of increased spending levels during periods of revenue surplus followed by drastic reductions in state services in lean years. The citizens of the state are best served by an expenditure limit that keeps pace with the growth in the state's economy yet ensures budget discipline and taxpayer protection. For these reasons, the legislature finds that modifications to the state expenditure limit, after ten years of experience following the initial implementation of Initiative Measure No. 601, will recognize the economic productivity of the state's economy and better balance the needs of the citizens for essential government services with the obligation of the legislature for strict spending accountability and protection of its taxpayers.

Sec. 2. RCW 43.135.035 and 2001 c 3 s 8 and 2000 2nd sp.s. c 2 s 2 are each reenacted and amended to read as follows:

(1) After July 1, 1995, any action or combination of actions by the legislature that raises state revenue or requires revenue-neutral tax shifts may be taken only if approved by a two-thirds vote of each house, and then only if state expenditures in any fiscal year, including the new revenue, will not exceed the state expenditure limits established under this chapter. However, for legislation enacted between the effective date of this 2005 act and June 30, 2007, any action or combination of actions by the legislature that raises state revenue or requires revenue-neutral tax shifts may be taken with the approval of a majority of members elected to each house, so long as state expenditures in any fiscal year, including the new revenue, will not exceed the state expenditure limits established under this chapter.

(2)(a) If the legislative action under subsection (1) of this section will result in expenditures in excess of the state expenditure limit, then the action of the legislature shall not take effect until approved by a vote of the people at a November general election. The (~~office of financial management~~) state expenditure limit committee shall adjust the state expenditure limit by the amount of additional revenue approved by the voters under this section. This adjustment shall not exceed the amount of revenue generated by the legislative action during the first full fiscal year in which it is in effect. The state expenditure limit shall be adjusted downward upon expiration or repeal of the legislative action.

(b) The ballot title for any vote of the people required under this section shall be substantially as follows:

"Shall taxes be imposed on in order to allow a spending increase above last year's authorized spending adjusted for inflation and population increases?"

(3)(a) The state expenditure limit may be exceeded upon declaration of an emergency for a period not to exceed twenty-four months by a law approved by a two-thirds vote of each house of the legislature and signed by the governor. The law shall set forth the nature of the emergency, which is limited to natural disasters that require immediate government action to alleviate human suffering and provide humanitarian assistance. The state expenditure limit may be exceeded for no more than twenty-four months following the declaration of the emergency and only for the purposes contained in the emergency declaration.

(b) Additional taxes required for an emergency under this section may be imposed only until thirty days following the next general election, unless an extension is approved at that general election. The additional taxes shall expire upon expiration of the declaration of emergency. The legislature shall not impose additional taxes for emergency purposes under this subsection unless funds in the education construction fund have been exhausted.

(c) The state or any political subdivision of the state shall not impose any tax on intangible property listed in RCW 84.36.070 as that statute exists on January 1, 1993.

(4) If the cost of any state program or function is shifted from the state general fund on or after January 1, 1993, to another source of funding, or if moneys are transferred from the state general fund to another fund or account,

the state expenditure limit committee, acting pursuant to RCW 43.135.025(5), shall lower the state expenditure limit to reflect the shift. For the purposes of this section, a transfer of money from the state general fund to another fund or account includes any state legislative action taken (~~(after July 1, 2000,)~~) that has the effect of reducing revenues from a particular source, where such revenues would otherwise be deposited into the state general fund, while increasing the revenues from that particular source to another state or local government account. This subsection does not apply to the dedication or use of lottery revenues under RCW 67.70.240(3) or property taxes under RCW 84.52.068, in support of education or education expenditures.

(5) If the cost of any state program or function is shifted to the state general fund on or after January 1, 2000, from another source of funding, or if moneys are transferred to the state general fund from another fund or account, the state expenditure limit committee, acting pursuant to RCW 43.135.025(5), shall increase the state expenditure limit to reflect the shift.

Sec. 3. RCW 43.135.010 and 1994 c 2 s 1 are each amended to read as follows:

The people of the state of Washington hereby find and declare:

(1) The continuing increases in our state tax burden and the corresponding growth of state government is contrary to the interest of the people of the state of Washington.

(2) It is necessary to limit the rate of growth of state government while assuring adequate funding of essential services, including basic education as defined by the legislature.

(3) The current budgetary system in the state of Washington lacks stability. The system encourages crisis budgeting and results in cutbacks during lean years and overspending during surplus years.

(4) It is therefore the intent of this chapter to:

(a) Establish a limit on state expenditures that will assure that the growth rate of state expenditures does not exceed the growth rate (~~(of inflation and state population)~~) in Washington personal income;

(b) Assure that local governments are provided funds adequate to render those services deemed essential by their citizens;

(c) Assure that the state does not impose responsibility on local governments for new programs or increased levels of service under existing programs unless the costs thereof are paid by the state;

(d) Provide for adjustment of the limit when costs of a program are transferred between the state and another political entity;

(e) Establish a procedure for exceeding this limit in emergency situations;

(f) Provide for voter approval of tax increases; and

(g) Avoid overfunding and underfunding state programs by providing stability, consistency, and long-range planning.

Sec. 4. RCW 43.135.025 and 2000 2nd sp.s. c 2 s 1 are each amended to read as follows:

(1) The state shall not expend from the general fund and related funds during any fiscal year state moneys in excess of the state expenditure limit established under this chapter.

(2) Except pursuant to a declaration of emergency under RCW 43.135.035 or pursuant to an appropriation under RCW 43.135.045(4)(b), the state treasurer shall not issue or redeem any check, warrant, or voucher that will result in a state general fund or related fund expenditure for any fiscal year in excess of the state expenditure limit established under this chapter. A violation of this subsection constitutes a violation of RCW 43.88.290 and shall subject the state treasurer to the penalties provided in RCW 43.88.300.

(3) The state expenditure limit for any fiscal year shall be the previous fiscal year's state expenditure limit increased by a percentage rate that equals the fiscal growth factor.

(4) For purposes of computing the state expenditure limit for the fiscal year beginning July 1, ~~((1995))~~ 2007, the phrase "the previous fiscal year's state expenditure limit" means the total state expenditures from the state general fund and related funds, not including federal funds, for the fiscal year beginning July 1, ~~((1989))~~ 2006, plus the fiscal growth factor. ~~((This calculation is then computed for the state expenditure limit for fiscal years 1992, 1993, 1994, and 1995, and as required under RCW 43.135.035(4).))~~

(5) A state expenditure limit committee is established for the purpose of determining and adjusting the state expenditure limit as provided in this chapter. The members of the state expenditure limit committee are the director of financial management, the attorney general or the attorney general's designee, and the chairs and ranking minority members of the senate committee on ways and means and the house of representatives committee on appropriations. All actions of the state expenditure limit committee taken pursuant to this chapter require an affirmative vote of at least ~~((three))~~ four members.

(6) Each November, the state expenditure limit committee shall adjust the expenditure limit for the preceding fiscal year based on actual expenditures and known changes in the fiscal growth factor and then project an expenditure limit for the next two fiscal years. If, by November 30th, the state expenditure limit committee has not adopted the expenditure limit adjustment and projected expenditure limit as provided in subsection (5) of this section, the attorney general or his or her designee shall adjust or project the expenditure limit, as necessary.

(7) "Fiscal growth factor" means the average ~~((of the sum of inflation and population change for each of the prior three fiscal years))~~ growth in state personal income for the prior ten fiscal years.

(8) ~~(("Inflation" means the percentage change in the implicit price deflator for the United States for each fiscal year as published by the federal bureau of labor statistics.~~

(9) ~~(("Population change" means the percentage change in state population for each fiscal year as reported by the office of financial management.))~~ "General fund" means the state general fund.

(9) "Related fund" means the health services account, violence reduction and drug enforcement account, public safety and education account, water quality account, or student achievement fund.

Sec. 5. RCW 43.135.035 and 2005 c ... s 2 (section 2 of this act) are each amended to read as follows:

(1) After July 1, 1995, any action or combination of actions by the legislature that raises state revenue or requires revenue-neutral tax shifts may be

taken only if approved by a two-thirds vote of each house, and then only if state expenditures in any fiscal year, including the new revenue, will not exceed the state expenditure limits established under this chapter. ~~((However, for legislation enacted between the effective date of this 2005 act and June 30, 2007, any action or combination of actions by the legislature that raises state revenue or requires revenue neutral tax shifts may be taken with the approval of a majority of members elected to each house, so long as state expenditures in any fiscal year, including the new revenue, will not exceed the state expenditure limits established under this chapter.))~~

(2)(a) If the legislative action under subsection (1) of this section will result in expenditures in excess of the state expenditure limit, then the action of the legislature shall not take effect until approved by a vote of the people at a November general election. The state expenditure limit committee shall adjust the state expenditure limit by the amount of additional revenue approved by the voters under this section. This adjustment shall not exceed the amount of revenue generated by the legislative action during the first full fiscal year in which it is in effect. The state expenditure limit shall be adjusted downward upon expiration or repeal of the legislative action.

(b) The ballot title for any vote of the people required under this section shall be substantially as follows:

"Shall taxes be imposed on in order to allow a spending increase above last year's authorized spending adjusted for ~~((inflation and population increases))~~ personal income growth?"

(3)(a) The state expenditure limit may be exceeded upon declaration of an emergency for a period not to exceed twenty-four months by a law approved by a two-thirds vote of each house of the legislature and signed by the governor. The law shall set forth the nature of the emergency, which is limited to natural disasters that require immediate government action to alleviate human suffering and provide humanitarian assistance. The state expenditure limit may be exceeded for no more than twenty-four months following the declaration of the emergency and only for the purposes contained in the emergency declaration.

(b) Additional taxes required for an emergency under this section may be imposed only until thirty days following the next general election, unless an extension is approved at that general election. The additional taxes shall expire upon expiration of the declaration of emergency. The legislature shall not impose additional taxes for emergency purposes under this subsection unless funds in the education construction fund have been exhausted.

(c) The state or any political subdivision of the state shall not impose any tax on intangible property listed in RCW 84.36.070 as that statute exists on January 1, 1993.

(4) If the cost of any state program or function is shifted from the state general fund ~~((on or after January 1, 1993,))~~ or a related fund to another source of funding, or if moneys are transferred from the state general fund or a related fund to another fund or account, the state expenditure limit committee, acting pursuant to RCW 43.135.025(5), shall lower the state expenditure limit to reflect the shift. For the purposes of this section, a transfer of money from the state general fund or a related fund to another fund or account includes any state legislative action taken that has the effect of reducing revenues from a particular

source, where such revenues would otherwise be deposited into the state general fund or a related fund, while increasing the revenues from that particular source to another state or local government account. This subsection does not apply to the dedication or use of lottery revenues under RCW 67.70.240(3) or property taxes under RCW 84.52.068, in support of education or education expenditures.

(5) If the cost of any state program or function (~~(is)~~) and the ongoing revenue necessary to fund the program or function are shifted to the state general fund or a related fund on or after January 1, (~~(2000, from another source of funding, or if moneys are transferred to the state general fund from another fund or account)~~) 2007, the state expenditure limit committee, acting pursuant to RCW 43.135.025(5), shall increase the state expenditure limit to reflect the shift.

Sec. 6. RCW 43.135.045 and 2003 1st sp.s. c 25 s 920 are each amended to read as follows:

(1) The emergency reserve fund is established in the state treasury. During each fiscal year, the state treasurer shall (~~deposit in the emergency reserve fund all general fund—state revenues in excess of the state expenditure limit for that fiscal year. Deposits~~) transfer an amount from the state general fund to the emergency reserve fund. The amount transferred shall equal the amount by which total state revenue for the general fund and related funds exceeds the state expenditure limit, multiplied by the percentage that general fund expenditures are of total expenditures from the general fund and related funds. Transfers shall be made at the end of each fiscal quarter based on projections of state revenues, expenditures, and the state expenditure limit. The treasurer shall make transfers between these accounts as necessary to reconcile actual annual revenues and the expenditure limit for fiscal year 2000 and thereafter.

(2) The legislature may appropriate moneys from the emergency reserve fund only with approval of at least two-thirds of the members of each house of the legislature, and then only if the appropriation does not cause total expenditures to exceed the state expenditure limit under this chapter.

(3) The emergency reserve fund balance shall not exceed five percent of annual general fund—state revenues as projected by the official state revenue forecast. Any balance in excess of five percent shall be transferred on a quarterly basis by the state treasurer as follows: Seventy-five percent to the student achievement fund hereby created in the state treasury and twenty-five percent to the general fund balance. The treasurer shall make transfers between these accounts as necessary to reconcile actual annual revenues for fiscal year 2000 and thereafter. When per-student state funding for the maintenance and operation of K-12 education meets a level of no less than ninety percent of the national average of total funding from all sources per student as determined by the most recent published data from the national center for education statistics of the United States department of education, as calculated by the office of financial management, further deposits to the student achievement fund shall be required only to the extent necessary to maintain the ninety-percent level. Remaining funds are part of the general fund balance and these funds are subject to the expenditure limits of this chapter.

(4) The education construction fund is hereby created in the state treasury.

(a) Funds may be appropriated from the education construction fund exclusively for common school construction or higher education construction.

(b) Funds may be appropriated for any other purpose only if approved by a two-thirds vote of each house of the legislature and if approved by a vote of the people at the next general election. An appropriation approved by the people under this subsection shall result in an adjustment to the state expenditure limit only for the fiscal period for which the appropriation is made and shall not affect any subsequent fiscal period.

(5) Funds from the student achievement fund shall be appropriated to the superintendent of public instruction strictly for distribution to school districts to meet the provisions set out in the student achievement act. Allocations shall be made on an equal per full-time equivalent student basis to each school district.

~~((6) Earnings of the emergency reserve fund under RCW 43.84.092(4)(a) shall be transferred quarterly to the multimodal transportation account, except for those earnings that are in excess of thirty-five million dollars each fiscal year. Within thirty days following any fiscal year in which earnings transferred to the multimodal transportation account under this subsection did not total thirty-five million dollars, the state treasurer shall transfer from the emergency reserve fund an amount necessary to bring the total deposited in the multimodal transportation account under this subsection to thirty-five million dollars. The revenues to the multimodal transportation account reflected in this subsection provide ongoing support for the transportation programs of the state. However, it is the intent of the legislature that any new long-term financial support that may be subsequently provided for transportation programs will be used to replace and supplant the revenues reflected in this subsection, thereby allowing those revenues to be returned to the purposes to which they were previously dedicated. No transfers from the emergency reserve fund to the multimodal fund shall be made during the 2003-05 fiscal biennium.))~~

NEW SECTION, Sec. 7. (1) Sections 1 and 2 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.

(2) Sections 3 through 6 of this act take effect July 1, 2007.

Passed by the Senate April 16, 2005.

Passed by the House April 15, 2005.

Approved by the Governor April 18, 2005.

Filed in Office of Secretary of State April 18, 2005.

CHAPTER 73

[Senate Bill 5809]

YOUTH COURTS

AN ACT Relating to jurisdiction of youth courts; and amending RCW 3.72.010 and 3.72.030.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 3.72.010 and 2002 c 237 s 2 are each amended to read as follows:

(1) A court created under chapter 3.30, 3.46, 3.50, or 35.20 RCW may create a youth court. The youth court shall have jurisdiction over traffic infractions alleged to have been committed by juveniles age sixteen or seventeen. The court may refer a juvenile to the youth court upon request of any

party or upon its own motion. However, a juvenile shall not be required under this section to have his or her traffic infraction referred to or disposed of by a youth court.

(2) To be referred to a youth court pursuant to this chapter, a juvenile:

(a) May not have had a prior traffic infraction referred to a youth court;

(b) May not be under the jurisdiction of any court for a violation of any provision of Title 46 RCW;

(c) May not have any convictions for a violation of any provision of Title 46 RCW; and

(d) Must acknowledge that there is a high likelihood that he or she would be found to have committed the traffic infraction.

(3)(a) Nothing in this chapter shall interfere with the ability of juvenile courts to refer matters to youth courts that have been established to provide a diversion for matters involving juvenile offenders who are eligible for diversion pursuant to RCW 13.40.070 (6) and (7) and who agree, along with a parent, guardian, or legal custodian, to comply with the provisions of RCW 13.40.600.

(b) Nothing in this chapter shall interfere with the ability of student courts to work with students who violate school rules and policies pursuant to RCW 28A.300.420.

Sec. 2. RCW 3.72.030 and 2002 c 237 s 4 are each amended to read as follows:

Youth courts provide a disposition method for cases involving juveniles alleged to have committed traffic infractions(~~(, in which)~~). Youth courts may also provide diversion in cases involving juvenile offenders who are eligible for diversion pursuant to RCW 13.40.070 (6) and (7) and who agree, along with a parent, guardian, or legal custodian, to comply with the provisions of RCW 13.40.600. Student court programs may also be available in schools to work with students who violate school rules and policies pursuant to RCW 28A.300.420. Youth court participants, under the supervision of the court or an adult coordinator, may serve in various capacities within the youth court, acting in the role of jurors, lawyers, bailiffs, clerks, and judges. Youth courts and student courts have no jurisdiction except as provided for in this chapter, chapter 13.40 RCW, and RCW 28A.300.420. Youth courts and student courts are not courts established under Article IV of the state Constitution.

Passed by the Senate March 15, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 18, 2005.

Filed in Office of Secretary of State April 18, 2005.

CHAPTER 74

[Engrossed Substitute Senate Bill 5506]

CREDIT CARDS—MARKETING

AN ACT Relating to the development of policies regarding the marketing or merchandising of credit cards to students at the state's institutions of higher education; and adding a new section to chapter 28B.10 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 28B.10 RCW to read as follows:

(1)(a) Subject to subsection (2) of this section, institutions of higher education shall develop policies regarding the marketing or merchandising of credit cards on institutional property to students, except as provided in newspapers, magazines, or similar publications or within any location of a financial services business regularly doing business on the institution's property.

(b) "Merchandising" means the offering of free merchandise or incentives to students as part of the credit card marketing effort.

(c) "Student" means any student enrolled for one or more credit hours at an institution of higher education.

(2) Institutions of higher education shall each develop official credit card marketing policies. The process of development of these policies must include consideration of student comments. The official credit card marketing policies must, at a minimum, include consideration of and decisions regarding:

(a) The registration of credit card marketers;

(b) Limitations on the times and locations of credit card marketing; and

(c) Prohibitions on material inducements to complete a credit card application unless the student has been provided credit card debt education literature, which includes, but is not limited to, brochures of written or electronic information.

(3)(a) The policies shall include the following elements: A requirement for credit card marketers to inform students about good credit management practices through programs developed in concert with the institution of higher education; and

(b) A requirement to make the official credit card marketing policy available to all students upon their request.

Passed by the Senate March 3, 2005.

Passed by the House April 6, 2005.

Approved by the Governor April 18, 2005.

Filed in Office of Secretary of State April 18, 2005.

CHAPTER 75

[Senate Bill 5563]

ORAL HISTORY—WOMEN IN WORLD WAR II

AN ACT Relating to recording the oral histories of women who contributed to their communities, the state, or the nation during World War II; amending RCW 28A.300.370; creating a new section; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that the women of the greatest generation made essential contributions, in many different ways, to our nation's success in World War II. During the war, more than four hundred fifty thousand women served their country in the armed forces of the United States. Another group of women provided nursing and support services to the troops. These women were joined by more than two million women back home who, like Rosie the Riveter, worked in industries that supported service men and women abroad. Other women held the nation together by raising families, educating children, and taking care of the ill and elderly. These women held our

families, businesses, and communities together, living with rationed goods and services so that the service men and women fighting in the war would have the materials they needed to be successful. The legislature finds that women in all these roles made sacrifices necessary for the success of our nation's defense and contributions essential to the well-being of the people back home. The legislature further finds that to have a clearer reflection of women's sacrifices on behalf of freedom and democracy, it is necessary to include in the World War II oral history project the memories of women who contributed to the war effort through either military service or other important contributions to our nation, state, or communities.

Sec. 2. RCW 28A.300.370 and 2000 c 112 s 2 are each amended to read as follows:

(1) The World War II oral history project is established for the purpose of providing oral history presentations, documentation, and other materials to assist the office of the superintendent of public instruction and educators in the development of a curriculum for use in kindergarten through twelfth grade.

(2) To the extent funds are appropriated or donated, the project shall be administered by the office of the superintendent of public instruction. The office shall convene an advisory committee to assist in the design and implementation of the project. The committee shall be composed of members of the World War II memorial educational foundation, the department of veterans affairs, the secretary of state's office, and legislators involved with and interested in the development of the oral history project. The committee may select its own chair and may expand its membership to include the services of other individuals, agencies, or organizations on the basis of need. The office shall provide staffing and administrative support to the advisory committee.

(3) The project will preserve for the education of Washington's school children the memories and history of our state's citizens who served their state and country as members of the armed forces or through national or community contributions during World War II. The project is intended to preserve these memories and history through audiotapes, videotapes, films, stories, printed transcripts, digitally, and through other appropriate methods.

(4) Any funding provided to the program through the omnibus appropriations act for the 2005-2007 biennium shall be used to record the memories of women who meet the requirements of subsection (3) of this section.

(5) As part of the project, the office of the superintendent of public instruction shall identify the requirements regarding instructional guides to help educators use the preserved material in age and grade appropriate ways.

~~((5))~~ (6) In its administration of the project, the office may carry out its responsibilities through contracts with filming and taping specialists, mini-grants to schools, contracts with the World War II memorial educational foundation, and through other means recommended by the foundation.

~~((6))~~ (7) By December 1, 2000, and every second year thereafter in which the project has received funding, the office shall report on the results of the project to the governor and the house of representatives and senate committees on education. The December 2000 report shall include, but need not be limited to, identification of the project's implementation strategies and resource requirements, and any curriculum standards developed through the project.

NEW SECTION. **Sec. 3.** This act takes effect August 1, 2005.

Passed by the Senate March 10, 2005.

Passed by the House April 6, 2005.

Approved by the Governor April 18, 2005.

Filed in Office of Secretary of State April 18, 2005.

CHAPTER 76

[Substitute Senate Bill 5584]

RENTAL CAR FACILITIES

AN ACT Relating to consolidated rental car facilities at airports; and amending RCW 14.08.120.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 14.08.120 and 1990 c 215 s 1 are each amended to read as follows:

In addition to the general powers conferred in this chapter, and without limitation thereof, a municipality that has established or may hereafter establish airports, restricted landing areas, or other air navigation facilities, or that has acquired or set apart or may hereafter acquire or set apart real property for that purpose or purposes is authorized:

(1) To vest authority for the construction, enlargement, improvement, maintenance, equipment, operation, and regulation thereof in an officer, a board, or body of the municipality by ordinance or resolution that prescribes the powers and duties of the officer, board, or body; and the municipality may also vest authority for industrial and commercial development in a municipal airport commission consisting of at least five resident taxpayers of the municipality to be appointed by the governing board of the municipality by an ordinance or resolution that includes (a) the terms of office, which may not exceed six years and which shall be staggered so that not more than three terms will expire in the same year, (b) the method of appointment and filling vacancies, (c) a provision that there shall be no compensation but may provide for a per diem of not to exceed twenty-five dollars per day plus travel expenses for time spent on commission business, (d) the powers and duties of the commission, and (e) any other matters necessary to the exercise of the powers relating to industrial and commercial development. The expense of the construction, enlargement, improvement, maintenance, equipment, industrial and commercial development, operation, and regulation are the responsibility of the municipality.

(2) To adopt and amend all needed rules, regulations, and ordinances for the management, government, and use of any properties under its control, whether within or outside the territorial limits of the municipality; to provide fire protection for the airport, including the acquisition and operation of fire protection equipment and facilities, and the right to contract with any private body or political subdivision of the state for the furnishing of such fire protection; to appoint airport guards or police, with full police powers; to fix by ordinance or resolution, as may be appropriate, penalties for the violation of the rules, regulations, and ordinances, and enforce those penalties in the same manner in which penalties prescribed by other rules, regulations, and ordinances of the municipality are enforced. For the purposes of such management and

government and direction of public use, that part of all highways, roads, streets, avenues, boulevards, and territory that adjoins the limits of any airport or restricted landing area acquired or maintained under the provisions of this chapter is under like control and management of the municipality. It may also adopt and enact rules, regulations, and ordinances designed to safeguard the public upon or beyond the limits of private airports or landing strips within the municipality or its police jurisdiction against the perils and hazards of instrumentalities used in aerial navigation. Rules, regulations, and ordinances shall be published as provided by general law or the charter of the municipality for the publication of similar rules, regulations, and ordinances. They shall conform to and be consistent with the laws of this state and the rules of the state department of transportation and shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics and the regulations duly promulgated thereunder and the rules and standards issued from time to time pursuant thereto.

(3) To create a special airport fund, and provide that all receipts from the operation of the airport be deposited in the fund, which fund shall remain intact from year to year and may be pledged to the payment of aviation bonds, or kept for future maintenance, construction, or operation of airports or airport facilities.

(4) To lease airports or other air navigation facilities, or real property acquired or set apart for airport purposes, to private parties, any municipal or state government or the national government, or any department thereof, for operation; to lease or assign to private parties, any municipal or state government or the national government, or any department thereof, for operation or use consistent with the purposes of this chapter, space, area, improvements, or equipment of such airports; to authorize its lessees to construct, alter, repair, or improve the leased premises at the cost of the lessee and to reimburse its lessees for such cost, provided the cost is paid solely out of funds fully collected from the airport's tenants; to sell any part of such airports, other air navigation facilities or real property to any municipal or state government, or to the United States or any department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto, and to confer the privileges of concessions of supplying upon its airports goods, commodities, things, services, and facilities: PROVIDED, That in each case in so doing the public is not deprived of its rightful, equal, and uniform use thereof.

(5) Acting through its governing body, to sell or lease any property, real or personal, acquired for airport purposes and belonging to the municipality, which, in the judgment of its governing body, may not be required for aircraft landings, aircraft takeoffs or related aeronautic purposes, in accordance with the laws of this state, or the provisions of the charter of the municipality, governing the sale or leasing of similar municipally owned property. The municipal airport commission, if one has been organized and appointed under subsection (1) of this section, may lease any airport property for aircraft landings, aircraft takeoffs, or related aeronautic purposes. If there is a finding by the governing body of the municipality that any airport property, real or personal, is not required for aircraft landings, aircraft takeoffs, or related aeronautic purposes, then the municipal airport commission may lease such space, land, area, or improvements, or construct improvements, or take leases back for financing purposes, grant concessions on such space, land, area, or improvements, all for

industrial or commercial purposes, by private negotiation and under such terms and conditions that seem just and proper to the municipal airport commission. Any such lease of real property for aircraft manufacturing or aircraft industrial purposes or to any manufacturer of aircraft or aircraft parts or for any other business, manufacturing, or industrial purpose or operation relating to, identified with, or in any way dependent upon the use, operation, or maintenance of the airport, or for any commercial or industrial purpose may be made for any period not to exceed seventy-five years, but any such lease of real property made for a longer period than ten years shall contain provisions requiring the municipality and the lessee to permit the rentals for each five-year period thereafter, to be readjusted at the commencement of each such period if written request for readjustment is given by either party to the other at least thirty days before the commencement of the five-year period for which the readjustment is requested. If the parties cannot agree upon the rentals for the five-year period, they shall submit to have the disputed rentals for the period adjusted by arbitration. The lessee shall pick one arbitrator, and the governing body of the municipality shall pick one, and the two so chosen shall select a third. After a review of all pertinent facts the board of arbitrators may increase or decrease such rentals or continue the previous rate thereof.

The proceeds of the sale of any property the purchase price of which was obtained by the sale of bonds shall be deposited in the bond sinking fund. If all the proceeds of the sale are not needed to pay the principal of bonds remaining unpaid, the remainder shall be paid into the airport fund of the municipality. The proceeds of sales of property the purchase price of which was paid from appropriations of tax funds shall be paid into the airport fund of the municipality.

(6) To determine the charges or rental for the use of any properties under its control and the charges for any services or accommodations, and the terms and conditions under which such properties may be used: PROVIDED, That in all cases the public is not deprived of its rightful, equal, and uniform use of the property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expense of operation to the municipality. The municipality shall have and may enforce liens, as provided by law for liens and enforcement thereof, for repairs to or improvement or storage or care of any personal property, to enforce the payment of any such charges.

(7) To impose a customer facility charge upon customers of rental car companies accessing the airport for the purposes of financing, designing, constructing, operating, and maintaining consolidated rental car facilities and common use transportation equipment and facilities which are used to transport the customer between the consolidated car rental facilities and other airport facilities. The airport operator may require the rental car companies to collect the facility charges, and any facility charges so collected shall be deposited in a trust account for the benefit of the airport operator and remitted at the direction of the airport operator, but no more often than once per month. The charge shall be calculated on a per-day basis. Facility charges may not exceed the reasonable costs of financing, designing, constructing, operating, and maintaining the consolidated car rental facilities and common use transportation equipment and facilities and may not be used for any other purpose.

(8) To exercise all powers necessarily incidental to the exercise of the general and special powers granted in this section.

Passed by the Senate March 14, 2005.

Passed by the House April 6, 2005.

Approved by the Governor April 18, 2005.

Filed in Office of Secretary of State April 18, 2005.

CHAPTER 77

[Senate Bill 5589]

CODE CITIES—AGRICULTURAL LAND

AN ACT Relating to proceedings for excluding agricultural land from the boundaries of a charter or noncharter code city; and adding a new section to chapter 35A.16 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. **Sec. 1.** A new section is added to chapter 35A.16 RCW to read as follows:

Proceedings for excluding agricultural land from the boundaries of a charter code city or noncharter code city may be commenced by the filing of a petition which is sufficient as determined by RCW 35A.01.040 by property owners of the agricultural land proposed to be excluded, in the following manner which is alternative to other methods provided in this chapter:

(1) A petition for exclusion of agricultural land from the incorporated area of a code city shall be filed with the legislative body of the municipality. The petition for exclusion must be signed by the owners of not less than one hundred percent of the agricultural land for which exclusion is sought and, if residents exist within the area proposed for exclusion, a majority of the registered voters residing in the area for which exclusion is petitioned.

(2) The petition shall set forth a legal description of the territory proposed to be excluded and shall be accompanied by a drawing that outlines the boundaries of the territory sought to be excluded.

(3) When a petition for exclusion that meets the requirements of this section and RCW 35A.01.040 is filed with the legislative body of the code city, the legislative body shall set a date, not later than sixty days after the filing of the request, for a public hearing thereon and cause notice of the hearing to be published in one or more issues of a newspaper of general circulation in the city. The notice shall also be posted in three public places within the territory proposed for exclusion, and shall specify the time and place of hearing and invite interested persons to appear and voice approval or disapproval of the exclusion.

(4) Following the hearing, if the legislative body determines to effect the exclusion from city boundaries, they shall do so by ordinance. The ordinance may exclude all or any portion of the proposed territory but may not include in the exclusion any territory not described in the petition. The ordinance shall contain a legal description of the territory and declare it no longer a part of the code city.

Passed by the Senate March 16, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 18, 2005.
Filed in Office of Secretary of State April 18, 2005.

CHAPTER 78

[Substitute Senate Bill 5676]

OIL SPILL MANAGEMENT—SHELLFISH BEDS

AN ACT Relating to oil spill management; and amending RCW 90.56.210 and 88.46.060.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 90.56.210 and 2000 c 69 s 20 are each amended to read as follows:

(1) Each onshore and offshore facility shall have a contingency plan for the containment and cleanup of oil spills from the facility into the waters of the state and for the protection of fisheries and wildlife, shellfish beds, natural resources, and public and private property from such spills. The department shall by rule adopt and periodically revise standards for the preparation of contingency plans. The department shall require contingency plans, at a minimum, to meet the following standards:

(a) Include full details of the method of response to spills of various sizes from any facility which is covered by the plan;

(b) Be designed to be capable in terms of personnel, materials, and equipment, of promptly and properly, to the maximum extent practicable, as defined by the department removing oil and minimizing any damage to the environment resulting from a worst case spill;

(c) Provide a clear, precise, and detailed description of how the plan relates to and is integrated into relevant contingency plans which have been prepared by cooperatives, ports, regional entities, the state, and the federal government;

(d) Provide procedures for early detection of oil spills and timely notification of such spills to appropriate federal, state, and local authorities under applicable state and federal law;

(e) State the number, training preparedness, and fitness of all dedicated, prepositioned personnel assigned to direct and implement the plan;

(f) Incorporate periodic training and drill programs to evaluate whether personnel and equipment provided under the plan are in a state of operational readiness at all times;

(g) Describe important features of the surrounding environment, including fish and wildlife habitat, shellfish beds, environmentally and archaeologically sensitive areas, and public facilities. The departments of ecology, fish and wildlife, and natural resources, and the office of archaeology and historic preservation, upon request, shall provide information that they have available to assist in preparing this description. The description of archaeologically sensitive areas shall not be required to be included in a contingency plan until it is reviewed and updated pursuant to subsection (9) of this section;

(h) State the means of protecting and mitigating effects on the environment, including fish, shellfish, marine mammals, and other wildlife, and ensure that implementation of the plan does not pose unacceptable risks to the public or the environment;

(i) Provide arrangements for the repositioning of oil spill containment and cleanup equipment and trained personnel at strategic locations from which they can be deployed to the spill site to promptly and properly remove the spilled oil;

(j) Provide arrangements for enlisting the use of qualified and trained cleanup personnel to implement the plan;

(k) Provide for disposal of recovered spilled oil in accordance with local, state, and federal laws;

(l) Until a spill prevention plan has been submitted pursuant to RCW 90.56.200, state the measures that have been taken to reduce the likelihood that a spill will occur, including but not limited to, design and operation of a facility, training of personnel, number of personnel, and backup systems designed to prevent a spill;

(m) State the amount and type of equipment available to respond to a spill, where the equipment is located, and the extent to which other contingency plans rely on the same equipment; and

(n) If the department has adopted rules permitting the use of dispersants, the circumstances, if any, and the manner for the application of the dispersants in conformance with the department's rules.

(2)(a) The following shall submit contingency plans to the department within six months after the department adopts rules establishing standards for contingency plans under subsection (1) of this section:

(i) Onshore facilities capable of storing one million gallons or more of oil; and

(ii) Offshore facilities.

(b) Contingency plans for all other onshore and offshore facilities shall be submitted to the department within eighteen months after the department has adopted rules under subsection (1) of this section. The department may adopt a schedule for submission of plans within the eighteen-month period.

(3)(a) The owner or operator of a facility shall submit the contingency plan for the facility.

(b) A person who has contracted with a facility to provide containment and cleanup services and who meets the standards established pursuant to RCW 90.56.240, may submit the plan for any facility for which the person is contractually obligated to provide services. Subject to conditions imposed by the department, the person may submit a single plan for more than one facility.

(4) A contingency plan prepared for an agency of the federal government or another state that satisfies the requirements of this section and rules adopted by the department may be accepted by the department as a contingency plan under this section. The department shall (~~assure~~) ensure that to the greatest extent possible, requirements for contingency plans under this section are consistent with the requirements for contingency plans under federal law.

(5) In reviewing the contingency plans required by this section, the department shall consider at least the following factors:

(a) The adequacy of containment and cleanup equipment, personnel, communications equipment, notification procedures and call down lists, response time, and logistical arrangements for coordination and implementation of response efforts to remove oil spills promptly and properly and to protect the environment;

(b) The nature and amount of vessel traffic within the area covered by the plan;

(c) The volume and type of oil being transported within the area covered by the plan;

(d) The existence of navigational hazards within the area covered by the plan;

(e) The history and circumstances surrounding prior spills of oil within the area covered by the plan;

(f) The sensitivity of fisheries, shellfish beds, and wildlife and other natural resources within the area covered by the plan;

(g) Relevant information on previous spills contained in on-scene coordinator reports prepared by the department; and

(h) The extent to which reasonable, cost-effective measures to prevent a likelihood that a spill will occur have been incorporated into the plan.

(6) The department shall approve a contingency plan only if it determines that the plan meets the requirements of this section and that, if implemented, the plan is capable, in terms of personnel, materials, and equipment, of removing oil promptly and properly and minimizing any damage to the environment.

(7) The approval of the contingency plan shall be valid for five years. Upon approval of a contingency plan, the department shall provide to the person submitting the plan a statement indicating that the plan has been approved, the facilities or vessels covered by the plan, and other information the department determines should be included.

(8) An owner or operator of a facility shall notify the department in writing immediately of any significant change of which it is aware affecting its contingency plan, including changes in any factor set forth in this section or in rules adopted by the department. The department may require the owner or operator to update a contingency plan as a result of these changes.

(9) The department by rule shall require contingency plans to be reviewed, updated, if necessary, and resubmitted to the department at least once every five years.

(10) Approval of a contingency plan by the department does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under this chapter or other state law.

Sec. 2. RCW 88.46.060 and 2000 c 69 s 6 are each amended to read as follows:

(1) Each covered vessel shall have a contingency plan for the containment and cleanup of oil spills from the covered vessel into the waters of the state and for the protection of fisheries and wildlife, shellfish beds, natural resources, and public and private property from such spills. The department shall by rule adopt and periodically revise standards for the preparation of contingency plans. The department shall require contingency plans, at a minimum, to meet the following standards:

(a) Include full details of the method of response to spills of various sizes from any vessel which is covered by the plan;

(b) Be designed to be capable in terms of personnel, materials, and equipment, of promptly and properly, to the maximum extent practicable, as defined by the department, removing oil and minimizing any damage to the environment resulting from a worst case spill;

(c) Provide a clear, precise, and detailed description of how the plan relates to and is integrated into relevant contingency plans which have been prepared by cooperatives, ports, regional entities, the state, and the federal government;

(d) Provide procedures for early detection of spills and timely notification of such spills to appropriate federal, state, and local authorities under applicable state and federal law;

(e) State the number, training preparedness, and fitness of all dedicated, prepositioned personnel assigned to direct and implement the plan;

(f) Incorporate periodic training and drill programs to evaluate whether personnel and equipment provided under the plan are in a state of operational readiness at all times;

(g) Describe important features of the surrounding environment, including fish and wildlife habitat, shellfish beds, environmentally and archaeologically sensitive areas, and public facilities. The departments of ecology, fish and wildlife, and natural resources, and the office of archaeology and historic preservation, upon request, shall provide information that they have available to assist in preparing this description. ~~((If the office of marine safety adopted rules for contingency plans prior to July 1, 1992, the description of archaeologically sensitive areas shall only be required when the department revises the rules for contingency plans after July 1, 1992.))~~ The description of archaeologically sensitive areas shall not be required to be included in a contingency plan until it is reviewed and updated pursuant to subsection (9) of this section;

(h) State the means of protecting and mitigating effects on the environment, including fish, shellfish, marine mammals, and other wildlife, and ensure that implementation of the plan does not pose unacceptable risks to the public or the environment;

(i) Establish guidelines for the use of equipment by the crew of a vessel to minimize vessel damage, stop or reduce any spilling from the vessel, and, only when appropriate and only when vessel safety is assured, contain and clean up the spilled oil;

(j) Provide arrangements for the prepositioning of spill containment and cleanup equipment and trained personnel at strategic locations from which they can be deployed to the spill site to promptly and properly remove the spilled oil;

(k) Provide arrangements for enlisting the use of qualified and trained cleanup personnel to implement the plan;

(l) Provide for disposal of recovered spilled oil in accordance with local, state, and federal laws;

(m) Until a spill prevention plan has been submitted pursuant to RCW 88.46.040, state the measures that have been taken to reduce the likelihood that a spill will occur, including but not limited to, design and operation of a vessel, training of personnel, number of personnel, and backup systems designed to prevent a spill;

(n) State the amount and type of equipment available to respond to a spill, where the equipment is located, and the extent to which other contingency plans rely on the same equipment; and

(o) If the department has adopted rules permitting the use of dispersants, the circumstances, if any, and the manner for the application of the dispersants in conformance with the department's rules.

(2)(a) The owner or operator of a tank vessel of three thousand gross tons or more shall submit a contingency plan to the department within six months after the department adopts rules establishing standards for contingency plans under subsection (1) of this section.

(b) Contingency plans for all other covered vessels shall be submitted to the department within eighteen months after the department has adopted rules under subsection (1) of this section. The department may adopt a schedule for submission of plans within the eighteen-month period.

(3)(a) The owner or operator of a tank vessel or of the facilities at which the vessel will be unloading its cargo, or a Washington state nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the owner or operator is a member, shall submit the contingency plan for the tank vessel. Subject to conditions imposed by the department, the owner or operator of a facility may submit a single contingency plan for tank vessels of a particular class that will be unloading cargo at the facility.

(b) The contingency plan for a cargo vessel or passenger vessel may be submitted by the owner or operator of the cargo vessel or passenger vessel, by the agent for the vessel resident in this state, or by a Washington state nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the owner or operator is a member. Subject to conditions imposed by the department, the owner, operator, or agent may submit a single contingency plan for cargo vessels or passenger vessels of a particular class.

(c) A person who has contracted with a covered vessel to provide containment and cleanup services and who meets the standards established pursuant to RCW 90.56.240, may submit the plan for any covered vessel for which the person is contractually obligated to provide services. Subject to conditions imposed by the department, the person may submit a single plan for more than one covered vessel.

(4) A contingency plan prepared for an agency of the federal government or another state that satisfies the requirements of this section and rules adopted by the department may be accepted by the department as a contingency plan under this section. The department shall (~~assure~~) ensure that to the greatest extent possible, requirements for contingency plans under this section are consistent with the requirements for contingency plans under federal law.

(5) In reviewing the contingency plans required by this section, the department shall consider at least the following factors:

(a) The adequacy of containment and cleanup equipment, personnel, communications equipment, notification procedures and call down lists, response time, and logistical arrangements for coordination and implementation of response efforts to remove oil spills promptly and properly and to protect the environment;

(b) The nature and amount of vessel traffic within the area covered by the plan;

(c) The volume and type of oil being transported within the area covered by the plan;

(d) The existence of navigational hazards within the area covered by the plan;

(e) The history and circumstances surrounding prior spills of oil within the area covered by the plan;

(f) The sensitivity of fisheries and wildlife, shellfish beds, and other natural resources within the area covered by the plan;

(g) Relevant information on previous spills contained in on-scene coordinator reports prepared by the director; and

(h) The extent to which reasonable, cost-effective measures to prevent a likelihood that a spill will occur have been incorporated into the plan.

(6) The department shall approve a contingency plan only if it determines that the plan meets the requirements of this section and that, if implemented, the plan is capable, in terms of personnel, materials, and equipment, of removing oil promptly and properly and minimizing any damage to the environment.

(7) The approval of the contingency plan shall be valid for five years. Upon approval of a contingency plan, the department shall provide to the person submitting the plan a statement indicating that the plan has been approved, the vessels covered by the plan, and other information the department determines should be included.

(8) An owner or operator of a covered vessel shall notify the department in writing immediately of any significant change of which it is aware affecting its contingency plan, including changes in any factor set forth in this section or in rules adopted by the department. The department may require the owner or operator to update a contingency plan as a result of these changes.

(9) The department by rule shall require contingency plans to be reviewed, updated, if necessary, and resubmitted to the department at least once every five years.

(10) Approval of a contingency plan by the department does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under this chapter or other state law.

Passed by the Senate March 8, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 18, 2005.

Filed in Office of Secretary of State April 18, 2005.

CHAPTER 79

[Substitute Senate Bill 5709]

VEHICLE REGISTRATION—NATIONAL RECREATION AREAS

AN ACT Relating to vehicle registration renewal fees within national recreation areas; and adding a new section to chapter 46.16 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 46.16 RCW to read as follows:

After initial vehicle registration, motor vehicles operated solely within a national recreation area that is not accessible by a state highway are exempt from annual registration renewal and the associated fees under RCW 46.16.0621.

Passed by the Senate March 12, 2005.

Passed by the House April 7, 2005.

Approved by the Governor April 18, 2005.
 Filed in Office of Secretary of State April 18, 2005.

CHAPTER 80

[Senate Bill 5713]

MULTIPLE-UNIT HOUSING—TAX EXEMPTION

AN ACT Relating to rehabilitating multiple-unit housing; and amending RCW 84.14.030.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 84.14.030 and 1997 c 429 s 42 are each amended to read as follows:

An owner of property making application under this chapter must meet the following requirements:

(1) The new or rehabilitated multiple-unit housing must be located in a residential targeted area as designated by the city;

(2) The multiple-unit housing must meet the guidelines as adopted by the governing authority that may include height, density, public benefit features, number and size of proposed development, parking, low-income or moderate-income occupancy requirements, and other adopted requirements indicated necessary by the city. The required amenities should be relative to the size of the project and tax benefit to be obtained;

(3) The new, converted, or rehabilitated multiple-unit housing must provide for a minimum of fifty percent of the space for permanent residential occupancy. In the case of existing occupied multifamily development, the multifamily housing must also provide for a minimum of four additional multifamily units. Existing multifamily vacant housing that has been vacant for twelve months or more does not have to provide additional multifamily units;

(4) New construction multifamily housing and rehabilitation improvements must be completed within three years from the date of approval of the application;

(5) Property proposed to be rehabilitated must (~~be vacant at least twelve months before submitting an application and~~) fail to comply with one or more standards of the applicable state or local building or housing codes on or after July 23, 1995. If the property proposed to be rehabilitated is not vacant, an applicant shall provide each existing tenant housing of comparable size, quality, and price and a reasonable opportunity to relocate; and

(6) The applicant must enter into a contract with the city approved by the governing body under which the applicant has agreed to the implementation of the development on terms and conditions satisfactory to the governing authority.

Passed by the Senate March 16, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 18, 2005.

Filed in Office of Secretary of State April 18, 2005.

CHAPTER 81

[Engrossed Substitute Senate Bill 5736]

SUBSCRIPTION AIR AMBULANCE SERVICES

AN ACT Relating to the availability of subscription air ambulance services; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) The legislature finds that there is a need to assist island and rural citizens with the availability of affordable air ambulance service. The legislature further finds that there is a need to evaluate the feasibility of subscription air ambulance service offered by a vendor that solicits membership subscriptions, accepts membership applications, charges membership fees, and furnishes prepaid or discounted air ambulance service to subscription members and designated members of their households.

(2) The office of the insurance commissioner must perform an evaluation of the feasibility of subscription air ambulance service. This evaluation shall be geared toward allowing a person, entity, corporation, or nonprofit corporation to offer, sell, and provide subscription air ambulance service. The evaluation shall:

(a) Include consultation with public and private entities and individuals involved in offering, providing, and purchasing subscription air ambulance service;

(b) Assess the needs and concerns of likely subscription air ambulance vendors, including the costs of providing affordable air ambulance service to rural and island residents, as well as the burdens placed on vendors if held to the reporting and solvency requirements of the insurance code;

(c) Determine the implications of subscription air ambulance service on consumer protection issues; and

(d) Compare the state's need for affordable subscription air ambulance service to other states that allow this service, including an inquiry into the practices of out-of-state vendors who provide the service, as well as the applicability or nonapplicability of other states' insurance codes to the service.

(3) The office of the insurance commissioner must submit a report of its findings to the legislature by December 31, 2005, and the report must include recommendations based on the evaluation required under subsection (2) of this section.

(4) The subscription air ambulance service feasibility evaluation shall be funded by the office of the insurance commissioner.

Passed by the Senate March 14, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 18, 2005.

Filed in Office of Secretary of State April 18, 2005.

CHAPTER 82

[Substitute Senate Bill 5765]

PUGET SOUND DUNGENESS CRAB FISHERY LICENSES

AN ACT Relating to allowing two holders of Puget Sound Dungeness crab fishery licenses to operate both licenses on one vessel; and amending RCW 77.65.100 and 77.65.130.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 77.65.100 and 2001 c 105 s 3 are each amended to read as follows:

This section applies to all commercial fishery licenses, delivery licenses, and charter licenses.

(1) An applicant for a license subject to this section may designate a vessel to be used with the license. Except for emergency salmon delivery licenses, the director may issue a license regardless of whether the applicant designates a vessel. An applicant may designate no more than one vessel on a license subject to this section.

(2) A license for a fishery that requires a vessel authorizes no taking or delivery of food fish or shellfish unless a vessel is designated on the license. A delivery license authorizes no delivery of food fish or shellfish unless a vessel is designated on the license.

(3) No vessel may be designated on more than one commercial fishery license unless the licenses are for different fisheries, except:

(a) The same vessel may be designated on two of the following licenses, provided the licenses are owned by the same licensee:

~~((a))~~ ~~Puget Sound Dungeness crab fishery license;~~

~~((b))~~ (i) Shrimp pot-Puget Sound fishery license;

~~((c))~~ (ii) Sea cucumber dive fishery license; and

~~((d))~~ (iii) Sea urchin dive fishery license.

(b) The same vessel may be designated on two Puget Sound Dungeness crab fishery licenses, subject to the provision of RCW 77.65.130.

(4) No vessel may be designated on more than one delivery license, on more than one salmon charter license, or on more than one nonsalmon charter license.

Sec. 2. RCW 77.65.130 and 2000 c 107 s 34 are each amended to read as follows:

(1) A person who holds a commercial fishery license or a delivery license may operate the vessel designated on the license. A person who is not the license holder may operate the vessel designated on the license only if:

(a) The person holds an alternate operator license issued by the director; and

(b) The person is designated as an alternate operator on the underlying commercial fishery license or delivery license under RCW 77.65.110.

(2) Only an individual at least sixteen years of age may hold an alternate operator license.

(3) No individual may hold more than one alternate operator license. An individual who holds an alternate operator license may be designated as an alternate operator on an unlimited number of commercial fishery licenses or delivery licenses under RCW 77.65.110.

(4) An individual who holds two Dungeness crab—Puget Sound fishery licenses may operate the licenses on one vessel if the ~~((vessel owner))~~ license holder or alternate operator is on the vessel. The department shall allow a license holder to operate up to one hundred crab pots for each license.

(5) Two persons owning separate Dungeness crab—Puget Sound fishery licenses may operate both licenses on one vessel if the license holders or their alternate operators are on the vessel.

(6) As used in this section, to "operate" means to control the deployment or removal of fishing gear from state waters while aboard a vessel or to operate a

vessel delivering food fish or shellfish taken in offshore waters to a port within the state.

Passed by the Senate March 8, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 18, 2005.

Filed in Office of Secretary of State April 18, 2005.

CHAPTER 83

[Substitute Senate Bill 5775]

SMALL CITY PAVEMENT AND SIDEWALK ACCOUNT

AN ACT Relating to the creation of a small city or town street improvement program; amending RCW 43.84.092; reenacting and amending RCW 43.84.092; adding new sections to chapter 47.26 RCW; creating new sections; providing effective dates; providing an expiration date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The state legislature finds that it is in the state's interest to support the economic vitality of all cities and towns and recognizes that those cities and towns with a population of less than five thousand are unable to fully maintain and preserve their street system. Therefore, the legislature finds it is necessary to create a small city pavement and sidewalk account.

NEW SECTION. Sec. 2. A new section is added to chapter 47.26 RCW to read as follows:

The small city pavement and sidewalk account is created in the state treasury. All state money allocated to the small city pavement and sidewalk account for the ongoing support of cities and towns must be deposited into the account. Money in the account may be spent only after appropriation. Expenditures from the account must be used for small city pavement and sidewalk projects or improvements selected by the board in accordance with section 3 of this act, to pay principal and interest on bonds authorized for these projects or improvements, to make grants or loans in accordance with this chapter, or to pay for engineering feasibility studies selected by the board.

NEW SECTION. Sec. 3. A new section is added to chapter 47.26 RCW to read as follows:

All cities and towns with a population of less than five thousand are eligible to receive money from the small city pavement and sidewalk account created under section 2 of this act for maintenance, repair, and resurfacing of city and town streets. The board shall determine the allocation of money based on:

(1) The amount of available funds within the small city pavement and sidewalk account;

(2) Whether the city or town meets one or more of the following criteria:

(a) The city or town has identified a street in a six-year transportation improvement plan, as defined by RCW 35.77.010, or a project identified through the use of a pavement management system;

(b) The city or town has provided pavement rating information on the proposed street improvement or street network improvement;

(c) The city or town has provided sidewalk information on the proposed sidewalk system improvement;

(d) The city or town has provided information, where available, on traffic conditions for truck routes, bus routes, and traffic volumes;

(e) The city or town has the ability to provide a local match as demonstrated by one or more of the following:

(i) A funding match based upon a city's assessed valuation;

(ii) Community involvement and support, including volunteer participation, such as landscaping and maintaining landscaping along the street or sidewalk system; or

(iii) Partnership efforts with federal or other state programs, including the department of community, trade, and economic development mainstreet program.

Sec. 4. RCW 43.84.092 and 2003 c 361 s 602, 2003 c 324 s 1, 2003 c 150 s 2, and 2003 c 48 s 2 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 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 common school construction fund, the county criminal justice assistance account, the county sales and use tax equalization account, the data processing building construction account, the deferred compensation

administrative account, the deferred compensation principal account, the department of retirement systems expense 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 election account, the emergency reserve fund, The Evergreen State College capital projects account, the federal forest revolving account, the health services account, the public health services account, the health system capacity account, the personal health services account, the state higher education construction account, the higher education construction account, the highway infrastructure account, 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 medical aid account, the mobile home park relocation fund, 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 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 facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puyallup tribal settlement account, the regional transportation investment district account, the resource management cost account, the site closure account, the small city pavement and sidewalk 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 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 infrastructure account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer fire fighters' and reserve officers' relief and pension principal fund, the volunteer fire fighters' and reserve officers' administrative fund, the Washington fruit express account, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan 1 retirement account, the Washington law enforcement officers' and fire fighters' system 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. All earnings to be distributed under this subsection (4)(a) shall first be

reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(b) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the county arterial preservation account, the department of licensing services account, the essential rail assistance account, the ferry bond retirement fund, the grade crossing protective fund, the high capacity transportation account, the highway bond retirement fund, the highway safety account, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the safety and education account, the special category C account, the state patrol highway 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, and the urban arterial trust account.

(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. 5. RCW 43.84.092 and 2004 c 242 s 60 are each 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 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 common school construction fund, the county criminal justice assistance account, the county sales and use tax equalization account, the data processing building construction account, the deferred compensation administrative account, the deferred compensation principal account, the department of retirement systems expense 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 election account, the emergency reserve fund, The Evergreen State College capital projects account, the federal forest revolving account, the health services account, the public health services account, the health system capacity account, the personal health services account, the state higher education construction account, the higher education construction account, the highway infrastructure account, 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 medical aid account, the mobile home park relocation fund, 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 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 facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puyallup tribal settlement account, the regional transportation investment district account, the resource management cost account, the site closure account, the small city pavement and sidewalk 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 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 infrastructure account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer fire fighters' and reserve officers' relief and pension principal fund, the volunteer fire fighters' and reserve officers' administrative fund, the Washington fruit express account, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan 1 retirement account, the Washington law enforcement officers' and fire fighters' 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. All earnings to be distributed under this subsection (4)(a) shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(b) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the county arterial preservation account, the department of licensing services account, the essential rail assistance account, the ferry bond retirement fund, the grade crossing protective fund, the high capacity transportation account, the highway bond retirement fund, the highway safety account, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the safety and education account, the special category C account, the state patrol highway 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, and the urban arterial trust account.

(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.

NEW SECTION. Sec. 6. Except for section 5 of this act which takes effect July 1, 2006, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005.

NEW SECTION. Sec. 7. Section 4 of this act expires July 1, 2006.

NEW SECTION. Sec. 8. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2005, in the transportation appropriations act, this act is null and void.

Passed by the Senate March 14, 2005.

Passed by the House April 6, 2005.

Approved by the Governor April 18, 2005.

Filed in Office of Secretary of State April 18, 2005.

CHAPTER 84

[Senate Bill 5831]

WATER WELL CONSTRUCTION

AN ACT Relating to the minimum standards for construction and maintenance of wells; amending RCW 18.104.020, 18.104.043, 18.104.050, 18.104.055, 18.104.100, 18.104.120, and 18.104.190; and adding a new section to chapter 18.104 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 18.104.020 and 2002 c 48 s 1 are each amended to read as follows:

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

(1) "Abandoned well" means a well that is (~~unused~~) unmaintained(~~and~~) or is in such disrepair (~~as to be~~) that it is unusable or is a risk to public health and welfare.

(2) "Constructing a well" or "construct a well" means:

- (a) Boring, digging, drilling, or excavating a well;
- (b) Installing casing, sheeting, lining, or well screens, in a well;
- (c) Drilling a geotechnical soil boring; or
- (d) Installing an environmental investigation well.

"Constructing a well" or "construct a well" includes the alteration of an existing well.

(3) "Decommission" means to fill or plug a well so that it will not produce water, serve as a channel for movement of water or pollution, or allow the entry of pollutants into the well or aquifers.

(4) "Department" means the department of ecology.

(5) "Dewatering well" means a cased or lined excavation or boring that is intended to withdraw or divert ground water for the purpose of facilitating construction, stabilizing a landslide, or protecting an aquifer.

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

(7) "Environmental investigation well" means a cased hole intended or used to extract a sample or samples of ground water, vapor, or soil from an underground formation and which is decommissioned immediately after the sample or samples are obtained. An environmental investigation well is typically installed using direct push technology or auger boring and uses the probe, stem, auger, or rod as casing. An environmental investigation well is not a geotechnical soil boring.

(8) "Geotechnical soil boring" or "boring" means a well drilled for the purpose of obtaining soil samples or information to ascertain structural properties of the subsurface.

(9) "Ground source heat pump boring" means a vertical boring constructed for the purpose of installing a closed loop heat exchange system for a ground source heat pump.

(10) "Ground water" means and includes ground waters as defined in RCW 90.44.035.

~~((10))~~ (11) "Grounding well" means a grounding electrode installed in the earth by the use of drilling equipment to prevent buildup of voltages that may result in undue hazards to persons or equipment. Examples are anode and cathode protection wells.

(12) "Instrumentation well" means a well in which pneumatic or electric geotechnical or hydrological instrumentation is permanently or periodically installed to measure or monitor subsurface strength and movement. Instrumentation well includes borehole extensometers, slope indicators, pneumatic or electric pore pressure transducers, and load cells.

~~((41))~~ (13) "Monitoring well" means a well designed to obtain a representative ground water sample or designed to measure the water level elevation in either clean or contaminated water or soil.

~~((42))~~ (14) "Observation well" means a well designed to measure the depth to the water level elevation in either clean or contaminated water or soil.

~~((43))~~ (15) "Operator" means a person who (a) is employed by a well contractor; (b) is licensed under this chapter; or (c) who controls, supervises, or oversees the construction of a well or who operates well construction equipment.

~~((44))~~ (16) "Owner" or "well owner" means the person, firm, partnership, copartnership, corporation, association, ~~((or))~~ other entity, or any combination of these, who owns the property on which the well is or will be constructed or has the right to the well by means of an easement, covenant, or other enforceable legal instrument for the purpose of benefiting from the well.

~~((45))~~ (17) "Pollution" and "contamination" have the meanings provided in RCW 90.48.020.

~~((46))~~ (18) "Remediation well" means a well intended or used to withdraw ground water or inject water, air (for air sparging), or other solutions into the subsurface for the purpose of remediating, cleaning up, or controlling potential or actual ground water contamination.

~~((47))~~ (19) "Resource protection well" means a cased boring intended or used to collect subsurface information or to determine the existence or migration of pollutants within an underground formation. Resource protection wells include monitoring wells, observation wells, piezometers, spill response wells, remediation wells, environmental investigation wells, vapor extraction wells, ground source heat pump boring, grounding wells, and instrumentation wells.

~~((48))~~ (20) "Resource protection well contractor" means any person, firm, partnership, copartnership, corporation, association, or other entity, licensed and bonded under chapter 18.27 RCW, engaged in the business of constructing resource protection wells or geotechnical soil borings.

~~((49))~~ (21) "Water well" means any excavation that is constructed when the intended use of the well is for the location, diversion, artificial recharge, observation, monitoring, dewatering, or withdrawal of ground water. "Water wells" include ground source heat pump borings and grounding wells.

~~((20))~~ (22) "Water well contractor" means any person, firm, partnership, copartnership, corporation, association, or other entity, licensed and bonded under chapter 18.27 RCW, engaged in the business of constructing water wells.

~~((21))~~ (23) "Well" means water wells, resource protection wells, dewatering wells, and geotechnical soil borings. Well does not mean an excavation made for the purpose of obtaining or prospecting for oil, natural gas, geothermal resources, minerals, or products of mining, or quarrying, or for inserting media to repressure oil or natural gas bearing formations, or for storing petroleum, natural gas, or other products.

~~((22))~~ (24) "Well contractor" means a resource protection well contractor and a water well contractor licensed and bonded under chapter 18.27 RCW.

Sec. 2. RCW 18.104.043 and 2000 c 32 s 1 are each amended to read as follows:

(1) If requested in writing by the governing body of a local health district or county, the department by memorandum of agreement may delegate to the

governing body the authority to administer and enforce the well tagging, sealing, and decommissioning portions of the water well construction program.

(2) The department shall determine whether a local health district or county that seeks delegation under this section has the resources, capability, and expertise, including qualified field inspectors, to administer the delegated program. If the department determines the local government has these resources, it shall notify well contractors(~~(-consultants,-)~~) and operators of the proposal. The department shall accept written comments on the proposal for sixty days after the notice is mailed.

(3) If the department determines that a delegation of authority to a local health district or county to administer and enforce the well sealing and decommissioning portions of the water well construction program will enhance the public health and safety and the environment, the department and the local governing body may enter into a memorandum of agreement setting forth the specific authorities delegated by the department to the local governing body. The memorandum of agreement (~~(shall provide for an initial review of the delegation within one year and for periodic review thereafter)~~) must be, at a minimum, reviewed annually. The department, in consultation with the technical advisory group, created under RCW 18.104.190, shall adopt rules outlining the annual review and reporting process. A detailed summary of the review must be made available to well contractors and operators upon request and be published on the department's web site.

(4) With regard to the portions of the water well construction program delegated under this section, the local governing agency shall exercise only the authority delegated to it under this section. If, after a public hearing, the department determines that a local governing body is not administering the program in accordance with this chapter, it shall notify the local governing body of the deficiencies. If corrective action is not taken within a reasonable time, not to exceed sixty days, the department by order shall withdraw the delegation of authority.

(5) The department shall promptly furnish the local governing body with a copy of each water well report and notification of start cards received in the area covered by a delegated program.

(6) The department and the local governing body shall coordinate to reduce duplication of effort and shall share all appropriate information including technical reports, violations, and well reports.

(7) Any person aggrieved by a decision of a local health district or county under a delegated program may appeal the decision to the department. The department's decision is subject to review by the pollution control hearings board as provided in RCW 43.21B.110.

(8) The department shall not delegate the authority to license well contractors, renew licenses, receive notices of intent to commence constructing a well, receive well reports, or collect state fees provided for in this chapter.

Sec. 3. RCW 18.104.050 and 1993 c 387 s 8 are each amended to read as follows:

(1) (~~(A well contractor)~~) Any person authorized by this chapter to construct or decommission a well shall furnish a well report to the director within thirty days after the completion of the construction or (~~(alteration)~~) decommissioning

of a well (~~by the contractor~~). The director, by rule, shall prescribe the form of the report and the information to be contained therein.

(2) In the case of a dewatering well project:

(a) A single well construction report may be submitted for all similar dewatering wells constructed with no significant change in geologic formation; and

(b) A single well decommissioning report may be submitted for all similar dewatering wells decommissioned that have no significant change in geologic formation.

Sec. 4. RCW 18.104.055 and 2002 c 48 s 2 are each amended to read as follows:

(1) A fee is hereby imposed on each well constructed in this state on or after July 1, (~~1993~~) 2005.

(2)(a) The fee for one (~~new~~) water well, other than a dewatering well, with a minimum top casing diameter of less than twelve inches is (~~one~~) two hundred dollars. This fee does not apply to a ground source heat pump boring or a grounding well.

(b) The fee for one (~~new~~) water well, other than a dewatering well, with a minimum top casing diameter of twelve inches or greater is (~~two~~) three hundred dollars.

(c) The fee for a (~~new~~) resource protection well, except for an environmental investigation well, a ground source heat pump boring, or a grounding well, is forty dollars for each well.

(d) The fee for an environmental investigation well in which ground water is sampled or measured is forty dollars for construction of up to four environmental investigation wells per project, ten dollars for each additional environmental investigation well constructed on a project with more than four wells. There is no fee for soil or vapor sampling purposes.

(e) The fee for a ground source heat pump boring or a grounding well is forty dollars for construction of up to four ground source heat pump borings or grounding wells per project and ten dollars for each additional ground source heat pump boring or grounding well constructed on a project with more than four wells.

(f) The combined fee for construction and decommissioning of a dewatering well system shall be forty dollars for each two hundred horizontal lineal feet, or portion thereof, of the dewatering well system.

(g) The fee to decommission a water well is fifty dollars.

(h) The fee to decommission a resource protection well, except for an environmental investigation well, is twenty dollars. There is no fee to decommission an environmental investigation well or a geotechnical soil boring.

(i) The fee to decommission a ground source heat pump boring or a grounding well is twenty dollars.

(3) The fees imposed by this section shall be paid at the time the notice of well construction is submitted to the department as provided by RCW 18.104.048. The department by rule may adopt procedures to permit the fees required for resource protection wells to be paid after the number of wells actually constructed has been determined. The department shall refund the amount of any fee collected for wells, borings, probes, or excavations as long as construction has not started and the department has received a refund request

within one hundred eighty days from the time the department received the fee. The refund request shall be made on a form provided by the department.

Sec. 5. RCW 18.104.100 and 1993 c 387 s 17 are each amended to read as follows:

(1) Licenses issued pursuant to this chapter shall be renewed every two years. A license shall be renewed upon payment of a renewal fee and completion of continuing education (~~required by rule adopted by the department~~) requirements and receipt of a completed license renewal application. If a licensee fails to submit an application for renewal, the renewal fee, and proof of completion of the required continuing education, the license shall (~~expire~~) be suspended at the end of its effective term. The licensee is not allowed to perform work authorized by their license during the time that it is suspended. The licensee is allowed thirty days to submit an application for renewal, the renewal fee, and proof of completion of the required continuing education for the renewal period. Continuing education obtained during the thirty-day suspension period may be applied only to the next renewal period. If a licensee fails to submit an application for renewal, the renewal fee, and proof of completion of the required continuing education by the end of the thirty-day suspension period, the license expires. The department shall adopt rules, in consultation with the technical advisory group created under RCW 18.104.190, that allow for an extension of the thirty-day suspension period for certain situations that are beyond the control of the licensee. The rules must also allow for a retirement or inactive license.

(2) A person whose license has expired must apply for a new license as provided in this chapter. The department may waive the requirement for a written examination and on-site testing for a person whose license has expired.

(3) The department may refuse to renew a license if the licensee has not complied with an order issued by the department or has not paid a penalty imposed in accordance with this chapter, unless the order or penalty is under appeal.

(4) The department may issue a conditional license to enable a former licensee to comply with an order to correct problems with a well.

NEW SECTION. **Sec. 6.** A new section is added to chapter 18.104 RCW to read as follows:

(1) A person seeking a new license or to renew an existing license under this chapter must demonstrate a willingness to maintain a high level of professional competency by completing continuing education programs as required by the department by rule. The department shall not approve any continuing education program unless: (a) It is offered by an approved provider; (b) it is open to all persons licensed or pursuing a license under this chapter; and (c) the fees charged are reasonable for all persons desiring to attend the program.

(2) The department, in consultation with the technical advisory group created in RCW 18.104.190, shall adopt rules governing continuing education programs. At a minimum, the rules must establish: A method of approving providers of continuing education; a criteria to evaluate the offerings, workshops, courses, classes, or programs; a criteria for assigning credits; and a criteria for reporting and verifying completion.

(3) The department shall support approved providers by providing, upon request and at the department's discretion, technical assistance and presenters for continuing education offerings.

(4) The department shall maintain a current list of all continuing education offerings by approved providers and ensure that the list is available to all licensees by request. The list must also be posted on the department's web site.

Sec. 7. RCW 18.104.120 and 1993 c 387 s 19 are each amended to read as follows:

Any person (~~with an economic or noneconomic interest~~) who can demonstrate being materially harmed by the actions or inactions of a well contractor, operator, or trainee, or has knowledge of illegal activities engaged in by a well contractor, operator, or trainee may ~~(make)~~ submit a complaint against ~~(any)~~ the well contractor ~~(or)~~, operator ~~(for violating this chapter or any regulations under it)~~, or trainee to the department of ecology. The complaint shall be in writing, signed by the complainant, and specify the grievances against the licensee. The department ~~(shall)~~ may investigate the complaint to establish the validity of the complaint. In the event evidence shows a violation of this chapter or rules adopted under this chapter, the department may respond to the complaint by issuance of an order ~~(it deems)~~ appropriate to the violation. Review of the order shall be subject to the hearings procedures set forth in RCW 18.104.130.

Sec. 8. RCW 18.104.190 and 1993 c 387 s 25 are each amended to read as follows:

(1) For the purpose of carrying out the provisions of this chapter, the director shall appoint a technical advisory group, chaired by the department. The technical advisory group shall have twelve members: Two members shall represent the department of ecology, six members shall represent resource protection well contractors or water well contractors, one member shall represent the department of health and be a person who regularly works on issues related to drinking water wells, one member shall represent local health departments and be a person who regularly works on issues related to drinking water wells, one member shall represent licensed professional engineers and be knowledgeable about the design and construction of wells, and one member shall be a ~~(scientist)~~ licensed hydrogeologist knowledgeable ~~(in)~~ about the design and construction of wells.

(2) The technical advisory group shall assist the department in the development and revision of rules; the preparation and revision of licensing examinations; the development of training criteria for inspectors, well contractors, and well operators; the establishment of continuing education providers; the development of evaluation procedures of all continuing education offerings; and the review of proposed changes to the minimum standards for construction and maintenance of wells by local governments for the purpose of achieving continuity with technology and state rules.

(3) The group shall meet at least twice each year to review rules and suggest any necessary changes.

(4) Each member of the group shall be compensated in accordance with RCW 43.03.240 and reimbursed for travel expenses while engaged in the business of the group as prescribed in RCW 43.03.050 and 43.03.060.

Passed by the Senate March 15, 2005.

Passed by the House April 7, 2005.

Approved by the Governor April 18, 2005.

Filed in Office of Secretary of State April 18, 2005.

CHAPTER 85

[Senate Bill 5833]

LICENSE PLATES—GONZAGA UNIVERSITY ALUMNI ASSOCIATION

AN ACT Relating to special license plates to recognize the Gonzaga University alumni association; reenacting and amending RCW 46.16.313; adding new sections to chapter 46.16 RCW; and adding a new section to chapter 46.04 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 46.16 RCW to read as follows:

(1) The legislature recognizes that the Gonzaga University alumni association license plate has been reviewed by the special license plate review board under RCW 46.16.725, and found to fully comply with all provisions of RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying a symbol or artwork, approved by the special license plate review board, recognizing the Gonzaga University alumni association. The special license plate may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department.

NEW SECTION. Sec. 2. A new section is added to chapter 46.04 RCW to read as follows:

"Gonzaga University alumni association license plates" means license plates issued under section 1 of this act that display a symbol or artwork recognizing the efforts of the Gonzaga University alumni association in Washington state.

Sec. 3. RCW 46.16.313 and 2004 c 221 s 3, 2004 c 48 s 3, and 2004 c 35 s 3 are each reenacted and amended to read as follows:

(1) The department may establish a fee of no more than forty dollars for each type of special license plates issued under RCW 46.16.301(1) (a), (b), or (c), as existing before amendment by section 5, chapter 291, Laws of 1997, in an amount calculated to offset the cost of production of the special license plates and the administration of this program. This fee is in addition to all other fees required to register and license the vehicle for which the plates have been requested. All such additional special license plate fees collected by the department shall be deposited in the state treasury and credited to the motor vehicle fund.

(2) In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a collegiate license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying

detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(3) In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a collegiate license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(4) In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a special baseball stadium license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds, minus the cost of plate production, shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(5) In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a special baseball stadium license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(6) Effective with vehicle registrations due or to become due on January 1, 2005, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a professional fire fighters and paramedics license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the professional fire fighters and paramedics license plates. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Washington State Council of Fire Fighters benevolent fund established under RCW 46.16.30902.

(7) Effective with annual renewals due or to become due on January 1, 2006, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a professional fire fighters and paramedics license plate shall, upon application, pay a fee of thirty dollars. The department

shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the professional fire fighters and paramedics special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Washington State Council of Fire Fighters benevolent fund established under RCW 46.16.30902.

(8) Effective with vehicle registrations due or to become due on November 1, 2004, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Helping Kids Speak" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Helping Kids Speak" account established under RCW 46.16.30904.

(9) Effective with annual renewals due or to become due on November 1, 2005, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Helping Kids Speak" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Helping Kids Speak" account established under RCW 46.16.30904.

(10) Effective with vehicle registrations due or to become due on January 1, 2005, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "law enforcement memorial" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the law enforcement memorial special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the

proceeds to the law enforcement memorial account established under RCW 46.16.30906.

(11) Effective with annual renewals due or to become due on January 1, 2006, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "law enforcement memorial" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the law enforcement memorial special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the law enforcement memorial account established under RCW 46.16.30906.

(12)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Gonzaga University alumni association" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administrative and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Gonzaga University alumni association" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Gonzaga University alumni association account established under section 4 of this act.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Gonzaga University alumni association" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Gonzaga University alumni association" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Gonzaga University alumni association account established under section 4 of this act.

NEW SECTION. Sec. 4. A new section is added to chapter 46.16 RCW to read as follows:

(1) The Gonzaga University alumni association account is created in the custody of the state treasurer. Upon the department's determination that the state has been reimbursed for the cost of implementing the Gonzaga University

alumni association special license plate, all receipts, except as provided in RCW 46.16.313(12) (a) and (b), from Gonzaga University alumni association license plates must be deposited into the account. Only the director of the department of licensing or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Funds in the account must be disbursed subject to the following conditions and limitations:

(a) Pursuant to the requirements set out in RCW 46.16.765, the department must contract with a qualified nonprofit organization to provide scholarship funds to needy and qualified students attending or planning to attend Gonzaga University.

(b) For the purposes of this section, a "qualified nonprofit organization" means a not-for-profit corporation incorporated and operating exclusively in Washington that has received a determination of tax exempt status under section 501(c)(3) of the federal internal revenue code. The organization must have been established for the express purpose of providing student scholarships to Gonzaga University.

(c) The qualified nonprofit organization must meet all requirements set out in RCW 46.16.765.

Passed by the Senate March 12, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 18, 2005.

Filed in Office of Secretary of State April 18, 2005.

CHAPTER 86

[Senate Bill 5857]

TAXATION—NONPROFIT COMMUNITY HEALTH CENTERS

AN ACT Relating to the business and occupation taxation of nonprofit community health centers; amending RCW 82.04.4311; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 82.04.4311 and 2002 c 314 s 2 are each amended to read as follows:

(1) A public hospital that is owned by a municipal corporation or political subdivision, or a nonprofit hospital, or a nonprofit community health center, or a network of nonprofit community health centers, that qualifies as a health and social welfare organization as defined in RCW 82.04.431, may deduct from the measure of tax amounts received as compensation for health care services covered under the federal medicare program authorized under Title XVIII of the federal social security act; medical assistance, children's health, or other program under chapter 74.09 RCW; or for the state of Washington basic health plan under chapter 70.47 RCW. The deduction authorized by this section does not apply to amounts received from patient copayments or patient deductibles.

(2) As used in this section, "community health center" means a federally qualified health center as defined in 42 U.S.C. 1396d as existing on the effective date of this act.

NEW SECTION. Sec. 2. This act takes effect August 1, 2005.

Passed by the Senate March 15, 2005.
 Passed by the House April 5, 2005.
 Approved by the Governor April 18, 2005.
 Filed in Office of Secretary of State April 18, 2005.

CHAPTER 87

[Senate Bill 5869]
 FISH PLANTING

AN ACT Relating to fish planting; amending RCW 77.18.060; and repealing RCW 77.18.070.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 77.18.060 and 1999 c 363 s 2 are each amended to read as follows:

The fish and wildlife commission in consultation with the department is authorized to determine which waters of the state are appropriate for this use (~~(during the 1999 and 2000 calendar years)~~). In making this determination, the commission shall seek geographic distribution to assure opportunity to fishers statewide.

The commission in consultation with the department will determine the maximum number of fish that may be planted into state waters so as not to compete with the wild populations of fish species in the water body.

NEW SECTION. **Sec. 2.** RCW 77.18.070 (Program costs to be covered by revenue increase) and 1999 c 363 s 3 are each repealed.

Passed by the Senate March 16, 2005.
 Passed by the House April 8, 2005.
 Approved by the Governor April 18, 2005.
 Filed in Office of Secretary of State April 18, 2005.

CHAPTER 88

[Engrossed Senate Bill 5966]
 VEHICLE IMMOBILIZATION

AN ACT Relating to vehicle immobilization; amending RCW 46.55.010; adding a new section to chapter 46.55 RCW; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. **Sec. 1.** A new section is added to chapter 46.55 RCW, to be codified between RCW 46.55.240 and 46.55.900, to read as follows:

(1) A property owner shall not immobilize any vehicle owned by a person other than the property owner.

(2) This section does not apply to property owned by the state or any unit of local government.

(3) A violation of this section is a gross misdemeanor.

Sec. 2. RCW 46.55.010 and 1999 c 398 s 2 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter:

(1) "Abandoned vehicle" means a vehicle that a registered tow truck operator has impounded and held in the operator's possession for one hundred twenty consecutive hours.

(2) "Immobilize" means the use of a locking wheel boot that, when attached to the wheel of a vehicle, prevents the vehicle from moving without damage to the tire to which the locking wheel boot is attached.

(3) "Abandoned vehicle report" means the document prescribed by the state that the towing operator forwards to the department after a vehicle has become abandoned.

~~((3))~~ (4) "Impound" means to take and hold a vehicle in legal custody. There are two types of impounds—public and private.

(a) "Public impound" means that the vehicle has been impounded at the direction of a law enforcement officer or by a public official having jurisdiction over the public property upon which the vehicle was located.

(b) "Private impound" means that the vehicle has been impounded at the direction of a person having control or possession of the private property upon which the vehicle was located.

~~((4))~~ (5) "Junk vehicle" means a vehicle certified under RCW 46.55.230 as meeting at least three of the following requirements:

(a) Is three years old or older;

(b) Is extensively damaged, such damage including but not limited to any of the following: A broken window or windshield, or missing wheels, tires, motor, or transmission;

(c) Is apparently inoperable;

(d) Has an approximate fair market value equal only to the approximate value of the scrap in it.

~~((5))~~ (6) "Master log" means the document or an electronic facsimile prescribed by the department and the Washington state patrol in which an operator records transactions involving impounded vehicles.

~~((6))~~ (7) "Registered tow truck operator" or "operator" means any person who engages in the impounding, transporting, or storage of unauthorized vehicles or the disposal of abandoned vehicles.

~~((7))~~ (8) "Residential property" means property that has no more than four living units located on it.

~~((8))~~ (9) "Suspended license impound" means an impound ordered under RCW 46.55.113 because the operator was arrested for a violation of RCW 46.20.342 or ~~((46.20.420))~~ 46.20.345.

~~((9))~~ (10) "Tow truck" means a motor vehicle that is equipped for and used in the business of towing vehicles with equipment as approved by the state patrol.

~~((10))~~ (11) "Tow truck number" means the number issued by the department to tow trucks used by a registered tow truck operator in the state of Washington.

~~((11))~~ (12) "Tow truck permit" means the permit issued annually by the department that has the classification of service the tow truck may provide stamped upon it.

~~((12))~~ (13) "Tow truck service" means the transporting upon the public streets and highways of this state of vehicles, together with personal effects and cargo, by a tow truck of a registered operator.

((14)) (14) "Unauthorized vehicle" means a vehicle that is subject to impoundment after being left unattended in one of the following public or private locations for the indicated period of time:

Subject to removal after:

- (a) Public locations:
 - (i) Constituting an accident or a traffic hazard as defined in RCW 46.55.113 Immediately
 - (ii) On a highway and tagged as described in RCW 46.55.085 24 hours
 - (iii) In a publicly owned or controlled parking facility, properly posted under RCW 46.55.070 Immediately
- (b) Private locations:
 - (i) On residential property Immediately
 - (ii) On private, nonresidential property, properly posted under RCW 46.55.070 Immediately
 - (iii) On private, nonresidential property, not posted 24 hours

NEW SECTION. Sec. 3. Section 1 of this act shall include a part heading titled "VEHICLE IMMOBILIZATION."

Passed by the Senate March 12, 2005.
Passed by the House April 6, 2005.
Approved by the Governor April 18, 2005.
Filed in Office of Secretary of State April 18, 2005.

CHAPTER 89

[Substitute Senate Bill 5969]

FUEL TAX—DISTRIBUTION—CITIES AND TOWNS

AN ACT Relating to city and town use of state fuel tax distributions; and amending RCW 46.68.110.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.68.110 and 2003 c 361 s 404 are each amended to read as follows:

Funds credited to the incorporated cities and towns of the state as set forth in RCW 46.68.090(2)(g) shall be subject to deduction and distribution as follows:

(1) One and one-half percent of such sums distributed under RCW 46.68.090(2)(g) shall be deducted monthly as such sums are credited and set aside for the use of the department of transportation for the supervision of work and expenditures of such incorporated cities and towns on the city and town streets thereof, including the supervision and administration of federal-aid programs for which the department of transportation has responsibility: PROVIDED, That any moneys so retained and not expended shall be credited in the succeeding biennium to the incorporated cities and towns in proportion to deductions herein made;

(2) Thirty-three one-hundredths of one percent of such funds distributed under RCW 46.68.090(2)(g) shall be deducted monthly, as such funds accrue,

and set aside for the use of the department of transportation for the purpose of funding the cities' share of the costs of highway jurisdiction studies and other studies. Any funds so retained and not expended shall be credited in the succeeding biennium to the cities in proportion to the deductions made;

(3) One percent of such funds distributed under RCW 46.68.090(2)(g) shall be deducted monthly, as such funds accrue, to be deposited in the urban arterial trust account, to implement the city hardship assistance program, as provided in RCW 47.26.164. However, any moneys so retained and not required to carry out the program as of July 1st of each odd-numbered year thereafter, shall be provided within sixty days to the treasurer and distributed in the manner prescribed in subsection ~~((5))~~ (4) of this section;

(4) After making the deductions under subsections (1) through (3) of this section and RCW 35.76.050~~((, 31.86 percent of the fuel tax distributed to the cities and towns in RCW 46.68.090(2)(g) shall be allocated to the incorporated cities and towns in the manner set forth in subsection (5) of this section and subject to deductions in subsections (1), (2), and (3) of this section, subject to RCW 35.76.050, to be used exclusively for: The construction, improvement, chip sealing, seal coating, and repair for arterial highways and city streets as those terms are defined in RCW 46.04.030 and 46.04.120; the maintenance of arterial highways and city streets for those cities with a population of less than fifteen thousand; or the payment of any municipal indebtedness which may be incurred in the construction, improvement, chip sealing, seal coating, and repair of arterial highways and city streets; and~~

~~(5))~~, the balance remaining to the credit of incorporated cities and towns after such deduction shall be apportioned monthly as such funds accrue among the several cities and towns within the state ratably on the basis of the population last determined by the office of financial management.

Passed by the Senate March 12, 2005.

Passed by the House April 6, 2005.

Approved by the Governor April 18, 2005.

Filed in Office of Secretary of State April 18, 2005.

CHAPTER 90

[Engrossed Senate Bill 5332]

MARTIN LUTHER KING, JR.

AN ACT Relating to honoring the Reverend Doctor Martin Luther King, Jr.; and amending RCW 36.04.170.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 36.04.170 and 1 H.C. s 13 are each amended to read as follows:

King county shall consist of the territory bounded as follows, to wit: Beginning at the point of intersection of the center of East Passage (also known as Admiralty Inlet) on Puget Sound and the northerly line of the Puyallup Indian Reservation (projected northwesterly); thence southeasterly in a straight line along said northerly line of Puyallup Indian Reservation and same extended to a point on the east line of section thirty-one, township twenty-one, north, range four east, Willamette Meridian; thence south along said east line of section

thirty-one, township twenty-one, range four east, Willamette Meridian, to the township line between township twenty north and township twenty-one north (being the fifth standard parallel north); thence east along said township line between township twenty north and township twenty-one north to the middle of the main channel of White river, near the northeast corner of section three, township twenty north, range five east, Willamette Meridian; thence upstream along the middle of the main channel of White river to the forks of White river and Greenwater river; thence upstream along the middle of the main channel of the Greenwater river to the forks of the Greenwater river and Meadow creek; thence upstream along the middle of the main channel of Meadow creek to the summit of the Cascade mountains, at a point known as Naches Pass, said point lying in the southwest quarter of section thirty-five, township nineteen north, range eleven east, Willamette Meridian; thence northerly along the summit of the Cascade mountains to a point on the township line between township twenty-six north and township twenty-seven north, said point lying near the north quarter-corner of section three, township twenty-six north, range thirteen east, Willamette Meridian; thence west along said township line between township twenty-six north and township twenty-seven north to the middle of the channel known as Admiralty Inlet on Puget Sound; thence southerly along said middle of channel known as Admiralty Inlet through Colvo's Passage (West Passage) on the west side of Vashon Island to a point due north of Point Defiance; thence southeasterly along middle of channel between Vashon Island and Point Defiance (Dalcos Passage) to a point due south of Quartermaster Harbor; thence northeasterly along middle of channel known as Admiralty Inlet to point of beginning. King county is renamed in honor of the Reverend Doctor Martin Luther King, Jr.

Passed by the Senate March 8, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 19, 2005.

Filed in Office of Secretary of State April 19, 2005.

CHAPTER 91

[House Bill 1202]

DISTRICT COURT JUDGES

AN ACT Relating to district court judges; amending RCW 3.34.010; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 3.34.010 and 2003 c 97 s 1 are each amended to read as follows:

The number of district judges to be elected in each county shall be: Adams, two; Asotin, one; Benton, three; Chelan, two; Clallam, two; Clark, six; Columbia, one; Cowlitz, two; Douglas, one; Ferry, one; Franklin, one; Garfield, one; Grant, two; Grays Harbor, two; Island, one; Jefferson, one; King, twenty-one; Kitsap, (~~three~~) four; Kittitas, two; Klickitat, two; Lewis, two; Lincoln, one; Mason, one; Okanogan, two; Pacific, two; Pend Oreille, one; Pierce, eleven; San Juan, one; Skagit, two; Skamania, one; Snohomish, eight; Spokane, ten; Stevens, one; Thurston, (~~two~~) three; Wahkiakum, one; Walla Walla, two;

Whatcom, two; Whitman, one; Yakima, four. This number may be increased only as provided in RCW 3.34.020.

NEW SECTION. Sec. 2. For the purposes of RCW 3.34.025, the district judge position for Clark county created in chapter 97, Laws of 2003, is hereby recreated as of the effective date of this section.

Passed by the House February 4, 2005.

Passed by the Senate April 11, 2005.

Approved by the Governor April 20, 2005.

Filed in Office of Secretary of State April 20, 2005.

CHAPTER 92

[House Bill 1032]

INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

AN ACT Relating to adopting the interstate insurance product regulation compact; and adding a new chapter to Title 48 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. Under the terms and conditions of this chapter, the state of Washington seeks to join with other states and establish the interstate insurance product regulation compact and thus become a member of the interstate insurance product regulation commission. The insurance commissioner is hereby designated to serve as the representative of this state to the commission. The purposes of the compact under this chapter are, through means of joint and cooperative action among the compacting states:

(1) To promote and protect the interest of consumers of individual and group annuity, life insurance, disability income, and long-term care insurance products;

(2) To develop uniform standards for insurance products covered under the compact;

(3) To establish a central clearinghouse to receive and provide prompt review of insurance products covered under the compact and, in certain cases, advertisements related thereto, submitted by insurers authorized to do business in one or more compacting states;

(4) To give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard;

(5) To improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the compact;

(6) To create the interstate insurance product regulation commission; and

(7) To perform these and such other related functions as may be consistent with the state regulation of the business of insurance.

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

(1) "Advertisement" means any material designed to create public interest in a product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace, or retain a policy, as more specifically defined in the rules and operating procedures of the commission.

(2) "Bylaws" means those bylaws established by the commission for its governance, or for directing or controlling the commission's actions or conduct.

(3) "Compact" means the compact set forth in this chapter.

(4) "Compacting state" means any state which has enacted the compact and which has not withdrawn under section 14(1) of this act or been terminated under section 14(2) of this act.

(5) "Commission" means the interstate insurance product regulation commission established in section 3 of this act.

(6) "Commissioner" means the insurance commissioner or the chief insurance regulatory official of a state including but not limited to commissioner, superintendent, director, or administrator.

(7) "Domiciliary state" means the state in which an insurer is incorporated or organized; or, in the case of an alien insurer, its state of entry.

(8) "Insurer" means any entity licensed by a state to issue contracts of insurance for any of the lines of insurance covered by the compact.

(9) "Member" means the person chosen by a compacting state as its representative to the commission, or his or her designee.

(10) "Noncompacting state" means any state which is not at the time a compacting state.

(11) "Operating procedures" mean procedures adopted by the commission implementing a rule, uniform standard, or a provision of the compact.

(12) "Product" means the form of a policy or contract, including any application, endorsement, or related form which is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income, or long-term care insurance product that an insurer is authorized to issue.

(13) "Rule" means a statement of general or particular applicability and future effect adopted by the commission, including a uniform standard developed under section 7 of this act, designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the commission, which shall have the force and effect of law in the compacting states.

(14) "State" means any state, district, or territory of the United States of America.

(15) "Third-party filer" means an entity that submits a product filing to the commission on behalf of an insurer.

(16) "Uniform standard" means a standard adopted by the commission for a product line, under section 7 of this act, and includes all of the product requirements in aggregate. However, each uniform standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading, or ambiguous provisions in a product and the form of the product made available to the public shall not be unfair, inequitable, or against public policy as determined by the commission.

NEW SECTION. Sec. 3. (1) The compacting states hereby create and establish a joint public agency known as the interstate insurance product regulation commission. Under section 4 of this act, the commission will have the power to develop uniform standards for product lines, receive and provide prompt review of products filed therewith, and give approval to those product filings satisfying applicable uniform standards. However, it is not intended for

the commission to be the exclusive entity for receipt and review of insurance product filings. This section does not prohibit any insurer from filing its product in any state wherein the insurer is licensed to conduct the business of insurance; and any such filing shall be subject to the laws of the state where filed.

(2) The commission is a body corporate and politic, and an instrumentality of the compacting states.

(3) The commission is solely responsible for its liabilities except as otherwise specifically provided in the compact.

(4) Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located.

NEW SECTION. Sec. 4. The commission shall have the following powers:

(1) To adopt rules, under section 7 of this act, which shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in the compact;

(2) To exercise its rule-making authority and establish reasonable uniform standards for products covered under the compact, and advertisement related thereto, which shall have the force and effect of law and shall be binding in the compacting states, but only for those products filed with the commission. However, a compacting state shall have the right to opt out of such uniform standard under section 7 of this act, to the extent and in the manner provided in this compact. Any uniform standard established by the commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the national association of insurance commissioners' long-term care insurance model act and long-term care insurance model regulation, respectively, adopted as of 2001. The commission shall consider whether any subsequent amendments to the long-term care insurance model act or long-term care insurance model regulation adopted by the national association of insurance commissioners require amending of the uniform standards established by the commission for long-term care insurance products;

(3) To receive and review in an expeditious manner products filed with the commission, and rate filings for disability income and long-term care insurance products, and give approval of those products and rate filings that satisfy the applicable uniform standard, where such approval shall have the force and effect of law and be binding on the compacting states to the extent and in the manner provided in the compact;

(4) To receive and review in an expeditious manner advertisement relating to long-term care insurance products for which uniform standards have been adopted by the commission, and give approval to all advertisement that satisfies the applicable uniform standard. For any product covered under this compact, other than long-term care insurance products, the commission shall have the authority to require an insurer to submit all or any part of its advertisement with respect to that product for review or approval prior to use, if the commission determines that the nature of the product is such that an advertisement of the product could have the capacity or tendency to mislead the public. The actions of the commission as provided in this section shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in the compact;

(5) To exercise its rule-making authority and designate products and advertisement that may be subject to a self-certification process without the need for prior approval by the commission;

(6) To adopt operating procedures, under section 7 of this act, which shall be binding in the compacting states to the extent and in the manner provided in the compact;

(7) To bring and prosecute legal proceedings or actions in its name as the commission. However, the standing of any state insurance department to sue or be sued under applicable law shall not be affected;

(8) To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence;

(9) To establish and maintain offices;

(10) To purchase and maintain insurance and bonds;

(11) To borrow, accept, or contract for services of personnel, including, but not limited to, employees of a compacting state;

(12) To hire employees, professionals, or specialists, and elect or appoint officers, and to fix their compensation, define their duties, and give them appropriate authority to carry out the purposes of the compact, and determine their qualifications; and to establish the commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;

(13) To accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same. However, the commission shall strive to avoid any appearance of impropriety;

(14) To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed. However, the commission shall strive to avoid any appearance of impropriety;

(15) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

(16) To remit filing fees to compacting states as may be set forth in the bylaws, rules, or operating procedures;

(17) To enforce compliance by compacting states with rules, uniform standards, operating procedures, and bylaws;

(18) To provide for dispute resolution among compacting states;

(19) To advise compacting states on issues relating to insurers domiciled or doing business in noncompacting jurisdictions, consistent with the purposes of the compact;

(20) To provide advice and training to those personnel in state insurance departments responsible for product review, and to be a resource for state insurance departments;

(21) To establish a budget and make expenditures;

(22) To borrow money;

(23) To appoint committees, including advisory committees comprising members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in the bylaws;

(24) To provide and receive information from, and to cooperate with, law enforcement agencies;

(25) To adopt and use a corporate seal; and

(26) To perform such other functions as may be necessary or appropriate to achieve the purposes of the compact consistent with the state regulation of the business of insurance.

NEW SECTION. Sec. 5. (1)(a) Each compacting state shall have and be limited to one member. Each member shall be qualified to serve in that capacity pursuant to applicable law of the compacting state. Any member may be removed or suspended from office as provided by the law of the state from which he or she shall be appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compacting state wherein the vacancy exists. This section does not affect the manner in which a compacting state determines the election or appointment and qualification of its own commissioner.

(b) Each member shall be entitled to one vote and shall have an opportunity to participate in the governance of the commission in accordance with the bylaws. Notwithstanding any provision in this chapter to the contrary, no action of the commission with respect to the adoption of a uniform standard shall be effective unless two-thirds of the members vote in favor thereof.

(c) The commission shall, by a majority of the members, prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes, and exercise the powers, of the compact, including, but not limited to:

(i) Establishing the fiscal year of the commission;

(ii) Providing reasonable procedures for appointing and electing members, as well as holding meetings, of the management committee;

(iii) Providing reasonable standards and procedures for: (A) The establishment and meetings of other committees; and (B) governing any general or specific delegation of any authority or function of the commission;

(iv) Providing reasonable procedures for calling and conducting meetings of the commission that consists of a majority of commission members, ensuring reasonable advance notice of each such meeting and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting. As soon as practicable, the commission must make public: (A) A copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed; and (B) votes taken during such meeting;

(v) Establishing the titles, duties, and authority and reasonable procedures for the election of the officers of the commission;

(vi) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the commission;

(vii) Adopting a code of ethics to address permissible and prohibited activities of commission members and employees; and

(viii) Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact and after the payment or reserving of all of its debts and obligations.

(d) The commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the compacting states.

(2)(a) A management committee comprising no more than fourteen members shall be established as follows:

(i) One member from each of the six compacting states with the largest premium volume for individual and group annuities, life, disability income, and long-term care insurance products, determined from the records of the national association of insurance commissioners for the prior year;

(ii) Four members from those compacting states with at least two percent of the market based on the premium volume described under (a)(i) of this subsection, other than the six compacting states with the largest premium volume, selected on a rotating basis as provided in the bylaws; and

(iii) Four members from those compacting states with less than two percent of the market, based on the premium volume described under (a)(i) of this subsection, with one selected from each of the four zone regions of the national association of insurance commissioners as provided in the bylaws.

(b) The management committee shall have such authority and duties as may be set forth in the bylaws, including but not limited to:

(i) Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission;

(ii) Establishing and overseeing an organizational structure within, and appropriate procedures for, the commission to provide for the creation of uniform standards and other rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a compacting state to opt out of a uniform standard. However, a uniform standard shall not be submitted to the compacting states for adoption unless approved by two-thirds of the members of the management committee;

(iii) Overseeing the offices of the commission; and

(iv) Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the commission.

(c) The commission shall elect annually officers from the management committee, with each having such authority and duties, as may be specified in the bylaws.

(d) The management committee may, subject to the approval of the commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the commission may deem appropriate. The executive director shall serve as secretary to the commission, but shall not be a member of the commission. The executive director shall hire and supervise such other staff as may be authorized by the commission.

(3)(a) A legislative committee comprising state legislators or their designees shall be established to monitor the operations of, and make recommendations to, the commission, including the management committee. However, the manner of selection and term of any legislative committee member shall be as set forth in the bylaws. Prior to the adoption by the commission of any uniform standard, revision to the bylaws, annual budget, or other significant matter as may be

provided in the bylaws, the management committee shall consult with and report to the legislative committee.

(b) The commission shall establish two advisory committees, one of which shall comprise consumer representatives independent of the insurance industry, and the other comprising insurance industry representatives.

(c) The commission may establish additional advisory committees as its bylaws may provide for the carrying out of its functions.

(4) The commission shall maintain its corporate books and records in accordance with the bylaws.

(5)(a) The members, officers, executive director, employees, and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities. However, this subsection (5)(a) does not protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of that person.

(b) The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities. However, this subsection (5)(b) does not prohibit that person from retaining his or her own counsel. Also, the actual or alleged act, error, or omission may not have resulted from that person's intentional or willful and wanton misconduct.

(c) The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities. However, the actual or alleged act, error, or omission may not have resulted from the intentional or willful and wanton misconduct of that person.

NEW SECTION. Sec. 6. (1) The commission shall meet and take such actions as are consistent with the provisions of the compact and the bylaws.

(2) Each member of the commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the commission. A member shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.

(3) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

NEW SECTION. Sec. 7. (1) The commission shall adopt reasonable rules, including uniform standards, and operating procedures in order to effectively and efficiently achieve the purposes of the compact. In the event the commission exercises its rule-making authority in a manner that is beyond the scope of the purposes of this chapter, then such an action by the commission shall be invalid and have no force and effect.

(2) Rules and operating procedures shall be made pursuant to a rule-making process that conforms to the model state administrative procedure act of 1981 as amended, as may be appropriate to the operations of the commission. Before the commission adopts a uniform standard, the commission shall give written notice to the relevant state legislative committees in each compacting state responsible for insurance issues of its intention to adopt the uniform standard. The commission in adopting a uniform standard shall consider fully all submitted materials and issue a concise explanation of its decision.

(3) A uniform standard shall become effective ninety days after its adoption by the commission or such later date as the commission may determine. However, a compacting state may opt out of a uniform standard as provided in this section. "Opt out" means any action by a compacting state to decline to adopt or participate in an adopted uniform standard. All other rules and operating procedures, and amendments thereto, shall become effective as of the date specified in each rule, operating procedure, or amendment.

(4)(a) A compacting state may opt out of a uniform standard, either by legislation or regulation adopted by the insurance department under the compacting state's administrative procedure act. If a compacting state elects to opt out of a uniform standard by rule, it must: (i) Give written notice to the commission no later than ten business days after the uniform standard is adopted, or at the time the state becomes a compacting state; and (ii) find that the uniform standard does not provide reasonable protections to the citizens of the state, given the conditions in the state.

(b) The commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state which warrant a departure from the uniform standard and determining that the uniform standard would not reasonably protect the citizens of the state. The commissioner must consider and balance the following factors and find that the conditions in the state and needs of the citizens of the state outweigh: (i) The intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the products subject to this chapter; and (ii) the presumption that a uniform standard adopted by the commission provides reasonable protections to consumers of the relevant product.

(c) A compacting state may, at the time of its enactment of the compact, prospectively opt out of all uniform standards involving long-term care insurance products by expressly providing for such opt out in the enacted compact, and such an opt out shall not be treated as a material variance in the offer or acceptance of any state to participate in the compact. Such an opt out shall be effective at the time of enactment of the compact by the compacting state and shall apply to all existing uniform standards involving long-term care insurance products and those subsequently promulgated.

(5) If a compacting state elects to opt out of a uniform standard, the uniform standard shall remain applicable in the compacting state electing to opt out until such time the opt out legislation is enacted into law or the regulation opting out becomes effective. Once the opt out of a uniform standard by a compacting state becomes effective as provided under the laws of that state, the uniform standard shall have no further force and effect in that state unless and until the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective under the laws of the state. If a compacting state opts out of a uniform standard after the uniform standard has been made effective in that state, the opt out shall have the same prospective effect as provided under section 14 of this act for withdrawals.

(6) If a compacting state has formally initiated the process of opting out of a uniform standard by regulation, and while the regulatory opt out is pending, the compacting state may petition the commission, at least fifteen days before the effective date of the uniform standard, to stay the effectiveness of the uniform standard in that state. The commission may grant a stay if it determines the regulatory opt out is being pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or extended by the commission, the stay or extension thereof may postpone the effective date by up to ninety days, unless affirmatively extended by the commission. However, a stay may not be permitted to remain in effect for more than one year unless the compacting state can show extraordinary circumstances which warrant a continuance of the stay, including, but not limited to, the existence of a legal challenge which prevents the compacting state from opting out. A stay may be terminated by the commission upon notice that the rule-making process has been terminated.

(7) Not later than thirty days after a rule or operating procedure is adopted, any person may file a petition for judicial review of the rule or operating procedure. However, the filing of such a petition shall not stay or otherwise prevent the rule or operating procedure from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the commission consistent with applicable law and shall not find the rule or operating procedure to be unlawful if the rule or operating procedure represents a reasonable exercise of the commission's authority.

NEW SECTION. Sec. 8. (1) The commission shall adopt rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals and insurers' trade secrets. The commission may adopt additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(2) Except as to privileged records, data, and information, the laws of any compacting state pertaining to confidentiality or nondisclosure shall not relieve any compacting state commissioner of the duty to disclose any relevant records, data or information to the commission. However, disclosure to the commission does not waive or otherwise affect any confidentiality requirement. Also, except as otherwise expressly provided in this chapter, the commission shall not be

subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data, and information in its possession. Confidential information of the commission shall remain confidential after such information is provided to any commissioner.

(3) The commission shall monitor compacting states for compliance with duly adopted bylaws, rules, including uniform standards, and operating procedures. The commission shall notify any noncomplying compacting state in writing of its noncompliance with commission bylaws, rules or operating procedures. If a noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state shall be deemed to be in default as set forth in section 14 of this act.

(4) The commissioner of any state in which an insurer is authorized to do business, or is conducting the business of insurance, shall continue to exercise his or her authority to oversee the market regulation of the activities of the insurer in accordance with the provisions of the state's law. The commissioner's enforcement of compliance with the compact is governed by the following provisions:

(a) With respect to the commissioner's market regulation of a product or advertisement that is approved or certified to the commission, the content of the product or advertisement shall not constitute a violation of the provisions, standards, or requirements of the compact except upon a final order of the commission, issued at the request of a commissioner after prior notice to the insurer and an opportunity for hearing before the commission.

(b) Before a commissioner may bring an action for violation of any provision, standard, or requirement of the compact relating to the content of an advertisement not approved or certified to the commission, the commission, or an authorized commission officer or employee, must authorize the action. However, authorization under this subsection (4)(b) does not require notice to the insurer, opportunity for hearing, or disclosure of requests for authorization or records of the commission's action on such requests.

NEW SECTION. Sec. 9. The commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and which may arise between two or more compacting states, or between compacting states and noncompacting states, and the commission shall adopt an operating procedure providing for resolution of such disputes.

NEW SECTION. Sec. 10. (1) Insurers and third-party filers seeking to have a product approved by the commission shall file the product with, and pay applicable filing fees to, the commission. This chapter does not restrict or otherwise prevent an insurer from filing its product with the insurance department in any state wherein the insurer is licensed to conduct the business of insurance, and such filing shall be subject to the laws of the states where filed.

(2) The commission shall establish appropriate filing and review processes and procedures pursuant to commission rules and operating procedures. The commission shall adopt rules to establish conditions and procedures under which the commission will provide public access to product filing information. In establishing such rules, the commission shall consider the interests of the public in having access to such information, as well as protection of personal medical

and financial information and trade secrets, that may be contained in a product filing or supporting information.

(3) Any product approved by the commission may be sold or otherwise issued in those compacting states for which the insurer is legally authorized to do business.

NEW SECTION. Sec. 11. (1) Not later than thirty days after the commission has given notice of a disapproved product or advertisement filed with the commission, the insurer or third-party filer whose filing was disapproved may appeal the determination to a review panel appointed by the commission. The commission shall adopt rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the commission, in disapproving a product or advertisement filed with the commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with section 3(4) of this act.

(2) The commission shall have authority to monitor, review, and reconsider products and advertisement subsequent to their filing or approval upon a finding that the product does not meet the relevant uniform standard. Where appropriate, the commission may withdraw or modify its approval after proper notice and hearing, subject to the appeal process in subsection (1) of this section.

NEW SECTION. Sec. 12. (1) The commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the commission may accept contributions and other forms of funding from the national association of insurance commissioners, compacting states, and other sources. Contributions and other forms of funding from other sources shall be of such a nature that the independence of the commission concerning the performance of its duties shall not be compromised.

(2) The commission shall collect a filing fee from each insurer and third-party filer filing a product with the commission to cover the cost of the operations and activities of the commission and its staff in a total amount sufficient to cover the commission's annual budget.

(3) The commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in section 7 of this act.

(4) The commission shall be exempt from all taxation in and by the compacting states.

(5) The commission shall not pledge the credit of any compacting state, except by and with the appropriate legal authority of that compacting state.

(6) The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the commission shall be subject to the accounting procedures established under its bylaws. The financial accounts and reports including the system of internal controls and procedures of the commission shall be audited annually by an independent certified public accountant. Upon the determination of the commission, but no less frequently than every three years, the review of the independent auditor shall include a management and performance audit of the commission. The commission shall make an annual report to the governor and legislature of the compacting states,

which shall include a report of the independent audit. The commission's internal accounts shall not be confidential and such materials may be shared with the commissioner of any compacting state upon request. However, any work papers related to any internal or independent audit and any information regarding the privacy of individuals and insurers' proprietary information, including trade secrets, shall remain confidential.

(7) A compacting state does not have any claim to or ownership of any property held by or vested in the commission or to any commission funds held under this chapter.

NEW SECTION. Sec. 13. (1) Any state is eligible to become a compacting state.

(2) The compact shall become effective and binding upon legislative enactment of the compact into law by two compacting states. However, the commission shall become effective for purposes of adopting uniform standards for, reviewing, and giving approval or disapproval of products filed with the commission that satisfy applicable uniform standards only after twenty-six states are compacting states or, alternatively, by states representing greater than forty percent of the premium volume for life insurance, annuity, disability income, and long-term care insurance products, based on records of the national association of insurance commissioners for the prior year. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state.

(3) Amendments to the compact may be proposed by the commission for enactment by the compacting states. An amendment does not become effective and binding upon the commission and the compacting states unless and until all compacting states enact the amendment into law.

NEW SECTION. Sec. 14. (1)(a) Once effective, the compact shall continue in force and remain binding upon each and every compacting state. However, a compacting state may withdraw from the compact by enacting a statute specifically repealing the statute which enacted the compact into law.

(b) The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any product filings approved or self-certified, or any advertisement of such products, on the date the repealing statute becomes effective, except by mutual agreement of the commission and the withdrawing state unless the approval is rescinded by the withdrawing state as provided in (e) of this subsection.

(c) The commissioner of the withdrawing state shall immediately notify the management committee in writing upon the introduction of legislation repealing the compact in the withdrawing state.

(d) The commission shall notify the other compacting states of the introduction of such legislation within ten days after its receipt of notice thereof.

(e) The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state. The commission's approval of products and advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and

effect in the withdrawing state, unless formally rescinded by the withdrawing state in the same manner as provided by the laws of the withdrawing state for the prospective disapproval of products or advertisement previously approved under state law.

(f) Reinstatement following withdrawal of any compacting state shall occur upon the effective date of the withdrawing state reenacting the compact.

(2)(a) If the commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under the compact, the bylaws, or adopted rules or operating procedures, then, after notice and hearing as set forth in the bylaws, all rights, privileges, and benefits conferred by the compact on the defaulting state shall be suspended from the effective date of default as fixed by the commission. The grounds for default include, but are not limited to, failure of a compacting state to perform its obligations or responsibilities, and any other grounds designated in commission rules. The commission shall immediately notify the defaulting state in writing of the defaulting state's suspension pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact and all rights, privileges, and benefits conferred by the compact shall be terminated from the effective date of termination.

(b) Product approvals by the commission or product self-certifications, or any advertisement in connection with such product, that are in force on the effective date of termination shall remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily under subsection (1) of this section.

(c) Reinstatement following termination of any compacting state requires a reenactment of the compact.

(3)(a) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.

(b) Upon the dissolution of the compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

NEW SECTION. Sec. 15. (1)(a) The compact does not prevent the enforcement of any other law of a compacting state, except as provided in (b) of this subsection.

(b) For any product approved or certified to the commission, the rules, uniform standards, and any other requirements of the commission shall constitute the exclusive provisions applicable to the content, approval, and certification of such products. For advertisement that is subject to the commission's authority, any rule, uniform standard, or other requirement of the commission which governs the content of the advertisement shall constitute the exclusive provision that a commissioner may apply to the content of the advertisement. However, no action taken by the commission shall abrogate or restrict: (i) The access of any person to state courts; (ii) remedies available under state law related to breach of contract, tort, or other laws not specifically directed to the content of the product; (iii) state law relating to the construction

of insurance contracts; or (iv) the authority of the attorney general of the state, including but not limited to maintaining any actions or proceedings, as authorized by law.

(c) All insurance products filed with individual states shall be subject to the laws of those states.

(2)(a) All lawful actions of the commission, including all rules and operating procedures adopted by the commission, are binding upon the compacting states.

(b) All agreements between the commission and the compacting states are binding in accordance with their terms.

(c) Upon the request of a party to a conflict over the meaning or interpretation of commission actions, and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding the meaning or interpretation in dispute.

(d) In the event any provision of the compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the commission shall be ineffective as to that compacting state, and those obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which those obligations, duties, powers, or jurisdiction are delegated by law in effect at the time the compact becomes effective.

NEW SECTION. Sec. 16. 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. 17. This chapter shall be liberally construed.

NEW SECTION. Sec. 18. Sections 1 through 17 of this act constitute a new chapter in Title 48 RCW.

Passed by the House March 4, 2005.

Passed by the Senate April 6, 2005.

Approved by the Governor April 20, 2005.

Filed in Office of Secretary of State April 20, 2005.

CHAPTER 93

[Engrossed Substitute House Bill 1079]

FOSTER YOUTH—POSTSECONDARY EDUCATION

AN ACT Relating to postsecondary education and training support for former foster youth; amending RCW 74.13.570, 28B.92.060, and 28B.12.060; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) The legislature finds that:

(a) The majority of foster youth fail to thrive in our educational system and, relative to nonfoster youth, disproportionately few enroll in college or other postsecondary training programs. As a result, former foster youth generally have poor employment and life satisfaction outcomes; and

(b) Low expectations, lack of information, fragmented support services, and financial hardship are the most frequently cited reasons for failure of foster

youth to pursue postsecondary education or training. Initiatives have been undertaken at both the state and community levels in Washington to improve outcomes for foster youth in transition to independence; however, these initiatives are often not coordinated to complement one another.

(2) The legislature intends to encourage and support foster youth to pursue postsecondary education or training opportunities. A coordination committee that provides statewide planning and oversight of related efforts will improve the effectiveness of both current and future initiatives to improve postsecondary educational outcomes for foster youth. In addition, the state can provide financial support to former foster youth pursuing higher education or training by setting aside portions of the state need grant and the state work study programs specifically for foster youth.

Sec. 2. RCW 74.13.570 and 2003 c 112 s 4 are each amended to read as follows:

(1) The department shall establish an oversight committee composed of staff from the children's administration of the department, the office of the superintendent of public instruction, the higher education coordinating board, foster youth, former foster youth, foster parents, and advocacy agencies to develop strategies for maintaining foster children in the schools they were attending at the time they entered foster care and to promote opportunities for foster youth to participate in postsecondary education or training.

(2) The duties of the oversight committee shall include, but are not limited to:

- (a) Developing strategies for school-based recruitment of foster homes;
- (b) Monitoring the progress of current pilot projects that assist foster children to continue attending the schools they were attending at the time they entered foster care;
- (c) Overseeing the expansion of the number of pilot projects;
- (d) Promoting the use of best practices, throughout the state, demonstrated by the pilot projects and other programs relating to maintaining foster children in the schools they were attending at the time they entered foster care; ~~((and))~~
- (e) Informing the legislature of the status of efforts to maintain foster children in the schools they were attending at the time they entered foster care;
- (f) Assessing the scope and nature of statewide need among current and former foster youth for assistance to pursue and participate in postsecondary education or training opportunities;
- (g) Identifying available sources of funding available in the state for services to former foster youth to pursue and participate in postsecondary education or training opportunities;
- (h) Reviewing the effectiveness of activities in the state to support former foster youth to pursue and participate in postsecondary education or training opportunities;
- (i) Identifying new activities, or existing activities that should be modified or expanded, to best meet statewide needs; and
- (j) Reviewing on an ongoing basis the progress toward improving educational and vocational outcomes for foster youth.

Sec. 3. RCW 28B.92.060 and 2004 c 275 s 37 are each amended to read as follows:

In awarding need grants, the board shall proceed substantially as follows: PROVIDED, That nothing contained herein shall be construed to prevent the board, in the exercise of its sound discretion, from following another procedure when the best interest of the program so dictates:

(1) The board shall annually select the financial aid award recipients from among Washington residents applying for student financial aid who have been ranked according to:

(a) Financial need as determined by the amount of the family contribution; and

(b) Other considerations ((brought to the board's attention)), such as whether the student is a former foster youth.

(2) The financial need of the highest ranked students shall be met by grants depending upon the evaluation of financial need until the total allocation has been disbursed. Funds from grants which are declined, forfeited or otherwise unused shall be reawarded until ~~((dispersed))~~ disbursed, except that eligible former foster youth shall be assured receipt of a grant.

(3) A student shall be eligible to receive a state need grant for up to five years, or the credit or clock hour equivalent of five years, or up to one hundred twenty-five percent of the published length of time of the student's program. A student may not start a new associate degree program as a state need grant recipient until at least five years have elapsed since earning an associate degree as a need grant recipient, except that a student may earn two associate degrees concurrently. Qualifications for renewal will include maintaining satisfactory academic progress toward completion of an eligible program as determined by the board. Should the recipient terminate his or her enrollment for any reason during the academic year, the unused portion of the grant shall be returned to the state educational grant fund by the institution according to the institution's own policy for issuing refunds, except as provided in RCW 28B.92.070.

(4) In computing financial need, the board shall determine a maximum student expense budget allowance, not to exceed an amount equal to the total maximum student expense budget at the public institutions plus the current average state appropriation per student for operating expense in the public institutions.

(5) As used in this section, "former foster youth" means a person who is at least eighteen years of age, but not more than twenty-four years of age, who was a dependent of the department of social and health services at the time he or she attained the age of eighteen.

Sec. 4. RCW 28B.12.060 and 2002 c 354 s 224 are each amended to read as follows:

The higher education coordinating board shall adopt rules as may be necessary or appropriate for effecting the provisions of this chapter, and not in conflict with this chapter, in accordance with the provisions of chapter 34.05 RCW, the state higher education administrative procedure act. Such rules shall include provisions designed to make employment under the work-study program reasonably available, to the extent of available funds, to all eligible students in eligible post-secondary institutions in need thereof. The rules shall include:

(1) Providing work under the state work-study program that will not result in the displacement of employed workers or impair existing contracts for services;

(2) Furnishing work only to a student who:

(a) Is capable, in the opinion of the eligible institution, of maintaining good standing in such course of study while employed under the program covered by the agreement; and

(b) Has been accepted for enrollment as at least a half-time student at the eligible institution or, in the case of a student already enrolled in and attending the eligible institution, is in good standing and in at least half-time attendance there either as an undergraduate, graduate or professional student; and

(c) Is not pursuing a degree in theology;

(3) Placing priority on providing:

(a) Work opportunities for students who are residents of the state of Washington as defined in RCW 28B.15.012 and 28B.15.013, particularly former foster youth as defined in RCW 28B.92.060, except resident students defined in RCW 28B.15.012(2)((~~f~~)) (g);

(b) Job placements in fields related to each student's academic or vocational pursuits, with an emphasis on off-campus job placements whenever appropriate; and

(c) Off-campus community service placements;

(4) Provisions to assure that in the state institutions of higher education, utilization of this work-study program:

(a) Shall only supplement and not supplant classified positions under jurisdiction of chapter 41.06 RCW;

(b) That all positions established which are comparable shall be identified to a job classification under the director of personnel's classification plan and shall receive equal compensation;

(c) Shall not take place in any manner that would replace classified positions reduced due to lack of funds or work; and

(d) That work study positions shall only be established at entry level positions of the classified service unless the overall scope and responsibilities of the position indicate a higher level; and

(5) Provisions to encourage job placements in occupations that meet Washington's economic development goals, especially those in international trade and international relations. The board shall permit appropriate job placements in other states and other countries.

Passed by the House March 10, 2005.

Passed by the Senate April 6, 2005.

Approved by the Governor April 20, 2005.

Filed in Office of Secretary of State April 20, 2005.

CHAPTER 94

[House Bill 1092]

RURAL WASHINGTON LOAN FUND

AN ACT Relating to the rural Washington loan fund; amending RCW 43.84.092; reenacting and amending RCW 43.84.092; providing effective dates; providing an expiration date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 43.84.092 and 2003 c 361 s 602, 2003 c 324 s 1, 2003 c 150 s 2, and 2003 c 48 s 2 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 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 common school construction fund, the county criminal justice assistance account, the county sales and use tax equalization account, the data processing building construction account, the deferred compensation administrative account, the deferred compensation principal account, the department of retirement systems expense 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 election account, the emergency reserve fund, The Evergreen State College capital projects account, the federal forest revolving account, the health services account, the public health services account, the health system capacity account, the personal health services account, the state higher education construction account, the higher education construction account, the highway infrastructure account, 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 medical aid account, the mobile home park relocation fund, 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 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 facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puyallup tribal settlement account, the regional transportation investment district account, the resource management cost account, the rural Washington loan fund, the site closure 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 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 infrastructure account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer fire fighters' and reserve officers' relief and pension principal fund, the volunteer fire fighters' and reserve officers' administrative fund, the Washington fruit express account, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan 1 retirement account, the Washington law enforcement officers' and fire fighters' system 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. All earnings to be distributed under this subsection (4)(a) shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(b) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the county arterial preservation account, the department of licensing services account, the essential rail assistance account, the ferry bond retirement fund, the grade crossing protective fund, the high capacity transportation account, the highway bond retirement fund, the highway safety account, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the safety and education account, the special category C account, the state patrol highway 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, and the urban arterial trust account.

(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. 2. RCW 43.84.092 and 2004 c 242 s 60 are each 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 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 common school construction fund, the county criminal justice assistance account, the county sales and use tax equalization account, the data processing building construction account, the deferred compensation administrative account, the deferred compensation principal account, the department of retirement systems expense 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 election account, the emergency reserve fund, The Evergreen State College capital projects account, the federal forest revolving account, the health services account, the public health services account, the health system capacity account, the personal health

services account, the state higher education construction account, the higher education construction account, the highway infrastructure account, 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 medical aid account, the mobile home park relocation fund, 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 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 facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puyallup tribal settlement account, the regional transportation investment district account, the resource management cost account, the rural Washington loan fund, the site closure 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 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 infrastructure account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer fire fighters' and reserve officers' relief and pension principal fund, the volunteer fire fighters' and reserve officers' administrative fund, the Washington fruit express account, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan 1 retirement account, the Washington law enforcement officers' and fire fighters' 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. All earnings to be distributed under this subsection (4)(a) shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(b) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the county arterial preservation account, the department of licensing services account, the essential rail assistance account, the ferry bond retirement fund, the grade crossing protective fund, the high capacity transportation account, the highway bond retirement fund, the highway safety

account, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the safety and education account, the special category C account, the state patrol highway 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, and the urban arterial trust account.

(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.

NEW SECTION. Sec. 3. (1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005.

(2) Section 2 of this act takes effect July 1, 2006.

NEW SECTION. Sec. 4. Section 1 of this act expires July 1, 2006.

Passed by the House February 28, 2005.

Passed by the Senate April 7, 2005.

Approved by the Governor April 20, 2005.

Filed in Office of Secretary of State April 20, 2005.

CHAPTER 95

[House Bill 1112]

SUPERIOR COURT JUDGES

AN ACT Relating to superior court judges; amending RCW 2.08.063; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 2.08.063 and 1998 c 270 s 2 are each amended to read as follows:

There shall be in the county of Lincoln one judge of the superior court; in the county of Skagit, (~~three~~) **four** judges of the superior court; in the county of Walla Walla, two judges of the superior court; in the county of Whitman, one judge of the superior court; in the county of Yakima, eight judges of the superior court; in the county of Adams, one judge of the superior court; in the county of Whatcom, three judges of the superior court.

NEW SECTION. Sec. 2. The additional judicial position created by section 1 of this act in Skagit county shall be effective only if the county through its legislative authority documents its approval by January 1, 2007, of the additional position and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of the additional judicial position as provided by statute. The additional expenses include, but are not limited to, expenses incurred for court facilities.

Passed by the House March 3, 2005.

Passed by the Senate April 8, 2005.

Approved by the Governor April 20, 2005.

Filed in Office of Secretary of State April 20, 2005.

CHAPTER 96

[Substitute House Bill 1117]

FARM EQUIPMENT—HIGHWAYS

AN ACT Relating to the highway weight limit for farm implements; creating a new section; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) The legislature recognizes that the farming industry of Washington is a vital state economic interest. Over the past decade, the number of operating farms has decreased while the average farm size has increased. With stricter regulations regarding the management of livestock nutrients, advances in farming and farm equipment technology, and larger distances between farms, the demand to increase farm equipment carrying capacity has increased.

(2) The legislature directs the Washington state department of transportation to study the issue of enabling Washington state farms to operate in an economically feasible manner while following federal and state laws, including laws regarding livestock nutrient management, and protecting state roads and highways. The department shall work with the United States department of transportation, local transportation authorities, transportation agencies in other states, and legislative members and/or staff. By December 1, 2005, the department shall report its findings and recommendations to the transportation committees of the legislature.

(3) Until such study and any subsequent law changes are completed, farm implements transporting dairy nutrients in order to comply with the dairy nutrient management act may travel on city and county roads, under the following conditions:

(a) The total gross weight for the entire vehicle and load does not exceed 105,500 pounds.

(b) The vehicle uses an axle configuration and low pressure tires that maximize distribution of vehicle and load weight.

(c) A city or county road authority may place restrictions on the weight of the load carried by the farm implement, the manner in which the load is carried, the times of the year the farm implement may travel, and the route or routes traveled in order to avoid reasonably likely damage to city or county roads.

(4) Until the study referenced in subsection (2) of this section is completed and any subsequent law changes take effect, the legislature respectfully requests the United States department of transportation to allow the vehicles described in subsection (3) of this section to travel on Washington state highways, under rules or policies adopted by the Washington state department of transportation that are designed to allow necessary movement of farm implements to comply with the dairy nutrient management act while mitigating risk of damage to state highways.

****NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.***

***Sec. 2 was vetoed. See message at end of chapter.**

Passed by the House March 10, 2005.

Passed by the Senate April 6, 2005.

Approved by the Governor April 20, 2005, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 20, 2005.

Note: Governor's explanation of partial veto is as follows:

"I am returning, without my approval as to Section 2, Substitute House Bill 1117 entitled:

"AN ACT Relating to the highway weight limit for farm implements; creating a new section; declaring an emergency."

This legislation requires the Washington state Department of Transportation to study the issue of enabling Washington state farms to operate in an economically feasible manner while following federal and state laws and protecting state roads and highways.

The bill also permits overweight farm implements transporting dairy nutrients, in order to comply with the Dairy Nutrient Management Act, to travel over city and county roads. Cities and counties may enact restrictions on the movement of these farm implements.

Farming and the maintenance of our streets and roads are both vital economic interests in our state. I recognize that our farmers are faced with many challenges as they try to operate efficiently and profitably, while complying with environmental and transportation regulations. The economic impact of stricter transportation regulations on our farmers is an issue that needs to be resolved. I am vetoing, therefore, only the emergency clause in the bill (Section 2) to give our local jurisdictions time to take whatever actions they deem necessary to best protect their streets and roads. I view this legislation as a temporary solution. I fully expect the Department's study and subsequent recommendations to result in legislation next session that will resolve this issue for both our farmers and local jurisdictions.

We cannot afford to lose our farms; but we also cannot afford to damage our roads and streets in this time of very limited revenue.

For these reasons, I have signed Section 1 and vetoed Section 2 of Substitute House Bill 1117."

CHAPTER 97

[House Bill 1125]

TRUST AND ESTATE MANAGEMENT

AN ACT Relating to trust and estate management; amending RCW 11.02.005, 11.12.110, 11.28.170, 11.40.020, 11.40.030, 11.40.051, 11.40.070, 11.42.020, 11.42.030, 11.42.070, 11.88.080, 11.94.010, 11.98.039, 21.35.005, and 22.28.030; and repealing RCW 11.04.270.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 11.02.005 and 2001 c 320 s 1 are each amended to read as follows:

When used in this title, unless otherwise required from the context:

(1) "Personal representative" includes executor, administrator, guardian, special administrator, and guardian or limited guardian and special representative.

(2) "Net estate" refers to the real and personal property of a decedent exclusive of homestead rights, exempt property, the family allowance and enforceable claims against, and debts of, the deceased or the estate.

(3) "Representation" refers to a method of determining distribution in which the takers are in unequal degrees of kinship with respect to the intestate, and is accomplished as follows: After first determining who, of those entitled to share in the estate, are in the nearest degree of kinship, the estate is divided into equal shares, the number of shares being the sum of the number of persons who survive the intestate who are in the nearest degree of kinship and the number of persons in the same degree of kinship who died before the intestate but who left issue surviving the intestate; each share of a deceased person in the nearest degree shall be divided among those of the deceased person's issue who survive the intestate and have no ancestor then living who is in the line of relationship between them and the intestate, those more remote in degree taking together the share which their ancestor would have taken had he or she survived the intestate. Posthumous children are considered as living at the death of their parent.

(4) "Issue" (~~includes~~) means all the (~~lawful~~) lineal descendants of (~~the ancestor and all lawfully adopted children~~) an individual. An adopted individual is a lineal descendant of each of his or her adoptive parents and of all individuals with regard to which each adoptive parent is a lineal descendant.

(5) "Degree of kinship" means the degree of kinship as computed according to the rules of the civil law; that is, by counting upward from the intestate to the nearest common ancestor and then downward to the relative, the degree of kinship being the sum of these two counts.

(6) "Heirs" denotes those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate.

(7) "Real estate" includes, except as otherwise specifically provided herein, all lands, tenements, and hereditaments, and all rights thereto, and all interest therein possessed and claimed in fee simple, or for the life of a third person.

(8) "Will" means an instrument validly executed as required by RCW 11.12.020.

(9) "Codicil" means a will that modifies or partially revokes an existing earlier will. A codicil need not refer to or be attached to the earlier will.

(10) "Guardian" or "limited guardian" means a personal representative of the person or estate of an incompetent or disabled person as defined in RCW 11.88.010 and the term may be used in lieu of "personal representative" wherever required by context.

(11) "Administrator" means a personal representative of the estate of a decedent and the term may be used in lieu of "personal representative" wherever required by context.

(12) "Executor" means a personal representative of the estate of a decedent appointed by will and the term may be used in lieu of "personal representative" wherever required by context.

(13) "Special administrator" means a personal representative of the estate of a decedent appointed for limited purposes and the term may be used in lieu of "personal representative" wherever required by context.

(14) "Trustee" means an original, added, or successor trustee and includes the state, or any agency thereof, when it is acting as the trustee of a trust to which chapter 11.98 RCW applies.

(15) "Nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under a written

instrument or arrangement other than the person's will. "Nonprobate asset" includes, but is not limited to, a right or interest passing under a joint tenancy with right of survivorship, joint bank account with right of survivorship, payable on death or trust bank account, transfer on death security or security account, deed or conveyance if possession has been postponed until the death of the person, trust of which the person is grantor and that becomes effective or irrevocable only upon the person's death, community property agreement, individual retirement account or bond, or note or other contract the payment or performance of which is affected by the death of the person. "Nonprobate asset" does not include: A payable-on-death provision of a life insurance policy, annuity, or other similar contract, or of an employee benefit plan; a right or interest passing by descent and distribution under chapter 11.04 RCW; a right or interest if, before death, the person has irrevocably transferred the right or interest, the person has waived the power to transfer it or, in the case of contractual arrangement, the person has waived the unilateral right to rescind or modify the arrangement; or a right or interest held by the person solely in a fiduciary capacity. For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, RCW 11.07.010(5) applies. For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, see RCW 11.07.010(5). For the definition of "nonprobate asset" relating to testamentary disposition of nonprobate assets, see RCW 11.11.010(7).

(16) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended or renumbered as of January 1, 2001.

(17) References to "section 2033A" of the Internal Revenue Code in wills, trust agreements, powers of appointment, beneficiary designations, and other instruments governed by or subject to this title shall be deemed to refer to the comparable or corresponding provisions of section 2057 of the Internal Revenue Code, as added by section 6006(b) of the Internal Revenue Service Restructuring Act of 1998 (H.R. 2676, P.L. 105-206); and references to the section 2033A "exclusion" shall be deemed to mean the section 2057 deduction.

Words that import the singular number may also be applied to the plural of persons and things.

Words importing the masculine gender only may be extended to females also.

Sec. 2. RCW 11.12.110 and 1994 c 221 s 14 are each amended to read as follows:

Unless otherwise provided, when any property shall be given under a will, or under a trust of which the decedent is a grantor and which by its terms becomes irrevocable upon or before the grantor's death, to any issue of a grandparent of the decedent and that issue dies before the decedent, or dies before that issue's interest is no longer subject to a contingency, leaving descendants who survive the decedent, those descendants shall take that property as the predeceased issue would have done if the predeceased issue had survived the decedent. If those descendants are all in the same degree of kinship to the predeceased issue they shall take equally or, if of unequal degree, then those of more remote degree shall take by representation with respect to the predeceased issue.

Sec. 3. RCW 11.28.170 and 1965 c 145 s 11.28.170 are each amended to read as follows:

Before letters testamentary or of administration are issued, each personal representative or an officer of a bank or trust company qualified to act as a personal representative, must take and subscribe an oath, before some person authorized to administer oaths, that the duties of the trust as personal representative will be performed according to law, which oath must be filed in the cause (~~and recorded~~).

Sec. 4. RCW 11.40.020 and 1999 c 42 s 601 are each amended to read as follows:

(1) Subject to subsection (2) of this section, a personal representative may give notice to the creditors of the decedent, (~~as directed~~) in substantially the form set forth in RCW 11.40.030, announcing the personal representative's appointment and requiring that persons having claims against the decedent present their claims within the time specified in RCW 11.40.051 or be forever barred as to claims against the decedent's probate and nonprobate assets. If notice is given:

(a) The personal representative shall (~~first~~) file the (~~original of the~~) notice with the court;

(b) The personal representative shall (~~then~~) cause the notice to be published once each week for three successive weeks in a legal newspaper in the county in which the estate is being administered (~~, and if the decedent was a Washington resident, in the county of the decedent's residence at the time of death, if different~~);

(c) The personal representative may, at any time during the probate proceeding, give actual notice to creditors who become known to the personal representative by serving the notice on the creditor or mailing the notice to the creditor at the creditor's last known address, by regular first class mail, postage prepaid; and

(d) The personal representative shall also mail a copy of the notice, including the decedent's social security number, to the state of Washington department of social and health services office of financial recovery.

The personal representative shall file with the court proof by affidavit of the giving and publication of the notice.

(2) If the decedent was a resident of the state of Washington at the time of death and probate proceedings are commenced in a county other than the county of the decedent's residence, then instead of the requirements under subsection (1)(a) and (b) of this section, the personal representative shall cause the notice to creditors in substantially the form set forth in RCW 11.40.030 to be published once each week for three successive weeks in a legal newspaper in the county of the decedent's residence and shall file the notice ((to the creditors of the decedent as directed in RCW 11.40.030 must be filed)) with the superior court of the county ((of the decedent's residence)) in which the probate proceedings were commenced.

Sec. 5. RCW 11.40.030 and 1997 c 252 s 9 are each amended to read as follows:

Notice under RCW 11.40.020 must contain the following elements in substantially the following form:

CAPTION)	No.
OF CASE)	PROBATE NOTICE TO
)	CREDITORS
.....)	RCW 11.40.030

The personal representative named below has been appointed as personal representative of this estate. Any person having a claim against the decedent must, before the time the claim would be barred by any otherwise applicable statute of limitations, present the claim in the manner as provided in RCW 11.40.070 by serving on or mailing to the personal representative or the personal representative's attorney at the address stated below a copy of the claim and filing the original of the claim with the court in which the probate proceedings were commenced. The claim must be presented within the later of: (1) Thirty days after the personal representative served or mailed the notice to the creditor as provided under RCW 11.40.020(~~((3))~~) (1)(c); or (2) four months after the date of first publication of the notice. If the claim is not presented within this time frame, the claim is forever barred, except as otherwise provided in RCW 11.40.051 and 11.40.060. This bar is effective as to claims against both the decedent's probate and nonprobate assets.

Date of First
Publication:

Personal Representative:

Attorney for the Personal Representative:
Address for Mailing or Service:
Court of probate proceedings and cause number:

Sec. 6. RCW 11.40.051 and 1997 c 252 s 11 are each amended to read as follows:

(1) Whether or not notice is provided under RCW 11.40.020, a person having a claim against the decedent is forever barred from making a claim or commencing an action against the decedent, if the claim or action is not already barred by an otherwise applicable statute of limitations, unless the creditor presents the claim in the manner provided in RCW 11.40.070 within the following time limitations:

(a) If the personal representative provided notice under RCW 11.40.020 (~~((1) and (2))~~) and the creditor was given actual notice as provided in RCW 11.40.020(~~((3))~~) (1)(c), the creditor must present the claim within the later of: (i) Thirty days after the personal representative's service or mailing of notice to the creditor; and (ii) four months after the date of first publication of the notice;

(b) If the personal representative provided notice under RCW 11.40.020 (~~((1) and (2))~~) and the creditor was not given actual notice as provided in RCW 11.40.020(~~((3))~~) (1)(c):

(i) If the creditor was not reasonably ascertainable, as defined in RCW 11.40.040, the creditor must present the claim within four months after the date of first publication of notice;

(ii) If the creditor was reasonably ascertainable, as defined in RCW 11.40.040, the creditor must present the claim within twenty-four months after the decedent's date of death; and

(c) If notice was not provided under this chapter or chapter 11.42 RCW, the creditor must present the claim within twenty-four months after the decedent's date of death.

(2) An otherwise applicable statute of limitations applies without regard to the tolling provisions of RCW 4.16.190.

(3) This bar is effective as to claims against both the decedent's probate and nonprobate assets.

Sec. 7. RCW 11.40.070 and 1997 c 252 s 13 are each amended to read as follows:

(1) The claimant, the claimant's attorney, or the claimant's agent shall sign the claim and include in the claim the following information:

(a) The name and address of the claimant;

(b) The name, address, if different from that of the claimant, and nature of authority of an agent signing the claim on behalf of the claimant;

(c) A statement of the facts or circumstances constituting the basis of the claim;

(d) The amount of the claim; and

(e) If the claim is secured, unliquidated, contingent, or not yet due, the nature of the security, the nature of the uncertainty, or the date when it will become due.

Failure to describe correctly the information in (c), (d), or (e) of this subsection, if the failure is not substantially misleading, does not invalidate the claim.

(2) A claim does not need to be supported by affidavit.

(3) A claim must be presented within the time limits set forth in RCW 11.40.051 by: (a) Serving on or mailing to, by regular first class mail, the personal representative or the personal representative's attorney a copy of the signed claim; and (b) filing the original of the signed claim with the court in which probate proceedings were commenced. A claim is deemed presented upon the later of the date of postmark or service on the personal representative, or the personal representative's attorney, and filing with the court.

(4) Notwithstanding any other provision of this chapter, if a claimant makes a written demand for payment within the time limits set forth in RCW 11.40.051, the personal representative may waive formal defects and elect to treat the demand as a claim properly filed under this chapter if: (a) The claim was due; (b) the amount paid is the amount of indebtedness over and above all payments and offsets; (c) the estate is solvent; and (d) the payment is made in good faith. Nothing in this chapter limits application of the doctrines of waiver, estoppel, or detrimental claims or any other equitable principle.

Sec. 8. RCW 11.42.020 and 1997 c 252 s 25 are each amended to read as follows:

(1) ~~(The)~~ Subject to subsection (2) of this section, a notice agent may give nonprobate notice to the creditors of the decedent if:

(a) As of the date of the filing of the notice to creditors with the court, the notice agent has no knowledge of another person acting as notice agent or of the appointment of a personal representative in the decedent's estate in the state of Washington; and

(b) According to the records of the court as are available on the date of the filing of the notice to creditors, no cause number regarding the decedent has been issued to any other notice agent and no personal representative of the decedent's estate had been appointed.

(2) The notice agent must give notice to the creditors of the decedent, (~~as directed~~) in substantially the form set forth in RCW 11.42.030, announcing that the notice agent has elected to give nonprobate notice to creditors and requiring that persons having claims against the decedent present their claims within the time specified in RCW 11.42.050 or be forever barred as to claims against the decedent's probate and nonprobate assets.

(a) The notice agent shall (~~first~~) file the (~~original of the~~) notice with the court.

(b) The notice agent shall (~~then~~) cause the notice to be published once each week for three successive weeks in a legal newspaper in the notice county.

(c) The notice agent may at any time give actual notice to creditors who become known to the notice agent by serving the notice on the creditor or mailing the notice to the creditor at the creditor's last known address, by regular first class mail, postage prepaid.

(d) The notice agent shall also mail a copy of the notice, including the decedent's social security number, to the state of Washington department of social and health services' office of financial recovery.

(e) If the decedent was a resident of the state of Washington at the time of death and the notice agent's declaration and oath were filed in a county other than the county of the decedent's residence, then instead of the requirements in (a) and (b) of this subsection, the notice agent shall cause the notice to creditors in substantially the form set forth in RCW 11.42.030 to be published once each week for three successive weeks in a legal newspaper in the county of the decedent's residence and shall file the notice with the superior court of the county in which the notice agent's declaration and oath were filed.

The notice agent shall file with the court proof by affidavit of the giving and publication of the notice.

Sec. 9. RCW 11.42.030 and 1997 c 252 s 26 are each amended to read as follows:

Notice under RCW 11.42.020 must contain the following elements in substantially the following form:

)	
CAPTION)	No.
OF CASE)	NONPROBATE
)	NOTICE TO CREDITORS
)	RCW 11.42.030
.....)	

The notice agent named below has elected to give notice to creditors of the above-named decedent. As of the date of the filing of a copy of this notice with the court, the notice agent has no knowledge of any other person acting as notice agent or of the appointment of a personal representative of the decedent's estate in the state of Washington. According to the records of the court as are available on the date of the filing of this notice with the court, a cause number regarding

the decedent has not been issued to any other notice agent and a personal representative of the decedent's estate has not been appointed.

Any person having a claim against the decedent must, before the time the claim would be barred by any otherwise applicable statute of limitations, present the claim in the manner as provided in RCW 11.42.070 by serving on or mailing to the notice agent or the notice agent's attorney at the address stated below a copy of the claim and filing the original of the claim with the court in which the notice agent's declaration and oath were filed. The claim must be presented within the later of: (1) Thirty days after the notice agent served or mailed the notice to the creditor as provided under RCW 11.42.020(2)(c); or (2) four months after the date of first publication of the notice. If the claim is not presented within this time frame, the claim is forever barred, except as otherwise provided in RCW 11.42.050 and 11.42.060. This bar is effective as to claims against both the decedent's probate and nonprobate assets.

Date of First
Publication:

The notice agent declares under penalty of perjury under the laws of the state of Washington on _____, [year], at [city], [state] that the foregoing is true and correct.

.....
Signature of Notice Agent

Notice Agent:

Attorney for the Notice Agent:

Address for Mailing or Service:

Court of Notice Agent's oath and declaration and cause number:

Sec. 10. RCW 11.42.070 and 1997 c 252 s 30 are each amended to read as follows:

(1) The claimant, the claimant's attorney, or the claimant's agent shall sign the claim and include in the claim the following information:

(a) The name and address of the claimant;

(b) The name, address, if different from that of the claimant, and nature of authority of an agent signing the claim on behalf of the claimant;

(c) A statement of the facts or circumstances constituting the basis of the claim;

(d) The amount of the claim; and

(e) If the claim is secured, unliquidated, contingent, or not yet due, the nature of the security, the nature of the uncertainty, or the date when it will become due.

Failure to describe correctly the information in (c), (d), or (e) of this subsection, if the failure is not substantially misleading, does not invalidate the claim.

(2) A claim does not need to be supported by affidavit.

(3) A claim must be presented within the time limits set forth in RCW 11.42.050 by: (a) Serving on or mailing to, by regular first class mail, the notice agent or the notice agent's attorney a copy of the signed claim; and (b) filing the original of the signed claim with the court in which the notice agent's declaration

and oath were filed. A claim is deemed presented upon the later of the date of postmark or service on the notice agent, or the notice agent's attorney, and filing with the court.

(4) Notwithstanding any other provision of this chapter, if a claimant makes a written demand for payment within the time limits set forth in RCW 11.42.050, the notice agent may waive formal defects and elect to treat the demand as a claim properly filed under this chapter if: (a) The claim was due; (b) the amount paid was the amount of indebtedness over and above all payments and offsets; (c) the estate is solvent; and (d) the payment is made in good faith. Nothing in this chapter limits application of the doctrines of waiver, estoppel, or detrimental claims or any other equitable principle.

Sec. 11. RCW 11.88.080 and 1990 c 122 s 7 are each amended to read as follows:

When either parent is deceased, the surviving parent of any minor child (~~((may,))~~ or a sole parent of a minor child, may by last will (~~((in writing appoint))~~ or durable power of attorney nominate a guardian or guardians of the person, or of the estate or both, of a minor child, whether born at the time of (~~((making))~~ executing the (~~((will))~~ instrument or afterwards, to continue during the minority of such child or for any less time. This nomination shall be effective in the event of the death or incapacity of such parent. Every (~~((testamentary))~~ guardian of the estate of a child shall give bond in like manner and with like conditions as required by RCW 11.88.100 and 11.88.110, and he or she shall have the same powers and perform the same duties with regard to the person and estate of the minor as a guardian appointed under this chapter. The court shall confirm the parent's (~~((testamentary appointment))~~ nomination unless the court finds, based upon evidence presented at a hearing on the matter, that the individual (~~((appointed))~~ nominated in the surviving parent's will or durable power of attorney is not qualified to serve.

Sec. 12. RCW 11.94.010 and 2003 c 283 s 27 are each amended to read as follows:

(1) Whenever a principal designates another as his or her attorney in fact or agent, by a power of attorney in writing, and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's disability, the authority of the attorney in fact or agent is exercisable on behalf of the principal as provided notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or the principal's guardian or heirs, devisees, and personal representative as if the principal were alive, competent, and not disabled. A principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a

durable power of attorney except for good cause or disqualification. If a guardian thereafter is appointed for the principal, the attorney in fact or agent, during the continuance of the appointment, shall account to the guardian rather than the principal. The guardian has the same power the principal would have had if the principal were not disabled or incompetent, to revoke, suspend or terminate all or any part of the power of attorney or agency.

(2) Persons shall place reasonable reliance on any determination of disability or incompetence as provided in the instrument that specifies the time and the circumstances under which the power of attorney document becomes effective.

(3)(a) A principal may authorize his or her attorney-in-fact to provide informed consent for health care decisions on the principal's behalf. If a principal has appointed more than one agent with authority to make mental health treatment decisions in accordance with a directive under chapter 71.32 RCW, to the extent of any conflict, the most recently appointed agent shall be treated as the principal's agent for mental health treatment decisions unless provided otherwise in either appointment.

(b) Unless he or she is the spouse, or adult child or brother or sister of the principal, none of the following persons may act as the attorney-in-fact for the principal: Any of the principal's physicians, the physicians' employees, or the owners, administrators, or employees of the health care facility or long-term care facility as defined in RCW 43.190.020 where the principal resides or receives care. Except when the principal has consented in a mental health advance directive executed under chapter 71.32 RCW to inpatient admission or electroconvulsive therapy, this authorization is subject to the same limitations as those that apply to a guardian under RCW 11.92.043(5) (a) through (c).

(4) A parent or guardian, by a properly executed power of attorney, may authorize an attorney in fact to make health care decisions on behalf of one or more of his or her children, or children for whom he or she is the legal guardian, who are under the age of majority as defined in RCW 26.28.015, to be effective if the child has no other parent or legal representative readily available and authorized to give such consent.

(5) A principal may further nominate a guardian or guardians of the person, or of the estate or both, of a minor child, whether born at the time of making the durable power of attorney or afterwards, to continue during the disability of the principal, during the minority of the child or for any less time by including such a provision in his or her power of attorney.

(6) The authority of any guardian of the person of any minor child shall supersede the authority of a designated attorney in fact to make health care decisions for the minor only after such designated guardian has been appointed by the court.

(7) In the event a conflict between the provisions of a will nominating a testamentary guardian under the authority of RCW 11.88.080 and the nomination of a guardian under the authority of this statute, the most recent designation shall control.

Sec. 13. RCW 11.98.039 and 1999 c 42 s 618 are each amended to read as follows:

(1) Where a vacancy occurs in the office of the trustee and there is a successor trustee who is willing to serve as trustee and (a) is named in the

governing instrument as successor trustee or (b) has been selected to serve as successor trustee under the procedure established in the governing instrument for the selection of a successor trustee, the outgoing trustee, or any other interested party, shall give notice of such vacancy, whether arising because of the trustee's resignation or because of any other reason, and of the successor trustee's agreement to serve as trustee, to ~~((all adult income beneficiaries of the trust and to all known and identifiable adults for whom the income of the trust is being accumulated))~~ each adult distributee or permissible distributee of trust income or of trust principal or of both trust income and trust principal. If there are no such adults, no notice need be given. The successor trustee named in the governing instrument or selected pursuant to the procedure therefor established in the governing instrument shall be entitled to act as trustee except for good cause or disqualification. The successor trustee shall serve as of the effective date of the discharge of the predecessor trustee as provided in RCW 11.98.041.

(2) Where a vacancy exists or occurs in the office of the trustee and there is no successor trustee who is named in the governing instrument or who has been selected to serve as successor trustee under the procedure established in the governing instrument for the selection of a successor trustee, and who is willing to serve as trustee, ~~((the beneficiaries and the then acting trustee, if any, of a))~~ then all parties with an interest in the trust may agree to a nonjudicial change of the trustee under RCW 11.96A.220. ~~((The trustee, or any beneficiary if there is no then acting trustee, shall give written notice of the proposed change in trustee to every beneficiary or special representative, and to the trustor if alive. The notice shall: (a) State the name and mailing address of the trustee or the beneficiary giving the notice; (b) include a copy of the governing instrument; (c) state the name and mailing address of the successor trustee; and (d) include a copy of the proposed successor trustee's agreement to serve as trustee. The notice shall advise the recipient of the right to petition for a judicial appointment or change in trustee as provided in subsection (3) of this section. The notice shall include a form on which consent or objection to the proposed change in trustee may be indicated.))~~ The successor trustee shall serve as of the effective date of the discharge of the predecessor trustee as provided in RCW 11.98.041 or, in circumstances where there is no predecessor trustee, as of the effective date of the trustee's appointment.

(3) When there is a desire to name one or more co-trustees to serve with the existing trustee, then all parties with an interest in the trust may agree to the nonjudicial addition of one or more co-trustees under RCW 11.96A.220. The additional co-trustee shall serve as of the effective date of the co-trustee's appointment.

(4) Unless subsection (1), (2), or (3) of this section applies, any beneficiary of a trust, the trustor, if alive, or the trustee may petition the superior court having jurisdiction for the appointment or change of a trustee or co-trustee under the procedures provided in RCW 11.96A.080 through 11.96A.200: (a) Whenever the office of trustee becomes vacant; (b) upon filing of a petition of resignation by a trustee; or (c) ((upon the giving of notice of the change in trustee as referred to in subsection (1) or (2) of this section; or (d))) for any other reasonable cause.

~~((4))~~ (5) For purposes of this subsection, the term fiduciary includes both trustee and personal representative.

(a) Except as otherwise provided in the governing instrument, a successor fiduciary, absent actual knowledge of a breach of fiduciary duty: (i) Is not liable for any act or omission of a predecessor fiduciary and is not obligated to inquire into the validity or propriety of any such act or omission; (ii) is authorized to accept as conclusively accurate any accounting or statement of assets tendered to the successor fiduciary by a predecessor fiduciary; and (iii) is authorized to receipt only for assets actually delivered and has no duty to make further inquiry as to undisclosed assets of the trust or estate.

(b) Nothing in this section relieves a successor fiduciary from liability for retaining improper investments, nor does this section in any way bar the successor fiduciary, trust beneficiaries, or other party in interest from bringing an action against a predecessor fiduciary arising out of the acts or omissions of the predecessor fiduciary, nor does it relieve the successor fiduciary of liability for its own acts or omissions except as specifically stated or authorized in this section.

Sec. 14. RCW 21.35.005 and 2003 c 118 s 1 are each amended to read as follows:

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

(1) "Beneficiary form" means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner, referred to as a "beneficiary."

(2) "Devisee" means any person designated in a will to receive a disposition of real or personal property.

(3) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(4) "Person" means an individual, a corporation, an organization, or other legal entity.

(5) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(6) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(7) "Register," including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(8) "Registering entity" means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(9) "Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.

(10) "Security account" means (a) a reinvestment account associated with a security; a securities account with a broker; a cash balance in a brokerage account; or cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; (b) an

agency account including, without limitation, an investment management account, investment advisory account, or custody account, with a trust company or a trust division of a bank with trust powers, including the securities in the account; a cash balance in the account; and cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in the account, whether or not credited to the account before the owner's death; or (c) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(11) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

Sec. 15. RCW 22.28.030 and 1923 c 186 s 3 are each amended to read as follows:

Whenever any safe deposit company shall let or lease any vault, safe, box or other receptacle for the keeping or storage of personal property such safe deposit company shall be bound to exercise due care to prevent the opening of such vault, safe, box or receptacle by any person other than the lessee thereof, or his or her duly authorized agent, and ~~((said)) the parties may provide in writing the terms, conditions, and liabilities in ((said)) the lease.~~ Authorized agent as used in this section includes, but is not limited to, a duly appointed personal representative, an attorney in fact, a special representative, or a trustee acting under a revocable living trust.

NEW SECTION. **Sec. 16.** RCW 11.04.270 (Limitation of liability for debts) and 1965 c 145 s 11.04.270 are each repealed.

Passed by the House February 4, 2005.

Passed by the Senate April 6, 2005.

Approved by the Governor April 20, 2005.

Filed in Office of Secretary of State April 20, 2005.

CHAPTER 98

[House Bill 1138]

AUTOMATED TELLER MACHINES

AN ACT Relating to the imposition of fees related to the use of automated teller machines; and adding a new chapter to Title 19 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. **Sec. 1.** (1) The owner of an automated teller machine may charge an access fee or surcharge to a customer conducting a transaction using an account from a financial institution that is located outside of the United States.

(2) "Automated teller machine" means the same as defined in RCW 19.174.020.

(3) "Financial institution" means the same as defined in RCW 30.22.040.

NEW SECTION. **Sec. 2.** Section 1 of this act constitutes a new chapter in Title 19 RCW.

Passed by the House February 11, 2005.

Passed by the Senate April 7, 2005.

Approved by the Governor April 20, 2005.

Filed in Office of Secretary of State April 20, 2005.

CHAPTER 99

[House Bill 1161]

SEX OFFENDERS—PUBLIC NOTICE—LIBRARIES

AN ACT Relating to adding entities entitled to notification about sex offenders and kidnapping offenders; and amending RCW 4.24.550.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 4.24.550 and 2003 c 217 s 1 are each amended to read as follows:

(1) In addition to the disclosure under subsection (5) of this section, public agencies are authorized to release information to the public regarding sex offenders and kidnapping offenders when the agency determines that disclosure of the information is relevant and necessary to protect the public and counteract the danger created by the particular offender. This authorization applies to information regarding: (a) Any person adjudicated or convicted of a sex offense as defined in RCW 9A.44.130 or a kidnapping offense as defined by RCW 9A.44.130; (b) any person under the jurisdiction of the indeterminate sentence review board as the result of a sex offense or kidnapping offense; (c) any person committed as a sexually violent predator under chapter 71.09 RCW or as a sexual psychopath under chapter 71.06 RCW; (d) any person found not guilty of a sex offense or kidnapping offense by reason of insanity under chapter 10.77 RCW; and (e) any person found incompetent to stand trial for a sex offense or kidnapping offense and subsequently committed under chapter 71.05 or 71.34 RCW.

(2) Except for the information specifically required under subsection (5) of this section, the extent of the public disclosure of relevant and necessary information shall be rationally related to: (a) The level of risk posed by the offender to the community; (b) the locations where the offender resides, expects to reside, or is regularly found; and (c) the needs of the affected community members for information to enhance their individual and collective safety.

(3) Except for the information specifically required under subsection (5) of this section, local law enforcement agencies shall consider the following guidelines in determining the extent of a public disclosure made under this section: (a) For offenders classified as risk level I, the agency shall share information with other appropriate law enforcement agencies and may disclose, upon request, relevant, necessary, and accurate information to any victim or witness to the offense and to any individual community member who lives near the residence where the offender resides, expects to reside, or is regularly found; (b) for offenders classified as risk level II, the agency may also disclose relevant, necessary, and accurate information to public and private schools, child day care centers, family day care providers, public libraries, businesses and organizations that serve primarily children, women, or vulnerable adults, and neighbors and community groups near the residence where the offender resides, expects to reside, or is regularly found; (c) for offenders classified as risk level III, the

agency may also disclose relevant, necessary, and accurate information to the public at large; and (d) because more localized notification is not feasible and homeless and transient offenders may present unique risks to the community, the agency may also disclose relevant, necessary, and accurate information to the public at large for offenders registered as homeless or transient.

(4) The county sheriff with whom an offender classified as risk level III is registered shall cause to be published by legal notice, advertising, or news release a sex offender community notification that conforms to the guidelines established under RCW 4.24.5501 in at least one legal newspaper with general circulation in the area of the sex offender's registered address or location. The county sheriff shall also cause to be published consistent with this subsection a current list of level III registered sex offenders, twice yearly. Unless the information is posted on the web site described in subsection (5) of this section, this list shall be maintained by the county sheriff on a publicly accessible web site and shall be updated at least once per month.

(5)(a) When funded by federal grants or other sources, the Washington association of sheriffs and police chiefs shall create and maintain a statewide registered sex offender web site, which shall be available to the public. The web site shall post all level III and level II registered sex offenders in the state of Washington.

(i) For level III offenders, the web site shall contain, but is not limited to, the registered sex offender's name, relevant criminal convictions, address by hundred block, physical description, and photograph. The web site shall provide mapping capabilities that display the sex offender's address by hundred block on a map. The web site shall allow citizens to search for registered sex offenders within the state of Washington by county, city, zip code, last name, type of conviction, and address by hundred block.

(ii) For level II offenders, the web site shall contain, but is not limited to, the same information and functionality as described in (a)(i) of this subsection, provided that it is permissible under state and federal law. If it is not permissible, the web site shall be limited to the information and functionality that is permissible under state and federal law.

(b) Until the implementation of (a) of this subsection, the Washington association of sheriffs and police chiefs shall create a web site available to the public that provides electronic links to county-operated web sites that offer sex offender registration information.

(6) Local law enforcement agencies that disseminate information pursuant to this section shall: (a) Review available risk level classifications made by the department of corrections, the department of social and health services, and the indeterminate sentence review board; (b) assign risk level classifications to all offenders about whom information will be disseminated; and (c) make a good faith effort to notify the public and residents at least fourteen days before the offender is released from confinement or, where an offender moves from another jurisdiction, as soon as possible after the agency learns of the offender's move, except that in no case may this notification provision be construed to require an extension of an offender's release date. The juvenile court shall provide local law enforcement officials with all relevant information on offenders allowed to remain in the community in a timely manner.

(7) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470, or units of local government and its employees, as provided in RCW 36.28A.010, are immune from civil liability for damages for any discretionary risk level classification decisions or release of relevant and necessary information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The immunity in this section applies to risk level classification decisions and the release of relevant and necessary information regarding any individual for whom disclosure is authorized. The decision of a local law enforcement agency or official to classify an offender to a risk level other than the one assigned by the department of corrections, the department of social and health services, or the indeterminate sentence review board, or the release of any relevant and necessary information based on that different classification shall not, by itself, be considered gross negligence or bad faith. The immunity provided under this section applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the general public.

(8) Except as may otherwise be provided by law, nothing in this section shall impose any liability upon a public official, public employee, or public agency for failing to release information authorized under this section.

(9) Nothing in this section implies that information regarding persons designated in subsection (1) of this section is confidential except as may otherwise be provided by law.

(10) When a local law enforcement agency or official classifies an offender differently than the offender is classified by the end of sentence review committee or the department of social and health services at the time of the offender's release from confinement, the law enforcement agency or official shall notify the end of sentence review committee or the department of social and health services and submit its reasons supporting the change in classification. Upon implementation of subsection (5)(a) of this section, notification of the change shall also be sent to the Washington association of sheriffs and police chiefs.

Passed by the House February 28, 2005.

Passed by the Senate April 6, 2005.

Approved by the Governor April 20, 2005.

Filed in Office of Secretary of State April 20, 2005.

CHAPTER 100

[Substitute House Bill 1196]

LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT INSURANCE

AN ACT Relating to the United States longshore and harbor workers' compensation account in the Washington insurance guaranty association; amending RCW 48.32.010, 48.32.020, 48.32.030, 48.32.040, 48.32.050, 48.32.060, and 48.32.100; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 48.32.010 and 1971 ex.s. c 265 s 1 are each amended to read as follows:

The purpose of this chapter is to provide a mechanism for the payment of covered claims (~~(under certain insurance policies)~~) to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders under certain

policies of insurance covered by the scope of this chapter because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers.

Sec. 2. RCW 48.32.020 and 1987 c 185 s 29 are each amended to read as follows:

This chapter (~~(shall apply)~~) applies to all kinds of direct insurance, except life, title, surety, disability, credit, mortgage guaranty, workers' compensation, and ocean marine (~~(insurance)~~). Workers' compensation as used in this section does not include longshore and harbor workers' compensation act insurance.

Sec. 3. RCW 48.32.030 and 1975-'76 2nd ex.s. c 109 s 3 are each amended to read as follows:

As used in this chapter:

(1) "Account" means one of the (~~(two)~~) three accounts created in RCW 48.32.040 (~~(as now or hereafter amended)~~).

(2) "Association" means the Washington insurance guaranty association created in RCW 48.32.040.

(3) "Commissioner" means the insurance commissioner of this state.

(4) "Covered claim" means:

(a) Except for longshore and harbor workers' compensation act insurance, an unpaid claim, including one for unearned premiums, (~~(which)~~) that arises out of and is within the coverage of an insurance policy to which this chapter applies issued by an insurer, if such insurer becomes an insolvent insurer after the first day of April, 1971 and (~~((a))~~) (i) the claimant or insured is a resident of this state at the time of the insured event; or (~~((b))~~) (ii) the property from which the claim arises is permanently located in this state. "Covered claim" (~~(shall)~~) does not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise (~~(= PROVIDED, That)~~). However, a claim for any such amount asserted against a person insured under a policy issued by an insurer which has become an insolvent insurer, which, if it were not a claim by or for the benefit of a reinsurer, insurer, insurance pool, or underwriting association, would be a "covered claim" may be filed directly with the receiver of the insolvent insurer, but in no event may any such claim be asserted in any legal action against the insured of such insolvent insurer. In addition, "covered claim" (~~(shall)~~) does not include any claim filed with the association subsequent to the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer; and

(b) For longshore and harbor workers' compensation act insurance, an unpaid claim, excluding one for unearned premiums, for benefits due an injured worker under the longshore and harbor workers' compensation act that is within the coverage of an insurance policy to which this chapter applies issued by an insurer, if that insurer becomes an insolvent insurer after the effective date of this section and (i) the worksite from which the injury occurred is within this state or on the navigable waters within or immediately offshore of this state, or (ii) the worksite from which the injury occurred is outside this state, the injured worker is a permanent resident of this state, the injured worker is temporarily working at the worksite from which the injury occurred, and the injured worker is not covered under a policy of longshore and harbor workers' compensation

insurance issued in another state. "Covered claim" does not include any amount due any insurer, reinsurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise.

(5) "Insolvent insurer" means:

(a) ~~An insurer ((a))~~ (i) authorized to transact insurance in this state either at the time the policy was issued or when the insured event occurred and ~~((b))~~ (ii) determined to be insolvent and ordered liquidated by a court of competent jurisdiction, and which adjudication was subsequent to the first day of April, 1971; and

(b) In the case of an insurer writing longshore and harbor workers' compensation act insurance, an insurer (i) authorized to write this class of insurance at the time the policy was written and (ii) determined to be insolvent and ordered liquidated by a court of competent jurisdiction subsequent to the effective date of this section.

(6) "Longshore and harbor workers' compensation act" means the longshore and harbor workers' compensation act as defined in U.S.C. Title 33, Chapter 18, 901 et seq. and its extensions commonly known as the defense base act, outer continental shelf lands act, nonappropriated funds instrumentalities act, District of Columbia workers' compensation act, and the war hazards act.

~~((6))~~ (7) "Member insurer" means any person who (a) writes any kind of insurance to which this chapter applies under RCW 48.32.020, including the exchange of reciprocal or interinsurance contracts, and (b) holds a certificate of authority to transact insurance in this state.

~~((7))~~ (8) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this chapter applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

~~((8))~~ (9) "Person" means any individual, corporation, partnership, association, or voluntary organization.

Sec. 4. RCW 48.32.040 and 1975-'76 2nd ex.s. c 109 s 4 are each amended to read as follows:

There is hereby created a nonprofit unincorporated legal entity to be known as the Washington insurance guaranty association. All insurers defined as member insurers in RCW 48.32.030~~((6) as now or hereafter amended)~~ shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved under RCW 48.32.070 and shall exercise its powers through a board of directors established under RCW 48.32.050 ~~((as now or hereafter amended))~~. For purposes of administration and assessment, the association shall be divided into ~~((two))~~ three separate accounts: (1) the automobile insurance account; ~~(and)~~ (2) the account for longshore and harbor workers' compensation act insurance; and (3) the account for all other insurance to which this chapter applies.

Sec. 5. RCW 48.32.050 and 1975-'76 2nd ex.s. c 109 s 5 are each amended to read as follows:

(1) The board of directors of the association shall consist of not less than five nor more than nine persons serving terms as established in the plan of

operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner.

(2) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented. In the event of the insolvency of a member insurer who writes longshore and harbor workers' compensation act insurance, at least one member of the board must represent the interests of this class of insurer, and this member shall be added to the board at the next annual meeting following the insolvency.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

Sec. 6. RCW 48.32.060 and 1975-'76 2nd ex.s. c 109 s 6 are each amended to read as follows:

(1) The association shall:

(a)(i) For other than covered claims involving the longshore and harbor workers' compensation act, be obligated to the extent of the covered claims existing prior to the order of liquidation and arising within thirty days after the order of liquidation, or before the policy expiration date if less than thirty days after the order of liquidation, or before the insured replaces the policy or on request effects cancellation, if he or she does so within thirty days of the order of liquidation, but such an obligation (~~shall~~) includes only that amount of each covered claim which is in excess of one hundred dollars and is less than three hundred thousand dollars. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the face amount of the policy from which the claim arises.

(ii) For covered claims involving longshore and harbor workers' compensation act insurance, be obligated to the extent of covered claims for insolvencies occurring after the effective date of this section. This obligation is for the statutory obligations established under the longshore and harbor workers' compensation act. However, the insured employer shall reimburse the association for any deductibles that are owed as part of the insured's obligations.

(b) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent.

(c)(i) Allocate claims paid and expenses incurred among the (~~two~~) three accounts enumerated in RCW 48.32.040 (~~as now or hereafter amended~~) separately, and assess member insurers separately for each account amounts necessary to pay the obligations of the association under (~~subsection (1)~~)(a) (~~above~~) of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under RCW 48.32.110, and other expenses authorized by this chapter. Except as provided for in this subsection for member insurers who write longshore and harbor workers' compensation act insurance, the assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the calendar year preceding the assessment on the kinds of insurance in the account. Each member insurer shall be notified of the assessment not later

than thirty days before it is due. No member insurer may be assessed in any year on any account an amount greater than two percent of that member insurer's net direct written premiums for the calendar year preceding the assessment on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available may be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association shall pay claims in any order which it may deem reasonable, including the payment of claims in the order such claims are received from claimants or in groups or categories of claims, or otherwise. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer serving as a servicing facility may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by such member insurer if they are chargeable to the account for which the assessment is made.

(ii) For member insurers who write longshore and harbor workers' compensation act insurance, (c)(i) of this subsection applies except as modified by the following:

(A) Beginning July 1, 2005, and prior to an insolvency, each member insurer who writes longshore and harbor workers' compensation act insurance in this state, whether on a primary or excess coverage basis, shall be assessed at a rate to be determined by the association, but not more than an annual rate of three percent of the net direct written premium for the calendar year preceding the assessment on this kind of insurance. Insurer assessments prior to an insolvency shall continue until a fund is established that equals four percent of the aggregate net direct premium for the calendar year preceding the assessment on all insurers authorized to write this kind of insurance;

(B) Subsequent to an insolvency, each member insurer who writes longshore and harbor workers' compensation act insurance in this state, whether on a primary or excess coverage basis, shall be assessed at a rate to be determined by the association, but not more than an annual rate of three percent of the net direct written premium for the calendar year preceding the assessment on this kind of insurance. Insurer assessments subsequent to an insolvency shall continue until a fund is established that the association deems sufficient to meet all claim and loan obligations of the fund, provided that the net fund balance may not at any time exceed four percent of the aggregate net direct premium for the calendar year preceding the assessment on all insurers authorized to write this kind of insurance; and

(C) If any insurer fails to provide its net direct written premium data in an accurate and timely manner upon request by the association, the association may, at its discretion, substitute that insurer's direct written premiums for workers' compensation reported or reportable in its statutory annual statement page fourteen data for the state of Washington.

(d) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims.

(e) Notify such persons as the commissioner directs under RCW 48.32.080(2)(a).

(f) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

(g) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this chapter.

(2) The association may:

(a) Appear in, defend, and appeal any action on a claim brought against the association.

(b) Employ or retain such persons as are necessary to handle claims and perform other duties of the association.

(c) Borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation. If such a loan is related to the account for longshore and harbor workers' compensation act insurance, the association may seek such a loan from the Washington longshore and harbor workers' compensation act insurance assigned risk plan under RCW 48.22.070 or from other interested parties.

(d) Sue or be sued.

(e) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this chapter.

(f) Perform such other acts as are necessary or proper to effectuate the purpose of this chapter.

(g) Refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year.

(3) The association shall not access any funds from the automobile insurance account or the account for all other insurance to which this chapter applies to cover the cost of claims or administration arising under the account for longshore and harbor workers' compensation act insurance.

Sec. 7. RCW 48.32.100 and 1987 c 185 s 30 are each amended to read as follows:

(1) Any person having a claim against his or her insurer under any provision in his or her insurance policy which is also a covered claim shall be required to exhaust first ~~((his))~~ any right under ~~((such))~~ that policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of ~~((such))~~ a recovery under the claimant's insurance policy.

(2) Any person having a claim ~~((which))~~ that may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, from the

association of the location of the property, and if it is a workers' compensation claim or a longshore and harbor workers' compensation act claim, from the association of the permanent residence of the claimant. Any recovery under this chapter shall be reduced by the amount of the recovery from any other insurance guaranty association or its equivalent.

NEW SECTION. Sec. 8. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House February 25, 2005.

Passed by the Senate April 6, 2005.

Approved by the Governor April 20, 2005.

Filed in Office of Secretary of State April 20, 2005.

CHAPTER 101

[Substitute House Bill 1460]

COUNTY CONTRACTS—MARINE VESSELS

AN ACT Relating to county contracts for construction, maintenance, or repair of a marine vessel; amending RCW 39.08.100; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 39.08.100 and 1989 c 58 s 2 are each amended to read as follows:

On contracts for construction, maintenance, or repair of a marine vessel, the department of transportation or any county may permit, subject to specified format and conditions, the substitution of one or more of the following alternate forms of security in lieu of all or part of the bond: Certified check, replacement bond, cashier's check, treasury bills, an irrevocable bank letter of credit, assignment of a savings account, or other liquid assets specifically approved by the secretary of transportation or county engineer, for their respective projects. The secretary of transportation or county engineer, respectively, shall predetermine and include in the special provisions of the bid package the amount of this alternative form of security or bond, or a combination of the two, on a case-by-case basis, in an amount adequate to protect one hundred percent of the state's or county's exposure to loss. Assets used as an alternative form of security shall not be used to secure the bond. By October 1, 1989, the department shall develop and adopt rules under chapter 34.05 RCW that establish the procedures for determining the state's exposure to loss on contracts for construction, maintenance, or repair of a marine vessel. Prior to awarding any contract limiting security to the county's exposure to loss, a county shall develop and adopt an ordinance that establishes the procedure for determining the county's exposure to loss on contracts for construction, maintenance, or repair of a marine vessel.

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House March 11, 2005.

Passed by the Senate April 12, 2005.

Approved by the Governor April 20, 2005.
 Filed in Office of Secretary of State April 20, 2005.

CHAPTER 102

[House Bill 1621]

LIQUOR PURCHASES—IDENTIFICATION CARDS

AN ACT Relating to acceptable forms of identification for liquor purchases; and amending RCW 66.16.040.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 66.16.040 and 2004 c 61 s 1 are each amended to read as follows:

Except as otherwise provided by law, an employee in a state liquor store or agency may sell liquor to any person of legal age to purchase alcoholic beverages and may also sell to holders of permits such liquor as may be purchased under such permits.

Where there may be a question of a person's right to purchase liquor by reason of age, such person shall be required to present any one of the following officially issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

(1) ~~(Liquor control authority card of identification of any state or province of Canada.~~

~~(2))~~ (2) Driver's license, instruction permit or identification card of any state or province of Canada, or "identocard" issued by the Washington state department of licensing pursuant to RCW 46.20.117.

~~((3))~~ (2) United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents, which may include an imbedded, digital signature in lieu of a visible signature.

~~((4))~~ (3) Passport.

~~((5))~~ (4) Merchant Marine identification card issued by the United States Coast Guard.

The board may adopt such regulations as it deems proper covering the cards of identification listed in this section.

No liquor sold under this section shall be delivered until the purchaser has paid for the liquor in cash, except as allowed under RCW 66.16.041. The use of a personal credit card does not rely upon the credit of the state as prohibited by Article VIII, section 5 of the state Constitution.

Passed by the House March 8, 2005.

Passed by the Senate April 11, 2005.

Approved by the Governor April 21, 2005.

Filed in Office of Secretary of State April 21, 2005.

CHAPTER 103

[House Bill 1625]

EMPLOYEE INFORMATION DISCLOSURE—EMPLOYER IMMUNITY

AN ACT Relating to employer disclosure of employee information; and adding a new section to chapter 4.24 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 4.24 RCW to read as follows:

(1) An employer who discloses information about a former or current employee to a prospective employer, or employment agency as defined by RCW 49.60.040, at the specific request of that individual employer or employment agency, is presumed to be acting in good faith and is immune from civil and criminal liability for such disclosure or its consequences if the disclosed information relates to: (a) The employee's ability to perform his or her job; (b) the diligence, skill, or reliability with which the employee carried out the duties of his or her job; or (c) any illegal or wrongful act committed by the employee when related to the duties of his or her job.

(2) The employer should retain a written record of the identity of the person or entity to which information is disclosed under this section for a minimum of two years from the date of disclosure. The employee or former employee has a right to inspect any such written record upon request and any such written record shall become part of the employee's personnel file, subject to the provisions of chapter 49.12 RCW.

(3) For the purposes of this section, the presumption of good faith may only be rebutted upon a showing by clear and convincing evidence that the information disclosed by the employer was knowingly false, deliberately misleading, or made with reckless disregard for the truth.

Passed by the House February 11, 2005.

Passed by the Senate April 6, 2005.

Approved by the Governor April 21, 2005.

Filed in Office of Secretary of State April 21, 2005.

CHAPTER 104

[House Bill 1695]

FISH AND WILDLIFE—RESIDENT DEFINITION

AN ACT Relating to the treatment of the nonresident children of state residents for the purposes of hunting and fishing licenses; and amending RCW 77.08.010.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 77.08.010 and 2003 c 387 s 1 are each amended to read as follows:

As used in this title or rules adopted under this title, unless the context clearly requires otherwise:

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

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

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

(4) "Person" means and includes an individual; a corporation; a public or private entity or organization; a local, state, or federal agency; all business organizations, including corporations and partnerships; or a group of two or more individuals acting with a common purpose whether acting in an individual, representative, or official capacity.

(5) "Fish and wildlife officer" means a person appointed and commissioned by the director, with authority to enforce this title and rules adopted pursuant to

this title, and other statutes as prescribed by the legislature. Fish and wildlife officer includes a person commissioned before June 11, 1998, as a wildlife agent or a fisheries patrol officer.

(6) "Ex officio fish and wildlife officer" means a commissioned officer of a municipal, county, state, or federal agency having as its primary function the enforcement of criminal laws in general, while the officer is in the appropriate jurisdiction. The term "ex officio fish and wildlife officer" includes special agents of the national marine fisheries service, state parks commissioned officers, United States fish and wildlife special agents, department of natural resources enforcement officers, and United States forest service officers, while the agents and officers are within their respective jurisdictions.

(7) "To hunt" and its derivatives means an effort to kill, injure, capture, or harass a wild animal or wild bird.

(8) "To trap" and its derivatives means a method of hunting using devices to capture wild animals or wild birds.

(9) "To fish," "to harvest," and "to take," and their derivatives means an effort to kill, injure, harass, or catch a fish or shellfish.

(10) "Open season" means those times, manners of taking, and places or waters established by rule of the commission for the lawful hunting, fishing, taking, or possession of game animals, game birds, game fish, food fish, or shellfish that conform to the special restrictions or physical descriptions established by rule of the commission or that have otherwise been deemed legal to hunt, fish, take, harvest, or possess by rule of the commission. "Open season" includes the first and last days of the established time.

(11) "Closed season" means all times, manners of taking, and places or waters other than those established by rule of the commission as an open season. "Closed season" also means all hunting, fishing, taking, or possession of game animals, game birds, game fish, food fish, or shellfish that do not conform to the special restrictions or physical descriptions established by rule of the commission as an open season or that have not otherwise been deemed legal to hunt, fish, take, harvest, or possess by rule of the commission as an open season.

(12) "Closed area" means a place where the hunting of some or all species of wild animals or wild birds is prohibited.

(13) "Closed waters" means all or part of a lake, river, stream, or other body of water, where fishing or harvesting is prohibited.

(14) "Game reserve" means a closed area where hunting for all wild animals and wild birds is prohibited.

(15) "Bag limit" means the maximum number of game animals, game birds, or game fish which may be taken, caught, killed, or possessed by a person, as specified by rule of the commission for a particular period of time, or as to size, sex, or species.

(16) "Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. This includes but is not limited to mammals, birds, reptiles, amphibians, fish, and invertebrates. The term "wildlife" does not include feral domestic mammals, old world rats and mice of the family Muridae of the order Rodentia, or those fish, shellfish, and marine invertebrates classified as food fish or shellfish by the director. The term "wildlife" includes all stages of development and the bodily parts of wildlife members.

(17) "Wild animals" means those species of the class Mammalia whose members exist in Washington in a wild state and the species *Rana catesbeiana* (bullfrog). The term "wild animal" does not include feral domestic mammals or old world rats and mice of the family Muridae of the order Rodentia.

(18) "Wild birds" means those species of the class Aves whose members exist in Washington in a wild state.

(19) "Protected wildlife" means wildlife designated by the commission that shall not be hunted or fished.

(20) "Endangered species" means wildlife designated by the commission as seriously threatened with extinction.

(21) "Game animals" means wild animals that shall not be hunted except as authorized by the commission.

(22) "Fur-bearing animals" means game animals that shall not be trapped except as authorized by the commission.

(23) "Game birds" means wild birds that shall not be hunted except as authorized by the commission.

(24) "Predatory birds" means wild birds that may be hunted throughout the year as authorized by the commission.

(25) "Deleterious exotic wildlife" means species of the animal kingdom not native to Washington and designated as dangerous to the environment or wildlife of the state.

(26) "Game farm" means property on which wildlife is held or raised for commercial purposes, trade, or gift. The term "game farm" does not include publicly owned facilities.

(27) "Person of disability" means a permanently disabled person who is not ambulatory without the assistance of a wheelchair, crutches, or similar devices.

(28) "Fish" includes all species classified as game fish or food fish by statute or rule, as well as all fin fish not currently classified as food fish or game fish if such species exist in state waters. The term "fish" includes all stages of development and the bodily parts of fish species.

(29) "Raffle" means an activity in which tickets bearing an individual number are sold for not more than twenty-five dollars each and in which a permit or permits are awarded to hunt or for access to hunt big game animals or wild turkeys on the basis of a drawing from the tickets by the person or persons conducting the raffle.

(30) "Youth" means a person fifteen years old for fishing and under sixteen years old for hunting.

(31) "Senior" means a person seventy years old or older.

(32) "License year" means the period of time for which a recreational license is valid. The license year begins April 1st, and ends March 31st.

(33) "Saltwater" means those marine waters seaward of river mouths.

(34) "Freshwater" means all waters not defined as saltwater including, but not limited to, rivers upstream of the river mouth, lakes, ponds, and reservoirs.

(35) "State waters" means all marine waters and fresh waters within ordinary high water lines and within the territorial boundaries of the state.

(36) "Offshore waters" means marine waters of the Pacific Ocean outside the territorial boundaries of the state, including the marine waters of other states and countries.

(37) "Concurrent waters of the Columbia river" means those waters of the Columbia river that coincide with the Washington-Oregon state boundary.

(38) "Resident" means:

(a) A person who has maintained a permanent place of abode within the state for at least ninety days immediately preceding an application for a license, has established by formal evidence an intent to continue residing within the state, and who is not licensed to hunt or fish as a resident in another state; and

(b) A person age eighteen or younger who does not qualify as a resident under (a) of this subsection, but who has a parent that qualifies as a resident under (a) of this subsection.

(39) "Nonresident" means a person who has not fulfilled the qualifications of a resident.

(40) "Shellfish" means those species of marine and freshwater invertebrates that have been classified and that shall not be taken except as authorized by rule of the commission. The term "shellfish" includes all stages of development and the bodily parts of shellfish species.

(41) "Commercial" means related to or connected with buying, selling, or bartering.

(42) "To process" and its derivatives mean preparing or preserving fish, wildlife, or shellfish.

(43) "Personal use" means for the private use of the individual taking the fish or shellfish and not for sale or barter.

(44) "Angling gear" means a line attached to a rod and reel capable of being held in hand while landing the fish or a hand-held line operated without rod or reel.

(45) "Fishery" means the taking of one or more particular species of fish or shellfish with particular gear in a particular geographical area.

(46) "Limited-entry license" means a license subject to a license limitation program established in chapter 77.70 RCW.

(47) "Seaweed" means marine aquatic plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free floating form, and includes but is not limited to marine aquatic plants in the classes Chlorophyta, Phaeophyta, and Rhodophyta.

(48) "Trafficking" means offering, attempting to engage, or engaging in sale, barter, or purchase of fish, shellfish, wildlife, or deleterious exotic wildlife.

(49) "Invasive species" means a plant species or a nonnative animal species that either:

(a) Causes or may cause displacement of, or otherwise threatens, native species in their natural communities;

(b) Threatens or may threaten natural resources or their use in the state;

(c) Causes or may cause economic damage to commercial or recreational activities that are dependent upon state waters; or

(d) Threatens or harms human health.

(50) "Prohibited aquatic animal species" means an invasive species of the animal kingdom that has been classified as a prohibited aquatic animal species by the commission.

(51) "Regulated aquatic animal species" means a potentially invasive species of the animal kingdom that has been classified as a regulated aquatic animal species by the commission.

(52) "Unregulated aquatic animal species" means a nonnative animal species that has been classified as an unregulated aquatic animal species by the commission.

(53) "Unlisted aquatic animal species" means a nonnative animal species that has not been classified as a prohibited aquatic animal species, a regulated aquatic animal species, or an unregulated aquatic animal species by the commission.

(54) "Aquatic plant species" means an emergent, submersed, partially submersed, free-floating, or floating-leaving plant species that grows in or near a body of water or wetland.

(55) "Retail-eligible species" means commercially harvested salmon, crab, and sturgeon.

Passed by the House March 4, 2005.

Passed by the Senate April 6, 2005.

Approved by the Governor April 21, 2005.

Filed in Office of Secretary of State April 21, 2005.

CHAPTER 105

[Substitute House Bill 1747]

LEGAL AID

AN ACT Relating to state-funded civil representation of indigent persons; amending RCW 43.08.250 and 43.08.260; adding a new chapter to Title 2 RCW; creating a new section; recodifying RCW 43.08.260; repealing RCW 43.08.270; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION, Sec. 1. The legislature finds that the provision of civil legal aid services to indigent persons is an important component of the state's responsibility to provide for the proper and effective administration of civil and criminal justice. The legislature further finds that state-funded legal aid services should be administered by an independent office of civil legal aid located within the judicial branch and subject to formal continuing oversight that includes bipartisan legislative representation.

Sec. 2. RCW 43.08.250 and 2003 1st sp.s. c 25 s 918 are each amended to read as follows:

The money received by the state treasurer from fees, fines, forfeitures, penalties, reimbursements or assessments by any court organized under Title 3 or 35 RCW, or chapter 2.08 RCW, shall be deposited in the public safety and education account which is hereby created in the state treasury. The legislature shall appropriate the funds in the account to promote traffic safety education, highway safety, criminal justice training, crime victims' compensation, judicial education, the judicial information system, civil representation of indigent persons under RCW 43.08.260 (as recodified by this act), winter recreation parking, drug court operations, and state game programs. During the fiscal biennium ending June 30, 2005, the legislature may appropriate moneys from the public safety and education account for purposes of appellate indigent defense and other operations of the office of public defense, the criminal litigation unit of the attorney general's office, the treatment alternatives to street

crimes program, crime victims advocacy programs, justice information network telecommunication planning, treatment for supplemental security income clients, sexual assault treatment, operations of the office of administrator for the courts, security in the common schools, alternative school start-up grants, programs for disruptive students, criminal justice data collection, Washington state patrol criminal justice activities, drug court operations, unified family courts, local court backlog assistance, financial assistance to local jurisdictions for extraordinary costs incurred in the adjudication of criminal cases, domestic violence treatment and related services, the department of corrections' costs in implementing chapter 196, Laws of 1999, reimbursement of local governments for costs associated with implementing criminal and civil justice legislation, the replacement of the department of corrections' offender-based tracking system, secure and semi-secure crisis residential centers, HOPE beds, the family policy council and community public health and safety networks, the street youth program, public notification about registered sex offenders, and narcotics or methamphetamine-related enforcement, education, training, and drug and alcohol treatment services.

Sec. 3. RCW 43.08.260 and 1997 c 319 s 2 are each amended to read as follows:

(1)(a) The legislature recognizes the ethical obligation of attorneys to represent clients without interference by third parties in the discharge of professional obligations to clients. However, to ensure the most beneficial use of state resources, the legislature finds that it is within the authority of the legislature to specify the categories of legal cases in which qualified legal aid programs may provide civil representation with state moneys. Accordingly, moneys appropriated for civil legal representation (~~(pursuant to this section)~~) shall not be used for legal representation that is either outside the scope of this section or prohibited by this section.

(b) Nothing in this section is intended to limit the authority of existing entities, including but not limited to the Washington state bar association, the public disclosure commission, the state auditor, and the federal legal services corporation to resolve issues within their respective jurisdictions.

(2) Any money appropriated by the legislature (~~(from the public safety and education account pursuant to RCW 43.08.250 or from any other state fund or account)~~) for civil representation of indigent persons shall be administered by the office of civil legal aid established under section 5 of this act, and shall be used solely for the purpose of contracting with qualified legal aid programs for legal representation of indigent persons in matters relating to: (a) Domestic relations and family law matters, (b) public assistance and health care, (c) housing and utilities, (d) social security, (e) mortgage foreclosures, (f) home protection bankruptcies, (g) consumer fraud and unfair sales practices, (h) rights of residents of long-term care facilities, (i) wills, estates, and living wills, (j) elder abuse, and (k) guardianship.

(3) For purposes of this section, a "qualified legal aid program" means a not-for-profit corporation incorporated and operating exclusively in Washington which has received basic field funding for the provision of civil legal (~~(services)~~) aid to indigents from the federal legal services corporation or that has received funding for civil legal (~~(services)~~) aid for indigents under this section before July 1, 1997.

~~(4) ((The department of community, trade, and economic development shall establish a distribution formula based on the distribution by county of individuals with incomes below the official federal poverty level guidelines.))~~ When entering into a contract with a qualified legal ~~((services))~~ aid provider under this section, the ~~((department))~~ office of civil legal aid shall require the provider to provide legal ~~((services))~~ aid in a manner that maximizes geographic access ~~((in accordance with the formula established in this subsection (4)))~~ throughout the state.

(5) Funds distributed to qualified legal aid programs under this section may not be used directly or indirectly for:

(a) Lobbying.

(i) For purposes of this section, "lobbying" means any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device directly or indirectly intended to influence any member of congress or any other federal, state, or local nonjudicial official, whether elected or appointed:

(A) In connection with any act, bill, resolution, or similar legislation by the congress of the United States or by any state or local legislative body, or any administrative rule, rule-making activity, standard, rate, or other enactment by any federal, state, or local administrative agency;

(B) In connection with any referendum, initiative, constitutional amendment, or any similar procedure of the congress, any state legislature, any local council, or any similar governing body acting in a legislative capacity; or

(C) In connection with inclusion of any provision in a legislative measure appropriating funds to, or defining or limiting the functions or authority of, the recipient of funds under this section.

(ii) "Lobbying" does not include the response of an employee of a legal aid program to a written request from a governmental agency, an elected or appointed official, or committee on a specific matter. This exception does not authorize communication with anyone other than the requesting party, or agent or employee of such agency, official, or committee.

(b) Grass roots lobbying. For purposes of this section, "grass roots lobbying" means preparation, production, or dissemination of information the purpose of which is to encourage the public at large, or any definable segment thereof, to contact legislators or their staff in support of or in opposition to pending or proposed legislation; or contribute to or participate in a demonstration, march, rally, lobbying campaign, or letter writing or telephone campaign for the purpose of influencing the course of pending or proposed legislation.

(c) Class action lawsuits.

(d) Participating in or identifying the program with prohibited political activities. For purposes of this section, "prohibited political activities" means (i) any activity directed toward the success or failure of a political party, a candidate for partisan or nonpartisan office, a partisan political group, or a ballot measure; (ii) advertising or contributing or soliciting financial support for or against any candidate, political group, or ballot measure; or (iii) voter registration or transportation activities.

(e) Representation in fee-generating cases. For purposes of this section, "fee-generating" means a case that might reasonably be expected to result in a

fee for legal ((services)) aid if undertaken by a private attorney. The charging of a fee pursuant to subsection (6) of this section does not establish the fee-generating nature of a case.

A fee-generating case may be accepted when: (i) The case has been rejected by the local lawyer referral services or by two private attorneys; (ii) neither the referral service nor two private attorneys will consider the case without payment of a consultation fee; (iii) after consultation with the appropriate representatives of the private bar, the program has determined that the type of case is one that private attorneys do not ordinarily accept, or do not accept without prepayment of a fee; or (iv) the director of the program or the director's designee has determined that referral of the case to the private bar is not possible because documented attempts to refer similar cases in the past have been futile, or because emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate and consistent with professional responsibility, referral will be attempted at a later time.

(f) Organizing any association, union, or federation, or representing a labor union. However, nothing in this subsection (5)(f) prohibits the provision of legal ((services)) aid to clients as otherwise permitted by this section.

(g) Representation of undocumented aliens.

(h) Picketing, demonstrations, strikes, or boycotts.

(i) Engaging in inappropriate solicitation. For purposes of this section, "inappropriate solicitation" means promoting the assertion of specific legal claims among persons who know of their rights to make a claim and who decline to do so. Nothing in this subsection precludes a legal ((services)) aid program or its employees from providing information regarding legal rights and responsibilities or providing information regarding the program's services and intake procedures through community legal education activities, responding to an individual's specific question about whether the individual should consult with an attorney or take legal action, or responding to an individual's specific request for information about the individual's legal rights or request for assistance in connection with a specific legal problem.

(j) Conducting training programs that: (i) Advocate particular public policies; (ii) encourage or facilitate political activities, labor or antilabor activities, boycotts, picketing, strikes, or demonstrations; or (iii) attempt to influence legislation or rule making. Nothing in this subsection (5)(j) precludes representation of clients as otherwise permitted by this section.

(6) The ((department)) office of civil legal aid may establish requirements for client participation in the provision of civil legal ((services)) aid under this section, including but not limited to copayments and sliding fee scales.

(7)(a) Contracts entered into by the ((department of community, trade, and economic development)) office of civil legal aid with qualified legal ((services)) aid programs under this section must specify that the program's expenditures of moneys distributed under this section:

(i) Must be audited annually by an independent outside auditor. These audit results must be provided to the ((department of community, trade, and economic development)) office of civil legal aid; and

(ii) Are subject to audit by the state auditor.

(b)(i) Any entity auditing a legal ((services)) aid program under this section shall have access to all records of the legal ((services)) aid program to the full

extent necessary to determine compliance with this section, with the exception of confidential information protected by the United States Constitution, the state Constitution, the attorney-client privilege, and applicable rules of attorney conduct.

(ii) The legal ~~((services))~~ aid program shall have a system allowing for production of case-specific information, including client eligibility and case type, to demonstrate compliance with this section, with the exception of confidential information protected by the United States Constitution, the state Constitution, the attorney-client privilege, and applicable rules of attorney conduct. Such information shall be available to any entity that audits the program.

(8) The ~~((department of community, trade, and economic development))~~ office of civil legal aid must recover or withhold amounts determined by an audit to have been used in violation of this section.

(9) The ~~((department of community, trade, and economic development))~~ office of civil legal aid may adopt rules to implement this section.

NEW SECTION. Sec. 4. (1) There is created a civil legal aid oversight committee consisting of the following members:

(a) Three persons appointed by the supreme court from a list of nominees submitted by the access to justice board, one of whom at the time of appointment is income eligible to receive state-funded civil legal aid;

(b) Two persons appointed by the board for judicial administration;

(c) Two senators, one from each of the two largest caucuses, appointed by the president of the senate; and two members of the house of representatives, one from each of the two largest caucuses, appointed by the speaker of the house of representatives;

(d) One person appointed by the Washington state bar association; and

(e) One person appointed by the governor.

(2) During the term of his or her appointment, an appointee may not be employed by a state-funded legal aid provider.

(3) Members shall each serve a three-year term, subject to renewal for no more than one additional three-year term. The oversight committee shall develop rules that provide for the staggering of terms so that, after the first three years of the committee's existence, the terms of one-third of the members expire each year. Members of the oversight committee receive no compensation for their services as members of the oversight committee, but may be reimbursed for travel and other expenses in accordance with rules adopted by the office of financial management.

(4) The oversight committee shall: Oversee the activities of the office of civil legal aid created in section 5 of this act; review the performance of the director of the office of civil legal aid; and may, from time to time, make recommendations to the supreme court, the access to justice board, and the legislature regarding the provision of civil legal aid funded through RCW 43.08.260 (as recodified by this act).

NEW SECTION. Sec. 5. (1) There is created an office of civil legal aid as an independent agency of the judicial branch.

(2) Activities of the office of civil legal aid shall be carried out by a director of civil legal aid services. The director of civil legal aid services shall be

appointed by the supreme court from a list of three names forwarded by the access to justice board. Qualifications for the director include admission to practice law in this state for at least five years; experience in representation of low-income people in civil matters, which experience may be in the form of volunteer representation; knowledge of and demonstrated commitment to promoting access to the civil justice system for indigent persons; and proven managerial or supervisory experience. The director shall serve at the pleasure of the supreme court and receive a salary to be fixed by the oversight committee.

(3) The director shall:

(a) Contract with one or more qualified legal aid providers to provide civil legal aid services authorized by RCW 43.08.260 (as recodified by this act);

(b) Monitor and oversee the use of state funding to ensure compliance with this chapter;

(c) Report quarterly to the civil legal aid oversight committee established in section 4 of this act and the supreme court's access to justice board on the use of state funds for legal aid; and report biennially on the status of access to the civil justice system for low-income people eligible for state-funded legal aid; and

(d) Submit a biennial budget request.

(4) The office shall not provide direct representation of clients.

NEW SECTION. **Sec. 6.** RCW 43.08.270 (Joint legislative civil legal services oversight committee) and 1997 c 319 s 3 are each repealed.

NEW SECTION. **Sec. 7.** Sections 4 and 5 of this act constitute a new chapter in Title 2 RCW.

NEW SECTION. **Sec. 8.** RCW 43.08.260 (as amended by this act) is recodified in the chapter created under section 7 of this act.

NEW SECTION. **Sec. 9.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005.

Passed by the House March 15, 2005.

Passed by the Senate April 6, 2005.

Approved by the Governor April 21, 2005.

Filed in Office of Secretary of State April 21, 2005.

CHAPTER 106

[Substitute House Bill 1806]

ETHICS IN PUBLIC SERVICE—UNIVERSITY RESEARCH EMPLOYEES

AN ACT Relating to encouraging the ethical transfer of technology for the economic benefit of the state; amending RCW 42.52.010, 42.52.030, 42.52.200, and 42.52.360; and adding a new section to chapter 42.52 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 42.52.010 and 1998 c 7 s 1 are each amended to read as follows:

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

(1) "Agency" means any state board, commission, bureau, committee, department, institution, division, or tribunal in the legislative, executive, or

judicial branch of state government. "Agency" includes all elective offices, the state legislature, those institutions of higher education created and supported by the state government, and those courts that are parts of state government.

(2) "Head of agency" means the chief executive officer of an agency. In the case of an agency headed by a commission, board, committee, or other body consisting of more than one natural person, agency head means the person or board authorized to appoint agency employees and regulate their conduct.

(3) "Assist" means to act, or offer or agree to act, in such a way as to help, aid, advise, furnish information to, or otherwise provide assistance to another person, believing that the action is of help, aid, advice, or assistance to the person and with intent so to assist such person.

(4) "Beneficial interest" has the meaning ascribed to it under the Washington case law. However, an ownership interest in a mutual fund or similar investment pooling fund in which the owner has no management powers does not constitute a beneficial interest in the entities in which the fund or pool invests.

(5) "Compensation" means anything of economic value, however designated, that is paid, loaned, granted, or transferred, or to be paid, loaned, granted, or transferred for, or in consideration of, personal services to any person.

(6) "Confidential information" means (a) specific information, rather than generalized knowledge, that is not available to the general public on request or (b) information made confidential by law.

(7) "Contract" or "grant" means an agreement between two or more persons that creates an obligation to do or not to do a particular thing. "Contract" or "grant" includes, but is not limited to, an employment contract, a lease, a license, a purchase agreement, or a sales agreement.

(8) "Ethics boards" means the commission on judicial conduct, the legislative ethics board, and the executive ethics board.

(9) "Family" has the same meaning as "immediate family" in RCW 42.17.020.

(10) "Gift" means anything of economic value for which no consideration is given. "Gift" does not include:

(a) Items from family members or friends where it is clear beyond a reasonable doubt that the gift was not made as part of any design to gain or maintain influence in the agency of which the recipient is an officer or employee;

(b) Items related to the outside business of the recipient that are customary and not related to the recipient's performance of official duties;

(c) Items exchanged among officials and employees or a social event hosted or sponsored by a state officer or state employee for coworkers;

(d) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

(e) Items a state officer or state employee is authorized by law to accept;

(f) Payment of enrollment and course fees and reasonable travel expenses attributable to attending seminars and educational programs sponsored by a bona

vide governmental or nonprofit professional, educational, trade, or charitable association or institution. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

(g) Items returned by the recipient to the donor within thirty days of receipt or donated to a charitable organization within thirty days of receipt;

(h) Campaign contributions reported under chapter 42.17 RCW;

(i) Discounts available to an individual as a member of an employee group, occupation, or similar broad-based group; and

(j) Awards, prizes, scholarships, or other items provided in recognition of academic or scientific achievement.

(11) "Honorarium" means money or thing of value offered to a state officer or state employee for a speech, appearance, article, or similar item or activity in connection with the state officer's or state employee's official role.

(12) "Official duty" means those duties within the specific scope of employment of the state officer or state employee as defined by the officer's or employee's agency or by statute or the state Constitution.

(13) "Participate" means to participate in state action or a proceeding personally and substantially as a state officer or state employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation, or otherwise but does not include preparation, consideration, or enactment of legislation or the performance of legislative duties.

(14) "Person" means any individual, partnership, association, corporation, firm, institution, or other entity, whether or not operated for profit.

(15) "Regulatory agency" means any state board, commission, department, or officer, except those in the legislative or judicial branches, authorized by law to conduct adjudicative proceedings, issue permits or licenses, or to control or affect interests of identified persons.

(16) "Responsibility" in connection with a transaction involving the state, means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or through subordinates, effectively to approve, disapprove, or otherwise direct state action in respect of such transaction.

(17) "State action" means any action on the part of an agency, including, but not limited to:

(a) A decision, determination, finding, ruling, or order; and

(b) A grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

(18) "State officer" means every person holding a position of public trust in or under an executive, legislative, or judicial office of the state. "State officer" includes judges of the superior court, judges of the court of appeals, justices of the supreme court, members of the legislature together with the secretary of the senate and the chief clerk of the house of representatives, holders of elective offices in the executive branch of state government, chief executive officers of state agencies, members of boards, commissions, or committees with authority over one or more state agencies or institutions, and employees of the state who are engaged in supervisory, policy-making, or policy-enforcing work. For the

purposes of this chapter, "state officer" also includes any person exercising or undertaking to exercise the powers or functions of a state officer.

(19) "State employee" means an individual who is employed by an agency in any branch of state government. For purposes of this chapter, employees of the superior courts are not state officers or state employees.

(20) "University" includes "state universities" and "regional universities" as defined in RCW 28B.10.016 and also includes any research or technology institute affiliated with a university, including without limitation, the Spokane Intercollegiate Research and Technology Institute and the Washington Technology Center.

(21) "University research employee" means a state officer or state employee employed by a university, but only to the extent the state officer or state employee is engaged in research, technology transfer, approved consulting activities related to research and technology transfer, or other incidental activities.

(22) "Thing of economic value," in addition to its ordinary meaning, includes:

(a) A loan, property interest, interest in a contract or other chose in action, and employment or another arrangement involving a right to compensation;

(b) An option, irrespective of the conditions to the exercise of the option; and

(c) A promise or undertaking for the present or future delivery or procurement.

~~((21))~~ (23)(a) "Transaction involving the state" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the state officer, state employee, or former state officer or state employee in question believes, or has reason to believe:

(i) Is, or will be, the subject of state action; or

(ii) Is one to which the state is or will be a party; or

(iii) Is one in which the state has a direct and substantial proprietary interest.

(b) "Transaction involving the state" does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by an officer or employee; or a claim, case, lawsuit, or similar matter if the officer or employee did not participate in the underlying transaction involving the state that is the basis for the claim, case, or lawsuit.

Sec. 2. RCW 42.52.030 and 1996 c 213 s 3 are each amended to read as follows:

(1) No state officer or state employee, except as provided in subsection((s))

(2) ~~((and (3)))~~ of this section, may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract, sale, lease, purchase, or grant.

(2) ~~((No officer or employee of an institution of higher education or of the Spokane intercollegiate research and technology institute, except as provided in subsection (3) of this section, may be beneficially interested, directly or~~

~~indirectly, in a contract or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract or grant, unless the institution of higher education or the Spokane intercollegiate research and technology institute has in effect a written administrative process to identify and manage, reduce, or eliminate conflicting interests with respect to such transactions as adopted pursuant to the national science investigator financial disclosure (GPM 510) 1995 and the public health service regulations, 42 C.F.R. Part 50 and 45 C.F.R. Subtitle A as each of those regulations existed on June 6, 1996, and the state employee or state officer has complied with such policy.~~

(3)) No state officer or state employee may participate in a transaction involving the state in his or her official capacity with a person of which the officer or employee is an officer, agent, employee, or member, or in which the officer or employee owns a beneficial interest, except that an officer or employee of an institution of higher education or the Spokane intercollegiate research and technology institute may serve as an officer, agent, employee, or member, or on the board of directors, board of trustees, advisory board, or committee or review panel for any nonprofit institute, foundation, or fundraising entity; and may serve as a member of an advisory board, committee, or review panel for a governmental or other nonprofit entity.

Sec. 3. RCW 42.52.200 and 1994 c 154 s 120 are each amended to read as follows:

(1) Each agency may adopt rules consistent with law, for use within the agency to protect against violations of this chapter.

(2) Each agency proposing to adopt rules under this section shall forward the rules to the appropriate ethics board before they may take effect. The board may submit comments to the agency regarding the proposed rules.

(3) This section applies to universities only to the extent their activities are not subject to section 4 of this act.

NEW SECTION. Sec. 4. A new section is added to chapter 42.52 RCW to read as follows:

(1) Consistent with the state policy to encourage basic and applied scientific research by the state's research universities as stated in RCW 28B.140.005, each university may develop, adopt, and implement one or more written administrative processes that shall, upon approval by the governor, apply in place of the obligations imposed on universities and university research employees under RCW 42.52.030, 42.52.040, 42.52.080, 42.52.110, 42.52.120, 42.52.130, 42.52.140, 42.52.150, and 42.52.160. The universities shall coordinate on the development of administrative processes to ensure the processes are comparable. A university research employee in compliance with the processes authorized in this section shall be deemed to be in compliance with RCW 42.52.030, 42.52.040, 42.52.080, 42.52.110, 42.52.120, 42.52.130, 42.52.140, 42.52.150, and 42.52.160.

(2) The executive ethics board shall enforce activity subject to the written approval processes under this section, as provided in RCW 42.52.360.

Sec. 5. RCW 42.52.360 and 1994 c 154 s 206 are each amended to read as follows:

(1) The executive ethics board shall enforce this chapter and rules adopted under it with respect to statewide elected officers and all other officers and employees in the executive branch, boards and commissions, and institutions of higher education.

(2) The executive ethics board shall enforce this chapter with regard to the activities of university research employees as provided in this subsection.

(a) With respect to compliance with RCW 42.52.030, 42.52.110, 42.52.130, 42.52.140, and 42.52.150, the administrative process shall be consistent with and adhere to no less than the current standards in regulations of the United States public health service and the office of the secretary of the department of health and human services in Title 42 C.F.R. Part 50, Subpart F relating to promotion of objectivity in research.

(b) With respect to compliance with RCW 42.52.040, 42.52.080, and 42.52.120, the administrative process shall include a comprehensive system for the disclosure, review, and approval of outside work activities by university research employees while assuring that such employees are fulfilling their employment obligations to the university.

(c) With respect to compliance with RCW 42.52.160, the administrative process shall include a reasonable determination by the university of acceptable private uses having de minimis costs to the university and a method for establishing fair and reasonable reimbursement charges for private uses the costs of which are in excess of de minimis.

(3) The executive ethics board shall:

(a) Develop educational materials and training;

(b) Adopt rules and policies governing the conduct of business by the board, and adopt rules defining working hours for purposes of RCW 42.52.180 and where otherwise authorized under chapter 154, Laws of 1994;

(c) Issue advisory opinions;

(d) Investigate, hear, and determine complaints by any person or on its own motion;

(e) Impose sanctions including reprimands and monetary penalties;

(f) Recommend to the appropriate authorities suspension, removal from position, prosecution, or other appropriate remedy; and

(g) Establish criteria regarding the levels of civil penalties appropriate for violations of this chapter and rules adopted under it.

~~((3))~~ (4) The board may:

(a) Issue subpoenas for the attendance and testimony of witnesses and the production of documentary evidence relating to any matter under examination by the board or involved in any hearing;

(b) Administer oaths and affirmations;

(c) Examine witnesses; and

(d) Receive evidence.

~~((4))~~ (5) Except as provided in section 4 of this act, the executive ethics board may review and approve agency policies as provided for in this chapter.

~~((5))~~ (6) This section does not apply to state officers and state employees of the judicial branch.

Passed by the House March 14, 2005.

Passed by the Senate April 7, 2005.

Approved by the Governor April 21, 2005.
Filed in Office of Secretary of State April 21, 2005.

CHAPTER 107

[House Bill 1832]

COUGAR INCIDENTS—INTERNET NOTICE

AN ACT Relating to disclosure of cougar incidences; and amending RCW 77.15.245.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 77.15.245 and 2001 c 253 s 31 are each amended to read as follows:

(1) Notwithstanding the provisions of RCW 77.12.240, 77.36.020, 77.36.030, or any other provisions of law, it is unlawful to take, hunt, or attract black bear with the aid of bait.

(a) Nothing in this subsection shall be construed to prohibit the killing of black bear with the aid of bait by employees or agents of county, state, or federal agencies while acting in their official capacities for the purpose of protecting livestock, domestic animals, private property, or the public safety.

(b) Nothing in this subsection shall be construed to prevent the establishment and operation of feeding stations for black bear in order to prevent damage to commercial timberland.

(c) Nothing in this subsection shall be construed to prohibit the director from issuing a permit or memorandum of understanding to a public agency, university, or scientific or educational institution for the use of bait to attract black bear for scientific purposes.

(d) As used in this subsection, "bait" means a substance placed, exposed, deposited, distributed, scattered, or otherwise used for the purpose of attracting black bears to an area where one or more persons hunt or intend to hunt them.

(2) Notwithstanding RCW 77.12.240, 77.36.020, 77.36.030, or any other provisions of law, it is unlawful to hunt or pursue black bear, cougar, bobcat, or lynx with the aid of a dog or dogs.

(a) Nothing in this subsection shall be construed to prohibit the killing of black bear, cougar, bobcat, or lynx with the aid of a dog or dogs by employees or agents of county, state, or federal agencies while acting in their official capacities for the purpose of protecting livestock, domestic animals, private property, or the public safety. A dog or dogs may be used by the owner or tenant of real property consistent with a permit issued and conditioned by the director.

(b) Nothing in this subsection shall be construed to prohibit the director from issuing a permit or memorandum of understanding to a public agency, university, or scientific or educational institution for the use of a dog or dogs for the pursuit, capture and relocation, of black bear, cougar, bobcat, or lynx for scientific purposes.

(c) Nothing in this subsection shall be construed to prohibit the director from issuing a permit or memorandum of understanding to a public agency, university, or scientific or educational institution for the use of a dog or dogs for the killing of black bear, cougar, or bobcat, for the protection of a state and/or federally listed threatened or endangered species.

(3)(a) Notwithstanding subsection (2) of this section, the commission shall authorize the use of dogs only in selected areas within a game management unit to address a public safety need presented by one or more cougar. This authority may only be exercised after the commission has determined that no other practical alternative to the use of dogs exists, and after the commission has adopted rules describing the conditions in which dogs may be used. Conditions that may warrant the use of dogs within a game management unit include, but are not limited to, confirmed cougar/human safety incidents, confirmed cougar/livestock and cougar/pet depredations, and the number of cougar capture attempts and relocations.

(b) The department shall post on their internet web site the known details of all reported cougar/human, cougar/pet, or cougar/livestock interactions within ten days of receiving the report. The posted material must include, but is not limited to, the location and time of all reported sightings, and the known details of any cougar/livestock incidents.

(4) A person who violates subsection (1) or (2) of this section is guilty of a gross misdemeanor. In addition to appropriate criminal penalties, the department shall revoke the hunting license of a person who violates subsection (1) or (2) of this section and order the suspension of wildlife hunting privileges for a period of five years following the revocation. Following a subsequent violation of subsection (1) or (2) of this section by the same person, a hunting license shall not be issued to the person at any time.

Passed by the House March 4, 2005.

Passed by the Senate April 6, 2005.

Approved by the Governor April 21, 2005.

Filed in Office of Secretary of State April 21, 2005.

CHAPTER 108

[Substitute House Bill 1918]

INDUSTRIAL INSURANCE—INJURY REPORTING

AN ACT Relating to implementing recommendation no. 2 of the joint legislative audit and review committee's report no. 98-9 with regard to reporting of industrial insurance injuries; amending RCW 51.28.020, 51.28.020, and 51.28.080; adding a new section to chapter 51.28 RCW; providing an effective date; and providing an expiration date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 51.28 RCW to read as follows:

(1) The legislature finds that:

(a) In 1998, the joint legislative audit and review committee, in its performance audit of the Washington industrial insurance system, reported that one of the most significant causes for delayed benefit payments to workers and lack of employer involvement in claims was the manner in which claims were reported. Under this system of reporting, the worker generally reports the injury to a physician who, in turn, reports the injury to the department.

(b) The performance audit further reported that adopting a system in which the employee reports to the employer and the employer reports to the department would speed the first payment of benefits to the worker and involve the

employer, from the beginning of the claim, in assisting in the management of the claim, including returning the worker to work.

(c) The performance audit also recognized that there would be instances in which workers would be reluctant to report injuries to employers and that, therefore, the system of physician reporting should be retained as an alternative, and employer reporting should be tested on a widespread basis.

(2)(a) The department of labor and industries shall develop and implement an initiative to encourage the reporting of industrial injuries by the worker to his or her employer and by the employer to the department. Under this initiative, the department must take steps to educate workers and employers about the benefits and importance of prompt reporting of injuries.

(b) By December 1, 2006, the department of labor and industries shall develop and make statutory recommendations for an alternative system of reporting injuries under which the worker would report to the employer and the employer would report to the department. Upon passage of such legislation, the department shall immediately begin an educational effort to promote this method of reporting.

(3)(a) The department must conduct a study of:

(i) Claims that are not reported promptly, including but not limited to a review of the circumstances of such claims, the type of injuries involved in such claims, and the reasons for the failure to report such claims promptly;

(ii) The effect of the educational initiative required under subsection (2)(a) of this section on whether the number of claims reported to employers increased, whether there was a reduction in delays in benefit payments, and whether there was an improvement in employer involvement in assisting with claims management and an increase in appropriate return-to-work and better outcomes for injured workers and employers; and

(iii) The results of the efforts of the centers of occupational health education in early reporting and early notification of employers, and the general lessons that can be drawn from these results for the larger workers' compensation program.

(b) By December 1, 2006, the department must report on the results of the study to the appropriate committees of the legislature.

Sec. 2. RCW 51.28.020 and 2004 c 65 s 4 are each amended to read as follows:

(1)(a) Where a worker is entitled to compensation under this title he or she shall file with the department or his or her self-insured employer, as the case may be, his or her application for such, together with the certificate of the physician or licensed advanced registered nurse practitioner who attended him or her. An application form developed by the department shall include a notice specifying the worker's right to receive health services from a physician or licensed advanced registered nurse practitioner of the worker's choice under RCW 51.36.010, including chiropractic services under RCW 51.36.015, and listing the types of providers authorized to provide these services.

(b) The physician or licensed advanced registered nurse practitioner who attended the injured worker shall inform the injured worker of his or her rights under this title and lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the worker. The department shall provide

physicians with a manual which outlines the procedures to be followed in applications for compensation involving occupational diseases, and which describes claimants' rights and responsibilities related to occupational disease claims.

(2) If the application ((for compensation)) required by this section is:

(a) Filed on behalf of the worker by the physician or licensed advanced registered nurse practitioner who attended the worker, the physician or licensed advanced registered nurse practitioner may transmit the application to the department electronically using facsimile mail;

(b) Made to the department and the employer has not received a copy of the application, the department shall immediately send a copy of the application to the employer; or

(c) Made to a self-insured employer, ((he or she)) the employer shall forthwith send a copy of the application to the department.

Sec. 3. RCW 51.28.020 and 2001 c 231 s 2 are each amended to read as follows:

(1)(a) Where a worker is entitled to compensation under this title he or she shall file with the department or his or her self-insured employer, as the case may be, his or her application for such, together with the certificate of the physician who attended him or her. An application form developed by the department shall include a notice specifying the worker's right to receive health services from a physician of the worker's choice under RCW 51.36.010, including chiropractic services under RCW 51.36.015, and listing the types of providers authorized to provide these services.

(b) The physician who attended the injured worker shall inform the injured worker of his or her rights under this title and lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the worker. The department shall provide physicians with a manual which outlines the procedures to be followed in applications for compensation involving occupational diseases, and which describes claimants' rights and responsibilities related to occupational disease claims.

(2) If the application ((for compensation)) required by this section is:

(a) Filed on behalf of the worker by the physician who attended the worker, the physician may transmit the application to the department electronically using facsimile mail;

(b) Made to the department and the employer has not received a copy of the application, the department shall immediately send a copy of the application to the employer; or

(c) Made to a self-insured employer, ((he or she)) the employer shall forthwith send a copy of the application to the department.

Sec. 4. RCW 51.28.080 and 1985 c 338 s 2 are each amended to read as follows:

(1) An employer shall be promptly notified by the department when:

(a) The department has received an application for compensation under this title. If the employer is a state fund employer, the department shall instruct the employer to submit a report of accident form and provide a telephone number for assistance in the reporting process; and

(b) It has determined that a worker of that employer is entitled to compensation under RCW 51.32.090.

(2) Notification shall include, in nontechnical language, an explanation of the employer's rights under this title.

NEW SECTION. Sec. 5. Section 2 of this act expires June 30, 2007.

NEW SECTION. Sec. 6. Section 3 of this act takes effect June 30, 2007.

Passed by the House March 14, 2005.

Passed by the Senate April 6, 2005.

Approved by the Governor April 21, 2005.

Filed in Office of Secretary of State April 21, 2005.

CHAPTER 109

[Substitute House Bill 1945]

FIRE SPRINKLER COMPONENTS—RECALL ASSISTANCE

AN ACT Relating to providing assistance in identifying fire sprinkler system components that have been subject to a recall or voluntary replacement program; and amending RCW 18.160.050.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 18.160.050 and 1990 c 177 s 6 are each amended to read as follows:

(1)(a) All certificate of competency holders that desire to continue in the fire protection sprinkler business shall annually, prior to January 1, secure from the state director of fire protection a renewal certificate of competency upon payment of the fee as prescribed by the state director of fire protection. Application for renewal shall be upon a form prescribed by the state director of fire protection and the certificate holder shall furnish the information required by the director.

(b) Failure of any certificate of competency holder to secure his or her renewal certificate of competency within sixty days after the due date shall constitute sufficient cause for the state director of fire protection to suspend the certificate of competency.

(c) The state director of fire protection may, upon the receipt of payment of all delinquent fees including a late charge, restore a certificate of competency that has been suspended for failure to pay the renewal fee.

(d) A certificate of competency holder may voluntarily surrender his or her certificate of competency to the state director of fire protection and be relieved of the annual renewal fee. After surrendering the certificate of competency, he or she shall not be known as a certificate of competency holder and shall desist from the practice thereof. Within two years from the time of surrender of the certificate of competency, he or she may again qualify for a certificate of competency, without examination, by the payment of the required fee. If two or more years have elapsed, he or she shall return to the status of a new applicant.

(2)(a) All licensed fire protection sprinkler system contractors desiring to continue to be licensed shall annually, prior to January 1, secure from the state director of fire protection a renewal license upon payment of the fee as prescribed by the state director of fire protection. Application for renewal shall be upon a form prescribed by the state director of fire protection and the license holder shall furnish the information required by the director.

(b) Failure of any license holder to secure his or her renewal license within sixty days after the due date shall constitute sufficient cause for the state director of fire protection to suspend the license.

(c) The state director of fire protection may, upon the receipt of payment of all delinquent fees including a late charge, restore a license that has been suspended for failure to pay the renewal fee.

(3) The initial certificate of competency or license fee shall be prorated based upon the portion of the year such certificate of competency or license is in effect, prior to renewal on January 1.

(4) The fire protection contractor license fund is created in the custody of the state treasurer. All receipts from license and certificate fees and charges or from the money generated by the rules and regulations promulgated under this chapter shall be deposited into the fund. Expenditures from the fund may be used only for purposes authorized under this chapter and for providing assistance in identifying fire sprinkler system components that have been subject to either a recall or voluntary replacement program by a manufacturer of fire sprinkler products, a nationally recognized testing laboratory, or the federal consumer product safety commission. Assistance shall include, but is not limited to, aiding in the identification of recalled components, information sharing strategies aimed at ensuring the consumer is made aware of recalls and voluntary replacement programs, and providing training and assistance to local fire authorities, the fire sprinkler industry, and the public. Only the state director of fire protection or the director's designee may authorize expenditures from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

Passed by the House March 8, 2005.

Passed by the Senate April 6, 2005.

Approved by the Governor April 21, 2005.

Filed in Office of Secretary of State April 21, 2005.

CHAPTER 110

[House Bill 1958]

SEA URCHINS—SEA CUCUMBERS—LICENSE FEES—TAXES

AN ACT Relating to extending the buyback program for certain limited fisheries that are set to expire at the end of 2005; and amending RCW 77.70.150, 77.70.190, 82.27.020, and 82.27.070.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 77.70.150 and 2001 c 253 s 58 are each amended to read as follows:

(1) A sea urchin dive fishery license is required to take sea urchins for commercial purposes. A sea urchin dive fishery license authorizes the use of only one diver in the water at any time during sea urchin harvest operations. If the same vessel has been designated on two sea urchin dive fishery licenses, two divers may be in the water. A natural person may not hold more than two sea urchin dive fishery licenses.

(2) Except as provided in subsection (6) of this section, the director shall issue no new sea urchin dive fishery licenses. For licenses issued for the year 2000 and thereafter, the director shall renew existing licenses only to a natural

person who held the license at the end of the previous year. If a sea urchin dive fishery license is not held by a natural person as of December 31, 1999, it is not renewable. However, if the license is not held because of revocation or suspension of licensing privileges, the director shall renew the license in the name of a natural person at the end of the revocation or suspension if the license holder applies for renewal of the license before the end of the year in which the revocation or suspension ends.

(3) Where a licensee failed to obtain the license during the previous year because of a license suspension or revocation by the director or the court, the licensee may qualify for a license by establishing that the person held such a license during the last year in which the person was eligible.

(4) Surcharges as provided for in this section shall be collected and deposited into the sea urchin dive fishery account hereby created in the custody of the state treasurer. Only the director or the director's designee may authorize expenditures from the account. The sea urchin dive fishery account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. Expenditures from the account shall only be used to retire sea urchin licenses until the number of licenses is reduced to twenty-five, and thereafter shall only be used for sea urchin management and enforcement.

(a) A surcharge of one hundred dollars shall be charged with each sea urchin dive fishery license renewal for licenses issued in 2000 through ~~((2005))~~ 2010.

(b) For licenses issued for the year 2000 and thereafter, a surcharge shall be charged on the sea urchin dive fishery license for designating an alternate operator. The surcharge shall be as follows: Five hundred dollars for the first year or each of the first two consecutive years after 1999 that any alternate operator is designated and two thousand five hundred dollars each year thereafter that any alternate operator is designated.

(5) Sea urchin dive fishery licenses are transferable. After December 31, 1999, there is a surcharge to transfer a sea urchin dive fishery license. The surcharge is five hundred dollars for the first transfer of a license valid for calendar year 2000, and two thousand five hundred dollars for any subsequent transfer, whether occurring in the year 2000 or thereafter. Notwithstanding this subsection, a one-time transfer exempt from surcharge applies for a transfer from the natural person licensed on January 1, 2000, to that person's spouse or child.

(6) If fewer than twenty-five natural persons are eligible for sea urchin dive fishery licenses, the director may accept applications for new licenses. The additional licenses may not cause more than twenty-five natural persons to be eligible for a sea urchin dive fishery license. New licenses issued under this section shall be distributed according to rules of the department that recover the value of such licensed privilege.

Sec. 2. RCW 77.70.190 and 2001 c 253 s 59 are each amended to read as follows:

(1) A sea cucumber dive fishery license is required to take sea cucumbers for commercial purposes. A sea cucumber dive fishery license authorizes the use of only one diver in the water at any time during sea cucumber harvest operations. If the same vessel has been designated on two sea cucumber dive fishery licenses, two divers may be in the water. A natural person may not hold more than two sea cucumber dive fishery licenses.

(2) Except as provided in subsection (6) of this section, the director shall issue no new sea cucumber dive fishery licenses. For licenses issued for the year 2000 and thereafter, the director shall renew existing licenses only to a natural person who held the license at the end of the previous year. If a sea cucumber dive fishery license is not held by a natural person as of December 31, 1999, it is not renewable. However, if the license is not held because of revocation or suspension of licensing privileges, the director shall renew the license in the name of a natural person at the end of the revocation or suspension if the license holder applies for renewal of the license before the end of the year in which the revocation or suspension ends.

(3) Where a licensee failed to obtain the license during either of the previous two years because of a license suspension by the director or the court, the licensee may qualify for a license by establishing that the person held such a license during the last year in which the person was eligible.

(4) Surcharges as provided for in this section shall be collected and deposited into the sea cucumber dive fishery account hereby created in the custody of the state treasurer. Only the director or the director's designee may authorize expenditures from the account. The sea cucumber dive fishery account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. Expenditures from the account shall only be used to retire sea cucumber licenses until the number of licenses is reduced to twenty-five, and thereafter shall only be used for sea cucumber management and enforcement.

(a) A surcharge of one hundred dollars shall be charged with each sea cucumber dive fishery license renewal for licenses issued in 2000 through ~~(2005)~~ 2010.

(b) For licenses issued for the year 2000 and thereafter, a surcharge shall be charged on the sea cucumber dive fishery license for designating an alternate operator. The surcharge shall be as follows: Five hundred dollars for the first year or each of the first two consecutive years after 1999 that any alternate operator is designated and two thousand five hundred dollars each year thereafter that any alternate operator is designated.

(5) Sea cucumber dive fishery licenses are transferable. After December 31, 1999, there is a surcharge to transfer a sea cucumber dive fishery license. The surcharge is five hundred dollars for the first transfer of a license valid for calendar year 2000 and two thousand five hundred dollars for any subsequent transfer whether occurring in the year 2000 or thereafter. Notwithstanding this subsection, a one-time transfer exempt from surcharge applies for a transfer from the natural person licensed on January 1, 2000, to that person's spouse or child.

(6) If fewer than twenty-five persons are eligible for sea cucumber dive fishery licenses, the director may accept applications for new licenses. The additional licenses may not cause more than twenty-five natural persons to be eligible for a sea cucumber dive fishery license. New licenses issued under this section shall be distributed according to rules of the department that recover the value of such licensed privilege.

Sec. 3. RCW 82.27.020 and 2001 c 320 s 9 are each amended to read as follows:

(1) In addition to all other taxes, licenses, or fees provided by law there is established an excise tax on the commercial possession of enhanced food fish as provided in this chapter. The tax is levied upon and shall be collected from the owner of the enhanced food fish whose possession constitutes the taxable event. The taxable event is the first possession in Washington by an owner after the enhanced food fish has been landed. Processing and handling of enhanced food fish by a person who is not the owner is not a taxable event to the processor or handler.

(2) A person in possession of enhanced food fish and liable to this tax may deduct from the price paid to the person from which the enhanced food fish (except oysters) are purchased an amount equal to a tax at one-half the rate levied in this section upon these products.

(3) The measure of the tax is the value of the enhanced food fish at the point of landing.

(4) The tax shall be equal to the measure of the tax multiplied by the rates for enhanced food fish as follows:

(a) Chinook, coho, and chum salmon and anadromous game fish: Five and twenty-five one-hundredths percent;

(b) Pink and sockeye salmon: Three and fifteen one-hundredths percent;

(c) Other food fish and shellfish, except oysters, sea urchins, and sea cucumbers: Two and one-tenth percent;

(d) Oysters: Eight one-hundredths of one percent;

(e) Sea urchins: Four and six-tenths percent through December 31, ~~((2005))~~ 2010, and two and one-tenth percent thereafter; and

(f) Sea cucumbers: Four and six-tenths percent through December 31, ~~((2005))~~ 2010, and two and one-tenth percent thereafter.

(5) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (4) of this section.

Sec. 4. RCW 82.27.070 and 2003 c 39 s 46 are each amended to read as follows:

All taxes collected by the department of revenue under this chapter shall be deposited in the state general fund except for the excise tax on anadromous game fish, which shall be deposited in the wildlife fund, and, during the period January 1, 2000, to December 31, ~~((2005))~~ 2010, twenty-five forty-sixths of the revenues derived from the excise tax on sea urchins collected under RCW 82.27.020 shall be deposited into the sea urchin dive fishery account created in RCW 77.70.150, and twenty-five forty-sixths of the revenues derived from the excise tax on sea cucumbers collected under RCW 82.27.020 shall be deposited into the sea cucumber dive fishery account created in RCW 77.70.190.

Passed by the House March 4, 2005.

Passed by the Senate April 8, 2005.

Approved by the Governor April 21, 2005.

Filed in Office of Secretary of State April 21, 2005.

CHAPTER 111

[House Bill 2028]

ADVISORY COMMITTEE OF THE OFFICE OF PUBLIC DEFENSE

AN ACT Relating to the advisory committee of the office of public defense; and amending RCW 2.70.030.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 2.70.030 and 1996 c 221 s 4 are each amended to read as follows:

(1) There is created an advisory committee consisting of the following members:

(a) Three persons appointed by the chief justice of the supreme court, including the chair of the appellate indigent defense commission identified in subsection (3) of this section;

(b) Two nonattorneys appointed by the governor;

(c) Two senators, one from each of the two largest caucuses, appointed by the president of the senate; and two members of the house of representatives, one from each of the two largest caucuses, appointed by the speaker of the house of representatives;

(d) One person appointed by the court of appeals executive committee;

(e) One person appointed by the Washington state bar association.

(2) During the term of his or her appointment, no appointee may: (a) Provide indigent defense services except on a pro bono basis; (b) serve as an appellate judge except on a pro tem basis or as an appellate court employee; or (c) serve as a prosecutor or prosecutor employee.

(3) The initial advisory committee shall be comprised of the current members of the appellate indigent defense commission, as established by Supreme Court Order No. 25700-B, dated March 9, 1995, plus two additional legislator members appointed under subsection (1)(c) of this section. Members shall serve until the termination of their current terms, and may be reappointed. The two additional legislator members, who are not on the appellate indigent defense commission, shall each serve three-year terms. Members of the advisory committee shall receive no compensation for their services as members of the commission, but may be reimbursed for travel and other expenses in accordance with rules adopted by the office of financial management.

Passed by the House March 8, 2005.

Passed by the Senate April 6, 2005.

Approved by the Governor April 21, 2005.

Filed in Office of Secretary of State April 21, 2005.

CHAPTER 112

[Engrossed Substitute Senate Bill 5002]

CAMPING RESORT CONTRACTS

AN ACT Relating to camping resort contracts; and amending RCW 19.105.310 and 19.105.325.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 19.105.310 and 1988 c 159 s 2 are each amended to read as follows:

Except in transactions exempt under RCW 19.105.325, it is unlawful for any person to market, offer, or sell a camping resort contract in this state or to a Washington state resident unless the camping resort contract is registered and the operator or registrant has received a permit to market the registered contracts under this chapter.

Sec. 2. RCW 19.105.325 and 1988 c 159 s 4 are each amended to read as follows:

(1) The following transactions are exempt from registration under this chapter:

- (a) An offer or sale by a government or governmental agency;
- (b) A bona fide pledge of a camping resort contract; and
- (c) Offerings and dispositions of up to three resale camping resort contracts by purchasers thereof on their own behalf or by third parties brokering on behalf of purchasers, other than resale contracts forfeited by or placed into an operator's sale inventory. All other sales of resale camping resort contracts by any person or business requires registration under this chapter.

(2) The director may, by rule or order, exempt any person, wholly or partially, from any or all requirements of this chapter if the director finds the requirements are not necessary for the protection of the public health, safety, and welfare.

Passed by the Senate March 8, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 21, 2005.

Filed in Office of Secretary of State April 21, 2005.

CHAPTER 113

[Senate Bill 5006]

AQUACULTURE PRODUCTS—LEASED STATE-OWNED AQUATIC LANDS

AN ACT Relating to the sale of aquaculture products from leased state-owned aquatic lands; amending RCW 79.90.210 and 79.96.080; and adding a new section to chapter 79.96 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. **Sec. 1.** A new section is added to chapter 79.96 RCW to read as follows:

Aquaculture products produced on leased state-owned aquatic land may be sold by the leaseholder as prescribed by the department without competitive bid or public auction and consistent with statutes governing aquaculture leases on state-owned aquatic land.

Sec. 2. RCW 79.90.210 and 1990 c 163 s 1 are each amended to read as follows:

All sales of tidelands and shorelands belonging to the state, otherwise permitted by RCW 79.94.150 to be sold, shall be at public auction and all sales of valuable materials shall be at public auction or by sealed bid to the highest responsible bidder, on the terms prescribed by law and as specified in the notice provided, and no land or materials shall be sold for less than their appraised value: PROVIDED, That when valuable material has been appraised at an amount not exceeding one hundred thousand dollars, the department of natural resources, when authorized by the board of natural resources, may arrange for

the sale at public auction of said valuable material and for its removal under such terms and conditions as the department may prescribe, after the department shall have caused to be published not less than ten days prior to sale a notice of such sale in a newspaper of general circulation located nearest to the property to be sold. However, any sale of valuable material on aquatic lands of an appraised value of ten thousand dollars or less may be sold directly to the applicant for cash without notice or advertising. Sales of aquaculture products by a leaseholder shall be as specified in section 1 of this act.

Sec. 3. RCW 79.96.080 and 2003 c 39 s 43 are each amended to read as follows:

(1) Except as provided in section 1 of this act, geoducks shall be sold as valuable materials under the provisions of chapter 79.90 RCW. After confirmation of the sale, the department of natural resources may enter into an agreement with the purchaser for the harvesting of geoducks. The department of natural resources may place terms and conditions in the harvesting agreements as the department deems necessary. The department of natural resources may enforce the provisions of any harvesting agreement by suspending or canceling the harvesting agreement or through any other means contained in the harvesting agreement. Any geoduck harvester may terminate a harvesting agreement entered into pursuant to this subsection if actions of a governmental agency, beyond the control of the harvester, its agents, or its employees, prohibit harvesting, for a period exceeding thirty days during the term of the harvesting agreement, except as provided within the agreement. Upon such termination of the agreement by the harvester, the harvester shall be reimbursed by the department of natural resources for the cost paid to the department on the agreement, less the value of the harvest already accomplished by the harvester under the agreement.

(2) Harvesting agreements under this title for the purpose of harvesting geoducks shall require the harvester and the harvester's agent or representatives to comply with all applicable commercial diving safety standards and regulations promulgated and implemented by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as such law exists or as hereafter amended (84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq.): PROVIDED, That for the purposes of this section and RCW 77.60.070 as now or hereafter amended, all persons who dive for geoducks are deemed to be employees as defined by the federal occupational safety and health act. All harvesting agreements shall provide that failure to comply with these standards is cause for suspension or cancellation of the harvesting agreement: PROVIDED FURTHER, That for the purposes of this subsection if the harvester contracts with another person or entity for the harvesting of geoducks, the harvesting agreement shall not be suspended or canceled if the harvester terminates its business relationship with such entity until compliance with this subsection is secured.

Passed by the Senate March 2, 2005.

Passed by the House April 8, 2005.

Approved by the Governor April 21, 2005.

Filed in Office of Secretary of State April 21, 2005.

CHAPTER 114

[Senate Bill 5044]

RURAL PUBLIC HOSPITAL DISTRICTS—OFFICER CONTRACT INTERESTS

AN ACT Relating to contract interests of an officer of a rural public hospital district; and amending RCW 42.23.030.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 42.23.030 and 1999 c 261 s 2 are each amended to read as follows:

No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein. This section shall not apply in the following cases:

(1) The furnishing of electrical, water or other utility services by a municipality engaged in the business of furnishing such services, at the same rates and on the same terms as are available to the public generally;

(2) The designation of public depositories for municipal funds;

(3) The publication of legal notices required by law to be published by any municipality, upon competitive bidding or at rates not higher than prescribed by law for members of the general public;

(4) The designation of a school director as clerk or as both clerk and purchasing agent of a school district;

(5) The employment of any person by a municipality for unskilled day labor at wages not exceeding two hundred dollars in any calendar month. The exception provided in this subsection does not apply to a county with a population of one hundred twenty-five thousand or more, a city with a population of more than one thousand five hundred, an irrigation district encompassing more than fifty thousand acres, or a first class school district;

(6)(a) The letting of any other contract in which the total amount received under the contract or contracts by the municipal officer or the municipal officer's business does not exceed one thousand five hundred dollars in any calendar month.

(b) However, in the case of a particular officer of a second class city or town, or a noncharter optional code city, or a member of any county fair board in a county which has not established a county purchasing department pursuant to RCW 36.32.240, the total amount of such contract or contracts authorized in this subsection (6) may exceed one thousand five hundred dollars in any calendar month but shall not exceed eighteen thousand dollars in any calendar year.

(c)(i) In the case of a particular officer of a rural public hospital district, as defined in RCW 70.44.460, the total amount of such contract or contracts authorized in this subsection (6) may exceed one thousand five hundred dollars in any calendar month, but shall not exceed twenty-four thousand dollars in any calendar year.

(ii) At the beginning of each calendar year, beginning with the 2006 calendar year, the legislative authority of the rural public hospital district shall increase the calendar year limitation described in this subsection (6)(c) by an amount equal to the dollar amount for the previous calendar year multiplied by

the change in the consumer price index as of the close of the twelve-month period ending December 31st of that previous calendar year. If the new dollar amount established under this subsection is not a multiple of ten dollars, the increase shall be rounded to the next lowest multiple of ten dollars. As used in this subsection, "consumer price index" means the consumer price index compiled by the bureau of labor statistics, United States department of labor for the state of Washington. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used.

(d) The exceptions provided in this subsection (6) do not apply to a sale or lease by the municipality as the seller or lessor. The exceptions provided in this subsection (6) also do not apply to the letting of any contract by a county with a population of one hundred twenty-five thousand or more, a city with a population of ten thousand or more, or an irrigation district encompassing more than fifty thousand acres.

~~((d))~~ (e) The municipality shall maintain a list of all contracts that are awarded under this subsection (6). The list must be made available for public inspection and copying;

(7) The leasing by a port district as lessor of port district property to a municipal officer or to a contracting party in which a municipal officer may be beneficially interested, if in addition to all other legal requirements, a board of three disinterested appraisers and the superior court in the county where the property is situated finds that all terms and conditions of such lease are fair to the port district and are in the public interest. The appraisers must be appointed from members of the American Institute of Real Estate Appraisers by the presiding judge of the superior court;

(8) The letting of any employment contract for the driving of a school bus in a second class school district if the terms of such contract are commensurate with the pay plan or collective bargaining agreement operating in the district;

(9) The letting of any employment contract to the spouse of an officer of a school district, when such contract is solely for employment as a substitute teacher for the school district. This exception applies only if the terms of the contract are commensurate with the pay plan or collective bargaining agreement applicable to all district employees and the board of directors has found, consistent with the written policy under RCW 28A.330.240, that there is a shortage of substitute teachers in the school district;

(10) The letting of any employment contract to the spouse of an officer of a school district if the spouse was under contract as a certificated or classified employee with the school district before the date in which the officer assumes office and the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district. However, in a second class school district that has less than two hundred full-time equivalent students enrolled at the start of the school year as defined in RCW 28A.150.040, the spouse is not required to be under contract as a certificated or classified employee before the date on which the officer assumes office;

(11) The authorization, approval, or ratification of any employment contract with the spouse of a public hospital district commissioner if: (a) The spouse was employed by the public hospital district before the date the commissioner was

initially elected; (b) the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district for similar employees; (c) the interest of the commissioner is disclosed to the board of commissioners and noted in the official minutes or similar records of the public hospital district prior to the letting or continuation of the contract; and (d) and the commissioner does not vote on the authorization, approval, or ratification of the contract or any conditions in the contract.

A municipal officer may not vote in the authorization, approval, or ratification of a contract in which he or she is beneficially interested even though one of the exemptions allowing the awarding of such a contract applies. The interest of the municipal officer must be disclosed to the governing body of the municipality and noted in the official minutes or similar records of the municipality before the formation of the contract.

Passed by the Senate March 8, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 21, 2005.

Filed in Office of Secretary of State April 21, 2005.

CHAPTER 115

[Engrossed Senate Bill 5045]

TITLE INSURANCE AGENTS

AN ACT Relating to allowing title insurance companies to provide a guarantee covering its agents; and amending RCW 48.29.155.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 48.29.155 and 2003 c 202 s 1 are each amended to read as follows:

(1) At the time of filing an application for a title insurance agent license, or any renewal or reinstatement of a title insurance agent license, the applicant shall provide satisfactory evidence to the commissioner of having obtained the following as evidence of financial responsibility:

(a) A fidelity bond or fidelity insurance providing coverage in the aggregate amount of two hundred thousand dollars with a deductible no greater than ten thousand dollars covering the applicant and each corporate officer, partner, escrow officer, and employee of the applicant conducting the business of an escrow agent as defined in RCW 18.44.011 and exempt from licensing under RCW 18.44.021(6), or a guarantee from a licensed title insurance company as authorized by subsection (5) of this section; and

(b) A surety bond in the amount of ten thousand dollars executed by the applicant as obligor and by a surety company authorized, or eligible under chapter 48.15 RCW, to do a surety business in this state as surety, or some other security approved by the commissioner, unless the fidelity bond or fidelity insurance obtained by the licensee to satisfy the requirement in (a) of this subsection does not have a deductible. The bond shall run to the state of Washington as obligee, and shall run to the benefit of the state and any person or persons who suffer loss by reason of the applicant's or its employee's violation of this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted under this

chapter, and shall reimburse all persons who suffer loss by reason of a violation of this chapter or rules adopted under this chapter. The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the commissioner of its intent to cancel the bond. The cancellation shall be effective thirty days after the notice is received by the commissioner. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond is not liable for any penalties imposed on the licensee, including but not limited to any increased damages or attorneys' fees, or both, awarded under RCW 19.86.090.

(2) For the purposes of this section, a "fidelity bond" means a primary commercial blanket bond or its equivalent satisfactory to the commissioner and written by an insurer authorized, or eligible under chapter 48.15 RCW, to transact this line of business in the state of Washington. The bond shall provide fidelity coverage for any fraudulent or dishonest acts committed by any one or more of the employees, officers, or owners as defined in the bond, acting alone or in collusion with others. The bond shall be for the sole benefit of the title insurance agent and under no circumstances whatsoever shall the bonding company be liable under the bond to any other party. The bond shall name the title insurance agent as obligee and shall protect the obligee against the loss of money or other real or personal property belonging to the obligee, or in which the obligee has a pecuniary interest, or for which the obligee is legally liable or held by the obligee in any capacity, whether the obligee is legally liable therefor or not. The bond may be canceled by the insurer upon delivery of thirty days' written notice to the commissioner and to the title insurance agent.

(3) For the purposes of this section, "fidelity insurance" means employee dishonesty insurance or its equivalent satisfactory to the commissioner and written by an insurer authorized, or eligible under chapter 48.15 RCW, to transact this line of business in the state of Washington. The insurance shall provide coverage for any fraudulent or dishonest acts committed by any one or more of the employees, officers, or owners as defined in the policy of insurance, acting alone or in collusion with others. The insurance shall be for the sole benefit of the title insurance agent and under no circumstances whatsoever shall the insurance company be liable under the insurance to any other party. The insurance shall name the title insurance agent as the named insured and shall protect the named insured against the loss of money or other real or personal property belonging to the named insured, or in which the named insured has a pecuniary interest, or for which the named insured is legally liable or held by the named insured in any capacity, whether the named insured is legally liable therefor or not. The insurance coverage may be canceled by the insurer upon delivery of thirty days' written notice to the commissioner and to the title insurance agent.

(4) The fidelity bond or fidelity insurance, and the surety bond or other form of security approved by the commissioner, shall be kept in full force and effect as a condition precedent to the title insurance agent's authority to transact

business in this state, and the title insurance agent shall supply the commissioner with satisfactory evidence thereof upon request.

(5) A title insurance company authorized to do business in Washington under RCW 48.05.030 may provide a guarantee in a form satisfactory to the commissioner accepting financial responsibility, up to the aggregate amount of two hundred thousand dollars, for any fraudulent or dishonest acts committed by any one or more of the employees, officers, or owners of a title insurance agent that is appointed as the title insurance company's agent. A title insurance company providing a guarantee as permitted under this subsection may only do so on behalf of its properly appointed title insurance agents. If the title insurance agent is an agent for two or more title insurance companies, any liability under the guarantee shall be borne by the title insurance company for those escrows for which a title insurance commitment or policy was issued on behalf of that title insurance company. If no commitment or policy was issued regarding the escrow for which moneys were lost, including but not limited to collection escrows, each title insurance company, for which the agent was appointed at the time of the fraudulent or dishonest act, shares in the liability. The liability will be shared proportionally, as follows: The premium the agent remitted to the title insurance company in the year prior to the fraudulent or dishonest act will be compared to the total premium the agent remitted to all title insurance companies, for whom the title insurance agent was appointed, during the same period.

(6) All title insurance agents licensed on or before the effective date of this act shall comply with this section within thirty days following the effective date.

Passed by the Senate February 23, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 21, 2005.

Filed in Office of Secretary of State April 21, 2005.

CHAPTER 116

[Senate Bill 5046]

ETHICS COMPLAINTS

AN ACT Relating to ethics complaints; and amending RCW 42.52.425 and 42.52.450.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 42.52.425 and 2000 c 211 s 2 are each amended to read as follows:

(1) Based on the investigation conducted under RCW 42.52.420 or 42.52.450, and subject to rules issued by each board, the board or the staff of the appropriate ethics board may issue an order of dismissal based on any of the following findings:

(a) Any violation that may have occurred is not within the jurisdiction of the board;

(b) The complaint is obviously unfounded or frivolous; or

(c) Any violation that may have occurred does not constitute a material violation because it was inadvertent and minor, or has been cured, and, after consideration of all of the circumstances, further proceedings would not serve the purposes of this chapter.

(2) Written notice of the determination under subsection (1) of this section shall be provided to the complainant, respondent, and the board. The written notice to the complainant shall include a statement of the complainant's right to appeal to the board under subsection (3) of this section if the dismissal order was issued by staff.

(3) In the event that a complaint is dismissed by staff under this section, the complainant may request that the board review the action. Following review, the board shall:

- (a) Affirm the staff dismissal;
- (b) Direct the staff to conduct further investigation; or
- (c) Issue a determination that there is reasonable cause to believe that a violation has been or is being committed.

(4) The board's decision under subsection (3) of this section shall be reduced to writing and provided to the complainant and the respondent.

Sec. 2. RCW 42.52.450 and 1994 c 154 s 215 are each amended to read as follows:

(1) If a complaint alleges a violation of RCW 42.52.180 by a legislator or statewide elected official other than the attorney general, the attorney general shall, if requested by the appropriate ethics board, conduct the investigation under RCW 42.52.420 and recommend action ~~((to the appropriate ethics board)).~~

(2) If a complaint alleges a violation of RCW 42.52.180 by the attorney general, the state auditor shall conduct the investigation under RCW 42.52.420 and recommend action to the appropriate ethics board.

Passed by the Senate February 23, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 21, 2005.

Filed in Office of Secretary of State April 21, 2005.

CHAPTER 117

[Senate Bill 5053]

SERVICE BY PUBLICATION—DOMESTIC RELATIONS

AN ACT Relating to service by publication in actions to establish or modify parenting plans, for legal separation or invalidity of marriage, and for nonparental custody; and amending RCW 4.28.100.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 4.28.100 and 1981 c 331 s 13 are each amended to read as follows:

When the defendant cannot be found within the state, and upon the filing of an affidavit of the plaintiff, his agent, or attorney, with the clerk of the court, stating that he believes that the defendant is not a resident of the state, or cannot be found therein, and that he has deposited a copy of the summons (substantially in the form prescribed in RCW 4.28.110) and complaint in the post office, directed to the defendant at his place of residence, unless it is stated in the affidavit that such residence is not known to the affiant, and stating the existence of one of the cases hereinafter specified, the service may be made by publication of the summons, by the plaintiff or his attorney in any of the following cases:

(1) When the defendant is a foreign corporation, and has property within the state;

(2) When the defendant, being a resident of this state, has departed therefrom with intent to defraud his creditors, or to avoid the service of a summons, or keeps himself concealed therein with like intent;

(3) When the defendant is not a resident of the state, but has property therein and the court has jurisdiction of the subject of the action;

(4) When the action is for ~~((divorce))~~ (a) establishment or modification of a parenting plan or residential schedule; or (b) dissolution of marriage, legal separation, or declaration of invalidity, in the cases prescribed by law;

(5) When the action is for nonparental custody under chapter 26.10 RCW and the child is in the physical custody of the petitioner;

(6) When the subject of the action is real or personal property in this state, and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly, or partly, in excluding the defendant from any interest or lien therein;

~~((6))~~ (7) When the action is to foreclose, satisfy, or redeem from a mortgage, or to enforce a lien of any kind on real estate in the county where the action is brought, or satisfy or redeem from the same;

~~((7))~~ (8) When the action is against any corporation, whether private or municipal, organized under the laws of the state, and the proper officers on whom to make service do not exist or cannot be found;

~~((8))~~ (9) When the action is brought under RCW 4.08.160 and 4.08.170 to determine conflicting claims to property in this state.

Passed by the Senate March 2, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 21, 2005.

Filed in Office of Secretary of State April 21, 2005.

CHAPTER 118

[Substitute Senate Bill 5065]

HOSPITALS—STATEMENTS TO PATIENTS—LIABILITY

AN ACT Relating to injuries resulting from health care; adding a new section to chapter 70.41 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 70.41 RCW to read as follows:

Hospitals shall have in place policies to assure that, when appropriate, information about unanticipated outcomes is provided to patients or their families or any surrogate decision makers identified pursuant to RCW 7.70.065. Notifications of unanticipated outcomes under this section do not constitute an acknowledgement or admission of liability, nor can the fact of notification, the content disclosed, or any and all statements, affirmations, gestures, or conduct expressing apology be introduced as evidence in a civil action.

NEW SECTION. Sec. 2. Beginning January 1, 2006, the department shall, during the survey of a hospital, ensure that the policy required in section 1 of this act is in place.

Passed by the Senate March 10, 2005.

Passed by the House April 6, 2005.

Approved by the Governor April 21, 2005.

Filed in Office of Secretary of State April 21, 2005.

CHAPTER 119

[Engrossed Senate Bill 5087]

COMMUNITY AND TECHNICAL COLLEGES—PART-TIME FACULTY

AN ACT Relating to part-time faculty of community and technical colleges; amending RCW 28B.50.4892; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that:

(1) The part-time faculty in the community and technical colleges provide a valuable contribution to quality instruction;

(2) The part-time faculty are essential to the success of the open access opportunities provided by the two-year colleges to the citizens of Washington;

(3) The two-year colleges employ a core of skilled, well-trained faculty whose contributions are critical to the quality and breadth of program offerings;

(4) The community and technical colleges have an essential role in educating and retraining high-skilled workers who are vital to the economic health of the communities of Washington;

(5) It is vital to attract and retain highly skilled faculty capable of preparing students to transfer to four-year colleges and universities and for the work force;

(6) Low and stagnating salaries as well as the lack of career advancement options for part-time faculty are detrimental to the morale of all faculty;

(7) Part-time faculty contribute to the learning environment offered to the students through advising and attention that all good educators bring to their profession; and

(8) Although progress has been made since the initial work of the best practices task force in 1996, additional progress needs to be made to improve and implement best practices for part-time community and technical college faculty.

Sec. 2. RCW 28B.50.4892 and 1996 c 120 s 3 are each amended to read as follows:

(1) The legislature finds that community colleges and technical colleges have an obligation to carry out their roles and missions in an equitable fashion. The legislature also finds that governing boards for community colleges and technical colleges have a responsibility to provide leadership and guidance to their colleges in the equitable treatment of part-time faculty teaching in the community and technical colleges.

(2) The state board for community and technical colleges shall convene a task force to conduct a review and update of the best practices audit of compensation packages and conditions of employment for part-time faculty in the community and technical college system conducted in 1996 and reported on in 1998. The task force shall include but need not be limited to part-time faculty, full-time faculty, members of the state board, community college administrators, and members of community college and technical college governing boards. In

performing the review and update of the audit, the task force shall focus on the employment of part-time faculty, and shall include the following issues in its deliberations: Salary issues, provision of health and retirement benefits, the implications of increased reliance on part-time rather than full-time faculty, the implications of workload definitions, and tangible and intangible ways to recognize the professional stature of part-time faculty.

(3) The task force shall report its findings to the state board, local governing boards, and other interested parties by ~~((August 30, 1996))~~ December 1, 2005. The report shall include recommendations on a review of the status of the set of best practices principles for the colleges to follow in their employment of part-time faculty developed in 1996. ~~((By September 30, 1996,))~~ The state board for community and technical colleges shall adopt and periodically update a set of best practices principles for colleges in the community and technical college system to follow in their employment of part-time faculty. The board shall use the best practices principles in the development of ~~((its 1997-99))~~ each biennial operating budget request. The board shall encourage and, to the extent possible, require each local governing board to adopt, revise, and implement the principles.

Passed by the Senate March 9, 2005.

Passed by the House April 6, 2005.

Approved by the Governor April 21, 2005.

Filed in Office of Secretary of State April 21, 2005.

CHAPTER 120

[Substitute Senate Bill 5092]

BEGINNING FARMERS LOAN PROGRAM

AN ACT Relating to the beginning farmers loan program; adding a new section to chapter 43.180 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that there are a significant number of people from both urban and rural areas of the state with the training, expertise, and interest in initiating a livelihood in farming but who lack the financial resources to get started. The legislature also finds that the average age of existing farmers is increasing, the number of full-time commercial farms is decreasing, and an increasing concern that there will be insufficient young people who have both the capability and interest to fulfill the needs for the next generation.

The legislature finds that there are a significant number of new small farms in the state and a significant enrollment in agricultural courses offered by public community colleges and universities and the beginning farmer program offered by Washington State University cooperative extension.

The purpose of this act is to establish a program to test the feasibility, interest, and results of a beginning farmer loan program.

NEW SECTION. Sec. 2. A new section is added to chapter 43.180 RCW to read as follows:

(1) The commission may develop and implement a program to provide financing for beginning farmers. In developing the program, the commission

shall establish eligibility criteria for financing that will enable it to choose applicants who are likely to repay loans made or acquired by the commission and funded from the proceeds of commission bonds.

(2) The commission may:

(a) Issue revenue bonds as defined in RCW 43.180.020(1) for the purpose of financing loans to beginning farmers in accordance with RCW 43.180.150;

(b) Do all things necessary to provide for the exemption of interest on its bonds from federal income taxation; and

(c) Participate fully in federal and other governmental programs and take such actions as are necessary and consistent with this chapter to secure to itself and the people of the state the benefits of those programs for beginning farmers.

Passed by the Senate March 11, 2005.

Passed by the House April 6, 2005.

Approved by the Governor April 21, 2005.

Filed in Office of Secretary of State April 21, 2005.

CHAPTER 121

[Substitute Senate Bill 5105]

UTILITIES AND TRANSPORTATION COMMISSION—CERTIFICATE HOLDERS

AN ACT Relating to certification of entities regulated by the utilities and transportation commission under Title 81 RCW; amending RCW 81.66.060, 81.68.030, 81.68.040, 81.77.030, 81.77.040, and 81.84.020; adding a new section to chapter 81.70 RCW; adding a new section to chapter 81.68 RCW; and recodifying RCW 81.68.045.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 81.66.060 and 1979 c 111 s 9 are each amended to read as follows:

The commission may, at any time, by its order duly entered after ~~((a hearing had upon))~~ notice to the holder of any certificate issued under this chapter, and an opportunity ~~((to such holder to be heard))~~ for a hearing, at which it is proven that the holder has willfully violated or refused to observe any of the commission's proper orders, rules, or regulations, suspend, revoke, alter, or amend any certificate issued under the provisions of this chapter, but the holder of the certificate shall have all the rights of rehearing, review, and appeal as to the order of the commission as is provided for in RCW 81.68.070.

Sec. 2. RCW 81.68.030 and 1989 c 163 s 4 are each amended to read as follows:

The commission is vested with power and authority, and it is its duty to supervise and regulate every auto transportation company in this state as provided in this section. Under this authority, it shall for each auto transportation company:

(1) Fix, alter, and amend just, fair, reasonable, and sufficient rates, fares, charges, classifications, rules, and regulations;

(2) Regulate the accounts, service, and safety of operations;

(3) Require the filing of annual and other reports and of other data;

(4) Supervise and regulate the companies in all other matters affecting the relationship between such companies and the traveling and shipping public;

(5) By general order or otherwise, prescribe rules and regulations in conformity with this chapter, applicable to any and all such companies, and within such limits make orders.

The commission may, at any time, by its order duly entered after (~~(a hearing had upon)~~) notice to the holder of any certificate under this chapter, and an opportunity (~~(to the holder to be heard)~~) for a hearing, at which it shall be proven that the holder willfully violates or refuses to observe any of the commission's proper orders, rules, or regulations, suspend, revoke, alter, or amend any certificate issued under the provisions of this chapter, but the holder of the certificate has all the rights of rehearing, review, and appeal as to the order of the commission as is provided for in RCW 81.68.070.

Sec. 3. RCW 81.68.040 and 1961 c 14 s 81.68.040 are each amended to read as follows:

No auto transportation company shall operate for the transportation of persons, and baggage, mail and express on the vehicles of auto transportation companies carrying passengers, for compensation between fixed termini or over a regular route in this state, without first having obtained from the commission under the provisions of this chapter a certificate declaring that public convenience and necessity require such operation; but a certificate shall be granted when it appears to the satisfaction of the commission that such person, firm or corporation was actually operating in good faith, over the route for which such certificate shall be sought on January 15, 1921. Any right, privilege, certificate held, owned or obtained by an auto transportation company may be sold, assigned, leased, transferred or inherited as other property, only upon authorization by the commission. The commission shall have power, after notice and an opportunity for a hearing, when the applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, only when the existing auto transportation company or companies serving such territory will not provide the same to the satisfaction of the commission, or when the existing auto transportation company does not object, and in all other cases with or without hearing, to issue said certificate as prayed for; or for good cause shown to refuse to issue same, or to issue it for the partial exercise only of said privilege sought, and may attach to the exercise of the rights granted by said certificate to such terms and conditions as, in its judgment, the public convenience and necessity may require.

NEW SECTION. **Sec. 4.** RCW 81.68.045 is recodified as a section in chapter 81.70 RCW.

Sec. 5. RCW 81.77.030 and 1989 c 431 s 20 are each amended to read as follows:

The commission shall supervise and regulate every solid waste collection company in this state,

(1) By fixing and altering its rates, charges, classifications, rules and regulations;

(2) By regulating the accounts, service, and safety of operations;

(3) By requiring the filing of annual and other reports and data;

(4) By supervising and regulating such persons or companies in all other matters affecting the relationship between them and the public which they serve;

(5) By requiring compliance with local solid waste management plans and related implementation ordinances;

(6) By requiring certificate holders under chapter 81.77 RCW to use rate structures and billing systems consistent with the solid waste management priorities set forth under RCW 70.95.010 and the minimum levels of solid waste collection and recycling services pursuant to local comprehensive solid waste management plans. The commission may order consolidated billing and provide for reasonable and necessary expenses to be paid to the administering company if more than one certificate is granted in an area.

The commission, on complaint made on its own motion or by an aggrieved party, at any time, after ~~((the holding of a hearing of which))~~ providing the holder of any certificate ~~((has had))~~ with notice and an opportunity ~~((to be heard, and))~~ for a hearing at which it shall be proven that the holder has willfully violated or refused to observe any of the commission's orders, rules, or regulations, or has failed to operate as a solid waste collection company for a period of at least one year preceding the filing of the complaint, may suspend, revoke, alter, or amend any certificate issued under the provisions of this chapter.

Sec. 6. RCW 81.77.040 and 1989 c 431 s 21 are each amended to read as follows:

No solid waste collection company shall hereafter operate for the hauling of solid waste for compensation without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation. A condition of operating a solid waste company in the unincorporated areas of a county shall be complying with the solid waste management plan prepared under chapter 70.95 RCW applicable in the company's franchise area.

Issuance of the certificate of necessity shall be determined upon, but not limited to, the following factors: The present service and the cost thereof for the contemplated area to be served; an estimate of the cost of the facilities to be utilized in the plant for solid waste collection and disposal, sworn to before a notary public; a statement of the assets on hand of the person, firm, association or corporation which will be expended on the purported plant for solid waste collection and disposal, sworn to before a notary public; a statement of prior experience, if any, in such field by the petitioner, sworn to before a notary public; and sentiment in the community contemplated to be served as to the necessity for such a service.

~~((Except as provided in RCW 81.77.150,))~~ When an applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, the commission may, after notice and an opportunity for a hearing, issue the certificate only if the existing solid waste collection company or companies serving the territory will not provide service to the satisfaction of the commission or if the existing solid waste collection company does not object.

In all other cases, the commission may, with or without hearing, issue certificates, or for good cause shown refuse to issue them, or issue them for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted such terms and conditions as, in its judgment, the public convenience and necessity may require.

Any right, privilege, certificate held, owned, or obtained by a solid waste collection company may be sold, assigned, leased, transferred, or inherited as other property, but only upon authorization by the commission.

Any solid waste collection company which upon July 1, 1961 is operating under authority of a common carrier or contract carrier permit issued under the provisions of chapter 81.80 RCW shall be granted a certificate of necessity without hearing upon compliance with the provisions of this chapter. Such solid waste collection company which has paid the plate fee and gross weight fees required by chapter 81.80 RCW for the year 1961 shall not be required to pay additional like fees under the provisions of this chapter for the remainder of such year.

For purposes of issuing certificates under this chapter, the commission may adopt categories of solid wastes as follows: Garbage, refuse, recyclable materials, and demolition debris. A certificate may be issued for one or more categories of solid waste. Certificates issued on or before July 23, 1989, shall not be expanded or restricted by operation of this chapter.

Sec. 7. RCW 81.84.020 and 2003 c 373 s 5 are each amended to read as follows:

(1) Upon the filing of an application the commission shall give reasonable notice to the department, affected cities, counties, and public transportation benefit areas and any common carrier which might be adversely affected, of the time and place for hearing on such application. The commission shall have power after notice and an opportunity for a hearing, to issue the certificate as prayed for, or to refuse to issue it, or to issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by said certificate such terms and conditions as in its judgment the public convenience and necessity may require; but the commission shall not have power to grant a certificate to operate between districts and/or into any territory prohibited by RCW 47.60.120 or already served by an existing certificate holder, unless such existing certificate holder has failed or refused to furnish reasonable and adequate service ~~((or))~~, has failed to provide the service described in its certificate or tariffs after the time period allowed to initiate service has elapsed, or has not objected to the issuance of the certificate as prayed for: PROVIDED, A certificate shall be granted when it shall appear to the satisfaction of the commission that the commercial ferry was actually operating in good faith over the route for which such certificate shall be sought, on January 15, 1927: PROVIDED, FURTHER, That in case two or more commercial ferries shall upon said date have been operating vessels upon the same route, or between the same districts the commission shall determine after public hearing whether one or more certificates shall issue, and in determining to whom a certificate or certificates shall be issued, the commission shall consider all material facts and circumstances including the prior operation, schedules, and services rendered by either of the ferries, and in case more than one certificate shall issue, the commission shall fix and determine the schedules and services of the ferries to which the certificates are issued to the end that duplication of service be eliminated and public convenience be furthered.

(2) Before issuing a certificate, the commission shall determine that the applicant has the financial resources to operate the proposed service for at least twelve months, based upon the submission by the applicant of a pro forma

financial statement of operations. Issuance of a certificate shall be determined upon, but not limited to, the following factors: Ridership and revenue forecasts; the cost of service for the proposed operation; an estimate of the cost of the assets to be used in providing the service; a statement of the total assets on hand of the applicant that will be expended on the proposed operation; and a statement of prior experience, if any, in such field by the applicant. The documentation required of the applicant under this section shall comply with the provisions of RCW 9A.72.085.

(3) Subsection (2) of this section does not apply to an application for a certificate that is pending as of July 25, 1993.

(4) In granting a certificate for passenger-only ferries and determining what conditions to place on the certificate, the commission shall consider and give substantial weight to the effect of its decisions on public agencies operating, or eligible to operate, passenger-only ferry service.

(5) Until March 1, 2005, the commission shall not consider an application for passenger-only ferry service serving any county in Puget Sound, unless the public transportation benefit area authority or ferry district serving that county, by resolution, agrees to the application.

NEW SECTION. Sec. 8. A new section is added to chapter 81.68 RCW to read as follows:

The commission may, with or without a hearing, issue temporary certificates to engage in the business of operating an auto transportation company, but only after it finds that the issuance of the temporary certificate is consistent with the public interest. The temporary certificate may be issued for a period up to one hundred eighty days. The commission may prescribe rules and impose terms and conditions as in its judgment are reasonable and necessary in carrying out this chapter. The commission may by rule, prescribe a fee for an application for the temporary certificate. The commission shall not issue a temporary certificate to operate in a territory: (1) For which a certificate has been issued, unless the existing certificate holder, upon twenty days' notice, does not object to the issuance of the certificate or is not providing service; or (2) for which an application is pending unless the filing for a temporary certificate is made by the applicant or the applicant does not object to the issuance of the certificate.

Passed by the Senate March 11, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 21, 2005.

Filed in Office of Secretary of State April 21, 2005.

CHAPTER 122

[Senate Bill 5136]

FIRE PROTECTION DISTRICTS—PROPERTY TAX LEVIES

AN ACT Relating to fire protection district property tax levies; amending RCW 84.52.043; reenacting and amending RCW 84.52.010; adding a new section to chapter 84.52 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 84.52 RCW to read as follows:

A fire protection district may protect the district's tax levy from prorating under RCW 84.52.010(2) by imposing up to a total of twenty-five cents per thousand dollars of assessed value of the tax levies authorized under RCW 52.16.140 and 52.16.160 outside of the five dollars and ninety cents per thousand dollars of assessed valuation limitation established under RCW 84.52.043(2), if those taxes otherwise would be prorated under RCW 84.52.010(2)(e).

Sec. 2. RCW 84.52.010 and 2004 c 129 s 21 and 2004 c 80 s 3 are each reenacted and amended to read as follows:

Except as is permitted under RCW 84.55.050, all taxes shall be levied or voted in specific amounts.

The rate percent of all taxes for state and county purposes, and purposes of taxing districts coextensive with the county, shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the county, as shown by the completed tax rolls of the county, and the rate percent of all taxes levied for purposes of taxing districts within any county shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the taxing districts respectively.

When a county assessor finds that the aggregate rate of tax levy on any property, that is subject to the limitations set forth in RCW 84.52.043 or 84.52.050, exceeds the limitations provided in either of these sections, the assessor shall recompute and establish a consolidated levy in the following manner:

(1) The full certified rates of tax levy for state, county, county road district, and city or town purposes shall be extended on the tax rolls in amounts not exceeding the limitations established by law; however any state levy shall take precedence over all other levies and shall not be reduced for any purpose other than that required by RCW 84.55.010. If, as a result of the levies imposed under section 1 of this act, RCW 84.52.135, 36.54.130, 84.52.069, 84.34.230, the portion of the levy by a metropolitan park district that was protected under RCW 84.52.120, and 84.52.105, the combined rate of regular property tax levies that are subject to the one percent limitation exceeds one percent of the true and fair value of any property, then these levies shall be reduced as follows:

(a) The portion of the levy by a fire protection district that is protected under section 1 of this act shall be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or shall be eliminated;

(b) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the levy imposed by a county under RCW 84.52.135 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

~~((b))~~ (c) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the levy imposed by a ferry district under RCW 36.54.130 must be

reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

~~((e))~~ (d) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the portion of the levy by a metropolitan park district that is protected under RCW 84.52.120 shall be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or shall be eliminated;

~~((d))~~ (e) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the levies imposed under RCW 84.34.230, 84.52.105, and any portion of the levy imposed under RCW 84.52.069 that is in excess of thirty cents per thousand dollars of assessed value, shall be reduced on a pro rata basis until the combined rate no longer exceeds one percent of the true and fair value of any property or shall be eliminated; and

~~((e))~~ (f) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the thirty cents per thousand dollars of assessed value of tax levy imposed under RCW 84.52.069 shall be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or eliminated.

(2) The certified rates of tax levy subject to these limitations by all junior taxing districts imposing taxes on such property shall be reduced or eliminated as follows to bring the consolidated levy of taxes on such property within the provisions of these limitations:

(a) First, the certified property tax levy rates of those junior taxing districts authorized under RCW 36.68.525, 36.69.145, 35.95A.100, and 67.38.130 shall be reduced on a pro rata basis or eliminated;

(b) Second, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of flood control zone districts shall be reduced on a pro rata basis or eliminated;

(c) Third, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of all other junior taxing districts, other than fire protection districts, regional fire protection service authorities, library districts, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts, and the first fifty cent per thousand dollars of assessed valuation levies for public hospital districts, shall be reduced on a pro rata basis or eliminated;

(d) Fourth, if the consolidated tax levy rate still exceeds these limitations, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts created on or after January 1, 2002, shall be reduced on a pro rata basis or eliminated;

(e) Fifth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized to regional fire protection service authorities under RCW 52.26.140(1) (b) and (c) and fire protection districts under RCW 52.16.140 and 52.16.160 shall be reduced on a pro rata basis or eliminated; and

(f) Sixth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized for regional fire protection service

authorities under RCW 52.26.140(1)(a), fire protection districts under RCW 52.16.130, library districts, metropolitan park districts created before January 1, 2002, under their first fifty cent per thousand dollars of assessed valuation levy, and public hospital districts under their first fifty cent per thousand dollars of assessed valuation levy, shall be reduced on a pro rata basis or eliminated.

Sec. 3. RCW 84.52.043 and 2004 c 80 s 4 are each amended to read as follows:

Within and subject to the limitations imposed by RCW 84.52.050 as amended, the regular ad valorem tax levies upon real and personal property by the taxing districts hereafter named shall be as follows:

(1) Levies of the senior taxing districts shall be as follows: (a) The levy by the state shall not exceed three dollars and sixty cents per thousand dollars of assessed value adjusted to the state equalized value in accordance with the indicated ratio fixed by the state department of revenue to be used exclusively for the support of the common schools; (b) the levy by any county shall not exceed one dollar and eighty cents per thousand dollars of assessed value; (c) the levy by any road district shall not exceed two dollars and twenty-five cents per thousand dollars of assessed value; and (d) the levy by any city or town shall not exceed three dollars and thirty-seven and one-half cents per thousand dollars of assessed value. However any county is hereby authorized to increase its levy from one dollar and eighty cents to a rate not to exceed two dollars and forty-seven and one-half cents per thousand dollars of assessed value for general county purposes if the total levies for both the county and any road district within the county do not exceed four dollars and five cents per thousand dollars of assessed value, and no other taxing district has its levy reduced as a result of the increased county levy.

(2) The aggregate levies of junior taxing districts and senior taxing districts, other than the state, shall not exceed five dollars and ninety cents per thousand dollars of assessed valuation. The term "junior taxing districts" includes all taxing districts other than the state, counties, road districts, cities, towns, port districts, and public utility districts. The limitations provided in this subsection shall not apply to: (a) Levies at the rates provided by existing law by or for any port or public utility district; (b) excess property tax levies authorized in Article VII, section 2 of the state Constitution; (c) levies for acquiring conservation futures as authorized under RCW 84.34.230; (d) levies for emergency medical care or emergency medical services imposed under RCW 84.52.069; (e) levies to finance affordable housing for very low-income housing imposed under RCW 84.52.105; (f) the portions of levies by metropolitan park districts that are protected under RCW 84.52.120; (g) levies imposed by ferry districts under RCW 36.54.130; ~~((and))~~ (h) levies for criminal justice purposes under RCW 84.52.135; and (i) the portions of levies by fire protection districts that are protected under section 1 of this act.

NEW SECTION. Sec. 4. This act applies to taxes levied for collection in 2006 and thereafter.

Passed by the Senate March 16, 2005.

Passed by the House April 7, 2005.

Approved by the Governor April 21, 2005.
Filed in Office of Secretary of State April 21, 2005.

CHAPTER 123

[Substitute Senate Bill 5207]

PILOTAGE SERVICES—PORT DISTRICT LIABILITY

AN ACT Relating to liability limitations for providing pilotage services; and amending RCW 88.16.115 and 88.16.118.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 88.16.115 and 1981 c 196 s 1 are each amended to read as follows:

The preservation of human life and property associated with maritime commerce on the pilotage waters of this state is declared to be in the public interest, and the limitation and regulation of the liability of pilots licensed by the state of Washington, and of any county-wide port district located partly or entirely within the Grays Harbor pilotage district as defined by RCW 88.16.050(2) authorized to provide pilotage services, is necessary to such preservation and is deemed to be in the public interest.

Sec. 2. RCW 88.16.118 and 1984 c 69 s 1 are each amended to read as follows:

A ship's pilot licensed to act as such by the state of Washington, and any county-wide port district located partly or entirely within the Grays Harbor pilotage district as defined by RCW 88.16.050(2) authorized to provide pilotage services, shall not be liable for damages in excess of the amount of five thousand dollars for damages or loss occasioned by ~~((the))~~ a pilot's errors, omissions, fault, or neglect in the performance of pilotage services, except as may arise by reason of the willful misconduct or gross negligence of ~~((the))~~ a pilot.

When a pilot boards a vessel, that pilot becomes a servant of the vessel and its owner and operator. Nothing in this section exempts the vessel, its owner or operator from liability for damage or loss occasioned by that ship to a person or property on the ground that (1) the ship was piloted by a Washington state licensed pilot, or (2) the damage or loss was occasioned by the error, omission, fault, or neglect of a Washington state licensed pilot.

Passed by the Senate March 11, 2005.
Passed by the House April 5, 2005.
Approved by the Governor April 21, 2005.
Filed in Office of Secretary of State April 21, 2005.

CHAPTER 124

[Senate Bill 5267]

STATE PATROL—OFF-DUTY EMPLOYMENT

AN ACT Relating to clarifying the ability of Washington state patrol officers to engage in private law enforcement off-duty employment in plainclothes for private benefit; and amending RCW 43.43.112.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 43.43.112 and 1997 c 375 s 1 are each amended to read as follows:

Washington state patrol officers may engage in private law enforcement off-duty employment, in uniform or in plainclothes for private benefit, subject to guidelines adopted by the chief of the Washington state patrol. These guidelines must ensure that the integrity and professionalism of the Washington state patrol is preserved. Use of Washington state patrol officer's uniforms shall be considered de minimis use of state property.

Passed by the Senate March 8, 2005.

Passed by the House April 8, 2005.

Approved by the Governor April 21, 2005.

Filed in Office of Secretary of State April 21, 2005.

CHAPTER 125

[Substitute Senate Bill 5289]

RUNNING START—HOME-SCHOOLED CHILDREN

AN ACT Relating to the running start program; and amending RCW 28A.600.310.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28A.600.310 and 1994 c 205 s 2 are each amended to read as follows:

(1) Eleventh and twelfth grade students or students who have not yet received the credits required for the award of a high school diploma (~~or its equivalent~~) and are eligible to be in the eleventh or twelfth grades may apply to a participating institution of higher education to enroll in courses or programs offered by the institution of higher education. A student receiving home-based instruction enrolling in a public high school for the sole purpose of participating in courses or programs offered by institutions of higher education shall not be counted by the school district in any required state or federal accountability reporting if the student's parents or guardians filed a declaration of intent to provide home-based instruction and the student received home-based instruction during the school year before the school year in which the student intends to participate in courses or programs offered by the institution of higher education. Students receiving home-based instruction under chapter 28A.200 RCW and students attending private schools approved under chapter 28A.195 RCW shall not be required to meet the student learning goals, obtain a certificate of academic achievement or a certificate of individual achievement to graduate from high school, or to master the essential academic learning requirements. However, students are eligible to enroll in courses or programs in participating universities only if the board of directors of the student's school district has decided to participate in the program. Participating institutions of higher education, in consultation with school districts, may establish admission standards for these students. If the institution of higher education accepts a secondary school pupil for enrollment under this section, the institution of higher education shall send written notice to the pupil and the pupil's school district within ten days of acceptance. The notice shall indicate the course and hours of enrollment for that pupil.

(2) The pupil's school district shall transmit to the institution of higher education an amount per each full-time equivalent college student at statewide uniform rates for vocational and nonvocational students. The superintendent of public instruction shall separately calculate and allocate moneys appropriated for basic education under RCW 28A.150.260 to school districts for purposes of making such payments and for granting school districts seven percent thereof to offset program related costs. The calculations and allocations shall be based upon the estimated statewide annual average per full-time equivalent high school student allocations under RCW 28A.150.260, excluding small high school enhancements, and applicable rules adopted under chapter 34.05 RCW. The superintendent of public instruction, the higher education coordinating board, and the state board for community and technical colleges shall consult on the calculation and distribution of the funds. The institution of higher education shall not require the pupil to pay any other fees. The funds received by the institution of higher education from the school district shall not be deemed tuition or operating fees and may be retained by the institution of higher education. A student enrolled under this subsection shall not be counted for the purpose of determining any enrollment restrictions imposed by the state on the institution of higher education.

Passed by the Senate March 15, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 21, 2005.

Filed in Office of Secretary of State April 21, 2005.

CHAPTER 126

[Substitute Senate Bill 5317]

INSURANCE COMMISSIONER—EXAMINATIONS—CONFIDENTIALITY

AN ACT Relating to providing confidentiality to certain insurance commissioner examinations; and amending RCW 48.02.065.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 48.02.065 and 2001 c 57 s 1 are each amended to read as follows:

(1) Documents, materials, or other information as described in either subsection (5) or (6), or both, of this section are confidential by law and privileged, are not subject to public disclosure under chapter 42.17 RCW, and are not subject to subpoena directed to the commissioner or any person who received documents, materials, or other information while acting under the authority of the commissioner. The commissioner is authorized to use such documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The confidentiality and privilege created by this section and RCW 42.17.31916 applies only to the commissioner, any person acting under the authority of the commissioner, the national association of insurance commissioners and its affiliates and subsidiaries, regulatory and law enforcement officials of other states and nations, the federal government, and international authorities.

(2) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the

commissioner is permitted or required to testify in any private civil action concerning any confidential and privileged documents, materials, or information subject to subsection (1) of this section.

(3) The commissioner:

(a) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (1) of this section, with (i) the national association of insurance commissioners and its affiliates and subsidiaries, and (ii) regulatory and law enforcement officials of other states and nations, the federal government, and international authorities, if the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

(b) May receive documents, materials, or information, including otherwise either confidential or privileged, or both, documents, materials, or information, from (i) the national association of insurance commissioners and its affiliates and subsidiaries, and (ii) regulatory and law enforcement officials of other states and nations, the federal government, and international authorities and shall maintain as confidential and privileged any document, material, or information received that is either confidential or privileged, or both, under the laws of the jurisdiction that is the source of the document, material, or information; and

(c) May enter into agreements governing the sharing and use of information consistent with this subsection.

(4) No waiver of an existing privilege or claim of confidentiality in the documents, materials, or information may occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (3) of this section.

(5) Documents, materials, or information, which is either confidential or privileged, or both, which has been provided to the commissioner by (a) the national association of insurance commissioners and its affiliates and subsidiaries, (b) regulatory or law enforcement officials of other states and nations, the federal government, or international authorities, or (c) agencies of this state, is confidential and privileged only if the documents, materials, or information is protected from disclosure by the applicable laws of the jurisdiction that is the source of the document, material, or information.

(6) Working papers, documents, materials, or information produced by, obtained by, or disclosed to the commissioner or any other person in the course of a financial or market conduct examination are not required to be disclosed by the commissioner unless cited by the commissioner in connection with an agency action as defined in RCW 34.05.010(3). The commissioner shall notify a party that produced the documents, materials, or information five business days before disclosure in connection with an agency action. The notified party may seek injunctive relief in any Washington state superior court to prevent disclosure of any documents, materials, or information it believes is confidential or privileged. In civil actions between private parties or in criminal actions, disclosure to the commissioner under this section does not create any privilege or claim of confidentiality or waive any existing privilege or claim of confidentiality.

(7)(a) After receipt of a public disclosure request, the commissioner shall disclose the documents, materials, or information under subsection (6) of this section that relate to a financial or market conduct examination undertaken as a

result of a proposed change of control of a nonprofit or mutual health insurer governed in whole or in part by chapter 48.31B or 48.31C RCW.

(b) The commissioner is not required to disclose the documents, materials, or information in (a) of this subsection if:

(i) The documents, materials, or information are otherwise privileged or exempted from public disclosure; or

(ii) The commissioner finds that the public interest in disclosure of the documents, materials, or information is outweighed by the public interest in nondisclosure in that particular instance.

(8) Any person may petition a Washington state superior court to allow inspection of information exempt from public disclosure under subsection (6) of this section when the information is connected to allegations of negligence or malfeasance by the commissioner related to a financial or market conduct examination. The court shall conduct an in-camera review after notifying the commissioner and every party that produced the information. The court may order the commissioner to allow the petitioner to have access to the information provided the petitioner maintains the confidentiality of the information. The petitioner must not disclose the information to any other person, except upon further order of the court. After conducting a regular hearing, the court may order that the information can be disclosed publicly if the court finds that there is a public interest in the disclosure of the information and the exemption of the information from public disclosure is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

Passed by the Senate March 8, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 21, 2005.

Filed in Office of Secretary of State April 21, 2005.

CHAPTER 127

[Senate Bill 5354]

FLOOD CONTROL ZONE DISTRICTS

AN ACT Relating to administering flood control zone districts; amending RCW 86.15.060; adding a new section to chapter 86.15 RCW; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 86.15.060 and 1961 c 153 s 6 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, administration of the affairs of zones shall be in the county engineer. The engineer may appoint such deputies and engage such employees, specialists, and technicians as may be required by the zone and as are authorized by the zone's budget. Subject to the approval of the ((board)) supervisors, the engineer may organize, or reorganize as required, the zone into such departments, divisions, or other administrative relationships as he deems necessary to its efficient operation.

(2) In a zone with supervisors elected pursuant to RCW 86.15.050, the supervisors may provide for administration of the affairs of the zone by other than the county engineer, pursuant to the authority established in RCW 86.15.095 to hire employees, staff, and services and to enter into contracts.

NEW SECTION. Sec. 2. A new section is added to chapter 86.15 RCW to read as follows:

In a zone with supervisors elected pursuant to RCW 86.15.050, the supervisors may each receive up to seventy dollars for attendance at official meetings of the supervisors and for each day or major part thereof for all necessary services actually performed in connection with their duties as a supervisor. The board of county commissioners shall fix any such compensation to be paid to the initial supervisors during their initial terms of office. The supervisors shall fix the compensation to be paid to the supervisors thereafter. Compensation for the supervisors shall not exceed six thousand seven hundred twenty dollars in one calendar year. A supervisor is entitled to reimbursement for reasonable expenses actually incurred in connection with performance of the duties of a supervisor, including subsistence and lodging, while away from the supervisor's place of residence, and mileage for use of a privately owned vehicle in accordance with chapter 42.24 RCW.

Any supervisor may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the supervisors as provided in this section. The waiver, to be effective, must be filed any time after the member's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate March 9, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 21, 2005.

Filed in Office of Secretary of State April 21, 2005.

CHAPTER 128

[Senate Bill 5453]

AMBER ALERT—RADIO, TELEVISION IMMUNITY

AN ACT Relating to civil immunity of radio and television broadcasting organizations participating in the Amber alert system; and adding a new section to chapter 4.24 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 4.24 RCW to read as follows:

No cause of action shall be maintained for civil damages in any court of this state against any radio or television broadcasting station or cable television system, or the employees, officers, directors, managers, or agents of the radio or television broadcasting station or cable television system, based on the broadcast of information including, but not limited to, the name or description of an abducted child, the name or description of a suspected abductor, and the circumstances of an abduction supplied by law enforcement officials pursuant to the voluntary broadcast notification system commonly known as the "Amber alert," or as the same system may otherwise be known in this state, which is used to notify the public of missing or abducted children. Nothing in this section shall

be construed to limit or restrict in any way any immunity or privilege a radio or television broadcasting station or cable television system may have under statute or common law for broadcasting or otherwise disseminating information.

Passed by the Senate March 8, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 21, 2005.

Filed in Office of Secretary of State April 21, 2005.

CHAPTER 129

[Substitute Senate Bill 5471]

PRESCRIPTION DRUG PURCHASING CONSORTIUM

AN ACT Relating to authorizing a prescription drug purchasing consortium; adding new sections to chapter 70.14 RCW; and creating new sections.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. **Sec. 1.** A new section is added to chapter 70.14 RCW to read as follows:

(1) The administrator of the state health care authority shall, directly or by contract, adopt policies necessary for establishment of a prescription drug purchasing consortium. The consortium's purchasing activities shall be based upon the evidence-based prescription drug program established under RCW 70.14.050. State purchased health care programs as defined in RCW 41.05.011 shall purchase prescription drugs through the consortium for those prescription drugs that are purchased directly by the state and those that are purchased through reimbursement of pharmacies, unless exempted under this section. The administrator shall not require any supplemental rebate offered to the department of social and health services by a pharmaceutical manufacturer for prescription drugs purchased for medical assistance program clients under chapter 74.09 RCW be extended to any other state purchased health care program, or to any other individuals or entities participating in the consortium. The administrator shall explore joint purchasing opportunities with other states.

(2) Participation in the purchasing consortium shall be offered as an option beginning January 1, 2006. Participation in the consortium is purely voluntary for units of local government, private entities, labor organizations, and for individuals who lack or are underinsured for prescription drug coverage. The administrator may set reasonable fees, including enrollment fees, to cover administrative costs attributable to participation in the prescription drug consortium.

(3) The prescription drug consortium advisory committee is created within the authority. The function of the prescription drug advisory committee is to advise the administrator of the state health care authority on the implementation of the prescription drug purchasing consortium.

(4) The prescription drug consortium advisory committee shall be composed of eleven members selected as provided in this subsection.

(a) The administrator shall select one member of the prescription drug consortium advisory committee from each list of three nominees submitted by statewide organizations representing the following:

(i) One representative of state employees, who represents an employee union certified as exclusive representative of at least one bargaining unit of classified employees;

(ii) One member who is a licensed physician;

(iii) One member who is a licensed pharmacist;

(iv) One member who is a licensed advanced registered nurse practitioner;

(v) One member representing a health carrier licensed under Title 48 RCW; and

(vi) One member representing unions that represent private sector employees;

(b) The administrator shall select two members of the advisory committee from a list of nominees submitted by statewide organizations representing consumers. One of the consumer members shall have knowledge or experience regarding senior citizen prescription drug cost and utilization issues;

(c) The administrator shall select two members of the advisory committee from a list of nominees submitted by statewide organizations representing business, one of whom shall represent small businesses who employ fifty or fewer employees and one of whom shall represent large businesses; and

(d) The administrator shall select one member who is versed in biologic medicine through research or academia from the University of Washington or Washington State University.

(5) The administrator shall consult with the advisory committee on at least a quarterly basis on significant policy decisions related to implementation of the purchasing consortium.

(6) This section does not apply to state purchased health care services that are purchased from or through health carriers as defined in RCW 48.43.005, or group model health maintenance organizations that are accredited by the national committee for quality assurance.

(7) The state health care authority is authorized to adopt rules implementing this act.

(8) State purchased health care programs are exempt from the requirements of this section if they can demonstrate to the administrator that, as a result of the availability of federal programs or other purchasing arrangements, their other purchasing mechanisms will result in greater discounts and aggregate cost savings than would be realized through participation in the consortium.

NEW SECTION. Sec. 2. A new section is added to chapter 70.14 RCW to read as follows:

The prescription drug consortium account is created in the custody of the state treasurer. All receipts from activities related to administration of the state drug purchasing consortium on behalf of participating individuals and organizations, other than state purchased health care programs, shall be deposited into the account. The receipts include but are not limited to rebates from manufacturers, and the fees established under section 1(2) of this act. Expenditures from the account may be used only for the purposes of section 1 of this act. Only the administrator of the state health care authority or the administrator'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. 3. By December 1, 2008, the joint legislative audit and review committee shall conduct a performance audit on the operation of the consortium created in section 1 of this act. The audit shall review the operations and outcomes associated with the implementation of this consortium and identify the net savings, if any, to the members of the consortium, the percentage of targeted populations participating, and changes in the health outcomes of participants.

NEW SECTION. Sec. 4. 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. 5. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

Passed by the Senate March 10, 2005.

Passed by the House April 6, 2005.

Approved by the Governor April 21, 2005.

Filed in Office of Secretary of State April 21, 2005.

CHAPTER 130

[Substitute Senate Bill 5479]

LANDLORD-TENANT ACT—UNLAWFUL DETAINER

AN ACT Relating to the unlawful detainer process under the residential landlord-tenant act; and amending RCW 59.12.070, 59.18.370, and 59.18.365.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 59.12.070 and 1927 c 123 s 1 are each amended to read as follows:

The plaintiff in his or her complaint, which shall be in writing, must set forth the facts on which he or she seeks to recover, and describe the premises with reasonable certainty, and may set forth therein any circumstances of fraud, force or violence, which may have accompanied the (~~said~~) forcible entry or forcible or unlawful detainer, and claim damages therefor, or compensation for the occupation of the premises, or both; in case the unlawful detainer charged be after default in the payment of rent, the complaint must state the amount of such rent. A summons must be issued as in other cases, returnable at a day designated therein, which shall not be less than (~~six~~) seven nor more than (~~twelve~~) thirty days from the date of service, except in cases where the publication of summons is necessary, in which case the court or judge thereof may order that the summons be made returnable at such time as may be deemed proper, and the summons shall specify the return day so fixed.

Sec. 2. RCW 59.18.370 and 1973 1st ex.s. c 207 s 38 are each amended to read as follows:

The plaintiff, at the time of commencing an action of forcible entry or detainer or unlawful detainer, or at any time afterwards, upon filing the complaint, may apply to the superior court in which the action is pending for an order directing the defendant to appear and show cause, if any he or she has, why a writ of restitution should not issue restoring to the plaintiff possession of the property in the complaint described, and the judge shall by order fix a time and place for a hearing of ~~((said))~~ the motion, which shall not be less than ~~((six))~~ seven nor more than ~~((twelve))~~ thirty days from the date of service of ~~((said))~~ the order upon defendant. A copy of ~~((said))~~ the order, together with a copy of the summons and complaint if not previously served upon the defendant, shall be served upon the defendant. ~~((Said))~~ The order shall notify the defendant that if he or she fails to appear and show cause at the time and place specified by the order the court may order the sheriff to restore possession of the property to the plaintiff and may grant such other relief as may be prayed for in the complaint and provided by this chapter.

Sec. 3. RCW 59.18.365 and 1989 c 342 s 15 are each amended to read as follows:

(1) The summons must contain the names of the parties to the proceeding, the attorney or attorneys if any, the court in which the same is brought, the nature of the action, in concise terms, and the relief sought, and also the return day; and must notify the defendant to appear and answer within the time designated or that the relief sought will be taken against him or her. The summons must contain a street address for service of the notice of appearance or answer and, if available, a facsimile number for the plaintiff or the plaintiff's attorney, if represented. The summons must be served and returned in the same manner as a summons in other actions is served and returned.

(2) A defendant may serve a copy of an answer or notice of appearance, and if required by the summons, the sworn statement regarding nonpayment of rent described in RCW 59.18.375, by any of the following methods:

(a) By delivering a copy of the answer or notice of appearance to the person who signed the summons at the street address listed on the summons;

(b) By mailing a copy of the answer or notice of appearance addressed to the person who signed the summons to the street address listed on the summons;

(c) By facsimile to the facsimile number listed on the summons. Service by facsimile is complete upon successful transmission to the facsimile number listed upon the summons;

(d) As otherwise authorized by the superior court civil rules.

(3) The summons for unlawful detainer actions for tenancies covered by this chapter shall be substantially in the following form. In unlawful detainer actions based on nonpayment of rent, the summons may contain the provisions authorized by RCW 59.18.375.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND
FOR COUNTY

Plaintiff,	}	NO.
vs.		EVICITION SUMMONS
Defendant.		(Residential)

THIS IS NOTICE OF A LAWSUIT TO EVICT YOU.PLEASE READ IT CAREFULLY.THE DEADLINE FOR YOUR WRITTENRESPONSE IS:5:00 p.m., on

TO: (Name)
. (Address)

This is notice of a lawsuit to evict you from the property which you are renting. Your landlord is asking the court to terminate your tenancy, direct the sheriff to remove you and your belongings from the property, enter a money judgment against you for unpaid rent and/or damages for your use of the property, and for court costs and attorneys' fees.

If you want to defend yourself in this lawsuit, you must respond to the eviction complaint in writing on or before the deadline stated above. You must respond in writing even if no case number has been assigned by the court yet.

You can respond to the complaint in writing by delivering a copy of a notice of appearance or answer, and if required by this summons, a sworn statement regarding nonpayment of rent, to your landlord's attorney (or your landlord if there is no attorney) (~~to be received no later than the deadline stated above~~) by personal delivery, mailing, or facsimile to the address or facsimile number stated below **TO BE RECEIVED NO LATER THAN THE DEADLINE STATED ABOVE.** Service by facsimile is complete upon successful transmission to the facsimile number, if any, listed in the summons.

The notice of appearance or answer must include the name of this case (plaintiff(s) and defendant(s)), your name, the street address where further legal papers may be sent, your telephone number (if any), and your signature.

If there is a number on the upper right side of the eviction summons and complaint, you must also file your original notice of appearance or answer with the court clerk by the deadline for your written response.

You may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the person signing the summons. Within fourteen days after you serve the demand, the plaintiff must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

You may also be instructed in a separate order to appear for a court hearing on your eviction. If you receive an order to show cause you must personally appear at the hearing on the date indicated in the order to show cause (~~the~~ addition) **IN ADDITION** to delivering and filing your notice of appearance or answer by the deadline stated above.

IF YOU DO NOT RESPOND TO THE COMPLAINT IN WRITING BY THE DEADLINE STATED ABOVE YOU WILL LOSE BY DEFAULT. YOUR LANDLORD MAY PROCEED WITH THE LAWSUIT, EVEN IF YOU HAVE MOVED OUT OF THE PROPERTY.

The notice of appearance or answer must be delivered to:

.....
Name
.....
Street Address
.....
Telephone Number
.....
Facsimile Number (Required if Available)

Passed by the Senate March 15, 2005.
Passed by the House April 5, 2005.
Approved by the Governor April 21, 2005.
Filed in Office of Secretary of State April 21, 2005.

CHAPTER 131

[Substitute Senate Bill 5497]

PUBLIC EMPLOYEES RETIREMENT SYSTEM—TERMINALLY ILL MEMBERS

AN ACT Relating to allowing terminally ill members to remove themselves from their retirement plan; amending RCW 41.40.023, 41.32.010, and 41.35.030; adding new sections to chapter 41.40 RCW; adding new sections to chapter 41.32 RCW; adding new sections to chapter 41.35 RCW; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. **Sec. 1.** A new section is added to chapter 41.40 RCW under the subchapter heading "plan 3" to read as follows:

(1) Upon application of the member, a member who is diagnosed with a terminal illness shall be removed from membership in the system subject to the following conditions:

(a) That the medical adviser, after a medical examination of the member made by or under the direction of the medical adviser, has certified in writing that the member has a terminal illness with a life expectancy of five or fewer years; and

(b) That the director concurs in the recommendation of the medical adviser.

(2) Members removed from the system shall not make contributions toward a defined contribution account as defined in chapter 41.34 RCW and shall not accumulate additional service credit.

(3) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to this benefit not granted prior to that amendment or repeal.

NEW SECTION. **Sec. 2.** A new section is added to chapter 41.32 RCW under the subchapter heading "plan 3" to read as follows:

(1) Upon application of the member, a member who is diagnosed with a terminal illness shall be removed from membership in the system subject to the following conditions:

(a) That the medical adviser, after a medical examination of the member made by or under the direction of the medical adviser, has certified in writing that the member has a terminal illness with a life expectancy of five or fewer years; and

(b) That the director concurs in the recommendation of the medical adviser.

(2) Members removed from the system shall not make contributions toward a defined contribution account as defined in chapter 41.34 RCW and shall not accumulate additional service credit.

(3) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to this benefit not granted prior to that amendment or repeal.

NEW SECTION. Sec. 3. A new section is added to chapter 41.35 RCW under the subchapter heading "plan 3" to read as follows:

(1) Upon application of the member, a member who is diagnosed with a terminal illness shall be removed from membership in the system subject to the following conditions:

(a) That the medical adviser, after a medical examination of the member made by or under the direction of the medical adviser, has certified in writing that the member has a terminal illness with a life expectancy of five or fewer years; and

(b) That the director concurs in the recommendation of the medical adviser.

(2) Members removed from the system shall not make contributions toward a defined contribution account as defined in chapter 41.34 RCW and shall not accumulate additional service credit.

(3) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to this benefit not granted prior to that amendment or repeal.

NEW SECTION. Sec. 4. A new section is added to chapter 41.40 RCW under the subchapter heading "plan 2" to read as follows:

(1) Upon application of the member, a member who is diagnosed with a terminal illness shall be removed from the system subject to the following conditions:

(a) That the medical adviser, after a medical examination of the member made by or under the direction of the medical adviser, has certified in writing that the member has a terminal illness with a life expectancy of five or fewer years; and

(b) That the director concurs in the recommendation of the medical adviser.

(2) Members removed from the system shall not make contributions and shall not accumulate additional service credit.

(3) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to this benefit not granted prior to that amendment or repeal.

NEW SECTION. Sec. 5. A new section is added to chapter 41.32 RCW under the subchapter heading "plan 2" to read as follows:

(1) Upon application of the member, a member who is diagnosed with a terminal illness shall be removed from the system subject to the following conditions:

(a) That the medical adviser, after a medical examination of the member made by or under the direction of the medical adviser, has certified in writing that the member has a terminal illness with a life expectancy of five or fewer years; and

(b) That the director concurs in the recommendation of the medical adviser.

(2) Members removed from the system shall not make contributions and shall not accumulate additional service credit.

(3) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to this benefit not granted prior to that amendment or repeal.

NEW SECTION. Sec. 6. A new section is added to chapter 41.35 RCW under the subchapter heading "plan 2" to read as follows:

(1) Upon application of the member, a member who is diagnosed with a terminal illness shall be removed from the system subject to the following conditions:

(a) That the medical adviser, after a medical examination of the member made by or under the direction of the medical adviser, has certified in writing that the member has a terminal illness with a life expectancy of five or fewer years; and

(b) That the director concurs in the recommendation of the medical adviser.

(2) Members removed from the system shall not make contributions and shall not accumulate additional service credit.

(3) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to this benefit not granted prior to that amendment or repeal.

Sec. 7. RCW 41.40.023 and 2001 c 37 s 1 are each amended to read as follows:

Membership in the retirement system shall consist of all regularly compensated employees and appointive and elective officials of employers, as defined in this chapter, with the following exceptions:

(1) Persons in ineligible positions;

(2) Employees of the legislature except the officers thereof elected by the members of the senate and the house and legislative committees, unless membership of such employees be authorized by the said committee;

(3)(a) Persons holding elective offices or persons appointed directly by the governor: PROVIDED, That such persons shall have the option of applying for membership during such periods of employment: AND PROVIDED FURTHER, That any persons holding or who have held elective offices or persons appointed by the governor who are members in the retirement system and who have, prior to becoming such members, previously held an elective office, and did not at the start of such initial or successive terms of office exercise their option to become members, may apply for membership to be effective during such term or terms of office, and shall be allowed to establish the service credit applicable to such term or terms of office upon payment of the employee contributions therefor by the employee with interest as determined by

the director and employer contributions therefor by the employer or employee with interest as determined by the director: AND PROVIDED FURTHER, That all contributions with interest submitted by the employee under this subsection shall be placed in the employee's individual account in the employee's savings fund and be treated as any other contribution made by the employee, with the exception that any contributions submitted by the employee in payment of the employer's obligation, together with the interest the director may apply to the employer's contribution, shall not be considered part of the member's annuity for any purpose except withdrawal of contributions;

(b) A member holding elective office who has elected to apply for membership pursuant to (a) of this subsection and who later wishes to be eligible for a retirement allowance shall have the option of ending his or her membership in the retirement system. A member wishing to end his or her membership under this subsection must file, on a form supplied by the department, a statement indicating that the member agrees to irrevocably abandon any claim for service for future periods served as an elected official. A member who receives more than fifteen thousand dollars per year in compensation for his or her elective service, adjusted annually for inflation by the director, is not eligible for the option provided by this subsection (3)(b);

(4) Employees holding membership in, or receiving pension benefits under, any retirement plan operated wholly or in part by an agency of the state or political subdivision thereof, or who are by reason of their current employment contributing to or otherwise establishing the right to receive benefits from any such retirement plan except as follows:

(a) In any case where the retirement system has in existence an agreement with another retirement system in connection with exchange of service credit or an agreement whereby members can retain service credit in more than one system, such an employee shall be allowed membership rights should the agreement so provide;

(b) An employee shall be allowed membership if otherwise eligible while receiving survivor's benefits;

(c) An employee shall not either before or after June 7, 1984, be excluded from membership or denied service credit pursuant to this subsection solely on account of: (i) Membership in the plan created under chapter 2.14 RCW; or (ii) enrollment under the relief and compensation provisions or the pension provisions of the volunteer fire fighters' relief and pension fund under chapter 41.24 RCW;

(d) Except as provided in RCW 41.40.109, on or after July 25, 1999, an employee shall not be excluded from membership or denied service credit pursuant to this subsection solely on account of participation in a defined contribution pension plan qualified under section 401 of the internal revenue code;

(e) Employees who have been reported in the retirement system prior to July 25, 1999, and who participated during the same period of time in a defined contribution pension plan qualified under section 401 of the internal revenue code and operated wholly or in part by the employer, shall not be excluded from previous retirement system membership and service credit on account of such participation;

(5) Patient and inmate help in state charitable, penal, and correctional institutions;

(6) "Members" of a state veterans' home or state soldiers' home;

(7) Persons employed by an institution of higher learning or community college, primarily as an incident to and in furtherance of their education or training, or the education or training of a spouse;

(8) Employees of an institution of higher learning or community college during the period of service necessary to establish eligibility for membership in the retirement plans operated by such institutions;

(9) Persons rendering professional services to an employer on a fee, retainer, or contract basis or when the income from these services is less than fifty percent of the gross income received from the person's practice of a profession;

(10) Persons appointed after April 1, 1963, by the liquor control board as agency vendors;

(11) Employees of a labor guild, association, or organization: PROVIDED, That elective officials and employees of a labor guild, association, or organization which qualifies as an employer within this chapter shall have the option of applying for membership;

(12) Retirement system retirees: PROVIDED, That following reemployment in an eligible position, a retiree may elect to prospectively become a member of the retirement system if otherwise eligible;

(13) Persons employed by or appointed or elected as an official of a first class city that has its own retirement system: PROVIDED, That any member elected or appointed to an elective office on or after April 1, 1971, shall have the option of continuing as a member of this system in lieu of becoming a member of the city system. A member who elects to continue as a member of this system shall pay the appropriate member contributions and the city shall pay the employer contributions at the rates prescribed by this chapter. The city shall also transfer to this system all of such member's accumulated contributions together with such further amounts as necessary to equal all employee and employer contributions which would have been paid into this system on account of such service with the city and thereupon the member shall be granted credit for all such service. Any city that becomes an employer as defined in RCW 41.40.010(4) as the result of an individual's election under this subsection shall not be required to have all employees covered for retirement under the provisions of this chapter. Nothing in this subsection shall prohibit a city of the first class with its own retirement system from: (a) Transferring all of its current employees to the retirement system established under this chapter, or (b) allowing newly hired employees the option of continuing coverage under the retirement system established by this chapter.

Notwithstanding any other provision of this chapter, persons transferring from employment with a first class city of over four hundred thousand population that has its own retirement system to employment with the state department of agriculture may elect to remain within the retirement system of such city and the state shall pay the employer contributions for such persons at like rates as prescribed for employers of other members of such system;

(14) Employees who (a) are not citizens of the United States, (b) do not reside in the United States, and (c) perform duties outside of the United States;

(15) Employees who (a) are not citizens of the United States, (b) are not covered by chapter 41.48 RCW, (c) are not excluded from membership under this chapter or chapter 41.04 RCW, (d) are residents of this state, and (e) make an irrevocable election to be excluded from membership, in writing, which is submitted to the director within thirty days after employment in an eligible position;

(16) Employees who are citizens of the United States and who reside and perform duties for an employer outside of the United States: PROVIDED, That unless otherwise excluded under this chapter or chapter 41.04 RCW, the employee may apply for membership (a) within thirty days after employment in an eligible position and membership service credit shall be granted from the first day of membership service, and (b) after this thirty-day period, but membership service credit shall be granted only if payment is made for the noncredited membership service under RCW 41.50.165(2), otherwise service shall be from the date of application;

(17) The city manager or chief administrative officer of a city or town, other than a retiree, who serves at the pleasure of an appointing authority: PROVIDED, That such persons shall have the option of applying for membership within thirty days from date of their appointment to such positions. Persons serving in such positions as of April 4, 1986, shall continue to be members in the retirement system unless they notify the director in writing prior to December 31, 1986, of their desire to withdraw from membership in the retirement system. A member who withdraws from membership in the system under this section shall receive a refund of the member's accumulated contributions.

Persons serving in such positions who have not opted for membership within the specified thirty days, may do so by paying the amount required under RCW 41.50.165(2) for the period from the date of their appointment to the date of acceptance into membership;

(18) Persons serving as: (a) The chief administrative officer of a public utility district as defined in RCW 54.16.100; (b) the chief administrative officer of a port district formed under chapter 53.04 RCW; or (c) the chief administrative officer of a county who serves at the pleasure of an appointing authority: PROVIDED, That such persons shall have the option of applying for membership within thirty days from the date of their appointment to such positions. Persons serving in such positions as of July 25, 1999, shall continue to be members in the retirement system unless they notify the director in writing prior to December 31, 1999, of their desire to withdraw from membership in the retirement system. A member who withdraws from membership in the system under this section shall receive a refund of the member's accumulated contributions upon termination of employment or as otherwise consistent with the plan's tax qualification status as defined in internal revenue code section 401.

Persons serving in such positions who have not opted for membership within the specified thirty days, may do so at a later date by paying the amount required under RCW 41.50.165(2) for the period from the date of their appointment to the date of acceptance into membership;

(19) Persons enrolled in state-approved apprenticeship programs, authorized under chapter 49.04 RCW, and who are employed by local governments to earn hours to complete such apprenticeship programs, if the employee is a member of

a union-sponsored retirement plan and is making contributions to such a retirement plan or if the employee is a member of a Taft-Hartley retirement plan;

(20) Beginning on July 22, 2001, persons employed exclusively as trainers or trainees in resident apprentice training programs operated by housing authorities authorized under chapter 35.82 RCW, (a) if the trainer or trainee is a member of a union-sponsored retirement plan and is making contributions to such a retirement plan or (b) if the employee is a member of a Taft-Hartley retirement plan; and

(21) Employees who are removed from membership under section 1 or 4 of this act.

Sec. 8. RCW 41.32.010 and 2003 c 31 s 1 are each amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context:

(1)(a) "Accumulated contributions" for plan 1 members, means the sum of all regular annuity contributions and, except for the purpose of withdrawal at the time of retirement, any amount paid under RCW 41.50.165(2) with regular interest thereon.

(b) "Accumulated contributions" for plan 2 members, means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality tables and regulations as shall be adopted by the director and regular interest.

(3) "Annuity" means the moneys payable per year during life by reason of accumulated contributions of a member.

(4) "Member reserve" means the fund in which all of the accumulated contributions of members are held.

(5)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter.

(b) "Beneficiary" for plan 2 and plan 3 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(6) "Contract" means any agreement for service and compensation between a member and an employer.

(7) "Creditable service" means membership service plus prior service for which credit is allowable. This subsection shall apply only to plan 1 members.

(8) "Dependent" means receiving one-half or more of support from a member.

(9) "Disability allowance" means monthly payments during disability. This subsection shall apply only to plan 1 members.

(10)(a) "Earnable compensation" for plan 1 members, means:

(i) All salaries and wages paid by an employer to an employee member of the retirement system for personal services rendered during a fiscal year. In all cases where compensation includes maintenance the employer shall fix the value of that part of the compensation not paid in money.

(ii) For an employee member of the retirement system teaching in an extended school year program, two consecutive extended school years, as

defined by the employer school district, may be used as the annual period for determining earnable compensation in lieu of the two fiscal years.

(iii) "Earnable compensation" for plan 1 members also includes the following actual or imputed payments, which are not paid for personal services:

(A) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned during a payroll period shall be considered earnable compensation and the individual shall receive the equivalent service credit.

(B) If a leave of absence, without pay, is taken by a member for the purpose of serving as a member of the state legislature, and such member has served in the legislature five or more years, the salary which would have been received for the position from which the leave of absence was taken shall be considered as compensation earnable if the employee's contribution thereon is paid by the employee. In addition, where a member has been a member of the state legislature for five or more years, earnable compensation for the member's two highest compensated consecutive years of service shall include a sum not to exceed thirty-six hundred dollars for each of such two consecutive years, regardless of whether or not legislative service was rendered during those two years.

(iv) For members employed less than full time under written contract with a school district, or community college district, in an instructional position, for which the member receives service credit of less than one year in all of the years used to determine the earnable compensation used for computing benefits due under RCW 41.32.497, 41.32.498, and 41.32.520, the member may elect to have earnable compensation defined as provided in RCW 41.32.345. For the purposes of this subsection, the term "instructional position" means a position in which more than seventy-five percent of the member's time is spent as a classroom instructor (including office hours), a librarian, or a counselor. Earnable compensation shall be so defined only for the purpose of the calculation of retirement benefits and only as necessary to insure that members who receive fractional service credit under RCW 41.32.270 receive benefits proportional to those received by members who have received full-time service credit.

(v) "Earnable compensation" does not include:

(A) Remuneration for unused sick leave authorized under RCW 41.04.340, 28A.400.210, or 28A.310.490;

(B) Remuneration for unused annual leave in excess of thirty days as authorized by RCW 43.01.044 and 43.01.041.

(b) "Earnable compensation" for plan 2 and plan 3 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

"Earnable compensation" for plan 2 and plan 3 members also includes the following actual or imputed payments which, except in the case of (b)(ii)(B) of this subsection, are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned during a payroll period shall be considered earnable compensation, to the extent provided above, and the individual shall receive the equivalent service credit.

(ii) In any year in which a member serves in the legislature the member shall have the option of having such member's earnable compensation be the greater of:

(A) The earnable compensation the member would have received had such member not served in the legislature; or

(B) Such member's actual earnable compensation received for teaching and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions.

(11) "Employer" means the state of Washington, the school district, or any agency of the state of Washington by which the member is paid.

(12) "Fiscal year" means a year which begins July 1st and ends June 30th of the following year.

(13) "Former state fund" means the state retirement fund in operation for teachers under chapter 187, Laws of 1923, as amended.

(14) "Local fund" means any of the local retirement funds for teachers operated in any school district in accordance with the provisions of chapter 163, Laws of 1917 as amended.

(15) "Member" means any teacher included in the membership of the retirement system who has not been removed from membership under section 2 or 5 of this act. Also, any other employee of the public schools who, on July 1, 1947, had not elected to be exempt from membership and who, prior to that date, had by an authorized payroll deduction, contributed to the member reserve.

(16) "Membership service" means service rendered subsequent to the first day of eligibility of a person to membership in the retirement system: PROVIDED, That where a member is employed by two or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service is rendered. The provisions of this subsection shall apply only to plan 1 members.

(17) "Pension" means the moneys payable per year during life from the pension reserve.

(18) "Pension reserve" is a fund in which shall be accumulated an actuarial reserve adequate to meet present and future pension liabilities of the system and from which all pension obligations are to be paid.

(19) "Prior service" means service rendered prior to the first date of eligibility to membership in the retirement system for which credit is allowable. The provisions of this subsection shall apply only to plan 1 members.

(20) "Prior service contributions" means contributions made by a member to secure credit for prior service. The provisions of this subsection shall apply only to plan 1 members.

(21) "Public school" means any institution or activity operated by the state of Washington or any instrumentality or political subdivision thereof employing teachers, except the University of Washington and Washington State University.

(22) "Regular contributions" means the amounts required to be deducted from the compensation of a member and credited to the member's individual account in the member reserve. This subsection shall apply only to plan 1 members.

(23) "Regular interest" means such rate as the director may determine.

(24)(a) "Retirement allowance" for plan 1 members, means monthly payments based on the sum of annuity and pension, or any optional benefits payable in lieu thereof.

(b) "Retirement allowance" for plan 2 and plan 3 members, means monthly payments to a retiree or beneficiary as provided in this chapter.

(25) "Retirement system" means the Washington state teachers' retirement system.

(26)(a) "Service" for plan 1 members means the time during which a member has been employed by an employer for compensation.

(i) If a member is employed by two or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service is rendered.

(ii) As authorized by RCW 28A.400.300, up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(iii) As authorized in RCW 41.32.065, service earned in an out-of-state retirement system that covers teachers in public schools may be applied solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(b) "Service" for plan 2 and plan 3 members, means periods of employment by a member for one or more employers for which earnable compensation is earned subject to the following conditions:

(i) A member employed in an eligible position or as a substitute shall receive one service credit month for each month of September through August of the following year if he or she earns earnable compensation for eight hundred ten or more hours during that period and is employed during nine of those months, except that a member may not receive credit for any period prior to the member's employment in an eligible position except as provided in RCW 41.32.812 and 41.50.132;

(ii) If a member is employed either in an eligible position or as a substitute teacher for nine months of the twelve month period between September through August of the following year but earns earnable compensation for less than eight hundred ten hours but for at least six hundred thirty hours, he or she will receive one-half of a service credit month for each month of the twelve month period;

(iii) All other members in an eligible position or as a substitute teacher shall receive service credit as follows:

(A) A service credit month is earned in those calendar months where earnable compensation is earned for ninety or more hours;

(B) A half-service credit month is earned in those calendar months where earnable compensation is earned for at least seventy hours but less than ninety hours; and

(C) A quarter-service credit month is earned in those calendar months where earnable compensation is earned for less than seventy hours.

(iv) Any person who is a member of the teachers' retirement system and who is elected or appointed to a state elective position may continue to be a member of the retirement system and continue to receive a service credit month for each of the months in a state elective position by making the required member contributions.

(v) When an individual is employed by two or more employers the individual shall only receive one month's service credit during any calendar month in which multiple service for ninety or more hours is rendered.

(vi) As authorized by RCW 28A.400.300, up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.32.470. For purposes of plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than eleven days equals one-quarter service credit month;

(B) Eleven or more days but less than twenty-two days equals one-half service credit month;

(C) Twenty-two days equals one service credit month;

(D) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month;

(E) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.

(vii) As authorized in RCW 41.32.065, service earned in an out-of-state retirement system that covers teachers in public schools may be applied solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(viii) The department shall adopt rules implementing this subsection.

(27) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(28) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(29) "Teacher" means any person qualified to teach who is engaged by a public school in an instructional, administrative, or supervisory capacity. The term includes state, educational service district, and school district superintendents and their assistants and all employees certificated by the superintendent of public instruction; and in addition thereto any full time school doctor who is employed by a public school and renders service of an instructional or educational nature.

(30) "Average final compensation" for plan 2 and plan 3 members, means the member's average earnable compensation of the highest consecutive sixty service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.32.810(2).

(31) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(32) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(33) "Director" means the director of the department.

(34) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(35) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(36) "Substitute teacher" means:

(a) A teacher who is hired by an employer to work as a temporary teacher, except for teachers who are annual contract employees of an employer and are guaranteed a minimum number of hours; or

(b) Teachers who either (i) work in ineligible positions for more than one employer or (ii) work in an ineligible position or positions together with an eligible position.

(37)(a) "Eligible position" for plan 2 members from June 7, 1990, through September 1, 1991, means a position which normally requires two or more uninterrupted months of creditable service during September through August of the following year.

(b) "Eligible position" for plan 2 and plan 3 on and after September 1, 1991, means a position that, as defined by the employer, normally requires five or more months of at least seventy hours of earnable compensation during September through August of the following year.

(c) For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position.

(d) The elected position of the superintendent of public instruction is an eligible position.

(38) "Plan 1" means the teachers' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(39) "Plan 2" means the teachers' retirement system, plan 2 providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977, and prior to July 1, 1996.

(40) "Plan 3" means the teachers' retirement system, plan 3 providing the benefits and funding provisions covering persons who first become members of the system on and after July 1, 1996, or who transfer under RCW 41.32.817.

(41) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items compiled by the bureau of labor statistics, United States department of labor.

(42) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(43) "Index B" means the index for the year prior to index A.

(44) "Index year" means the earliest calendar year in which the index is more than sixty percent of index A.

(45) "Adjustment ratio" means the value of index A divided by index B.

(46) "Annual increase" means, initially, fifty-nine cents per month per year of service which amount shall be increased each July 1st by three percent, rounded to the nearest cent.

(47) "Member account" or "member's account" for purposes of plan 3 means the sum of the contributions and earnings on behalf of the member in the defined contribution portion of plan 3.

(48) "Separation from service or employment" occurs when a person has terminated all employment with an employer.

(49) "Employed" or "employee" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law.

Sec. 9. RCW 41.35.030 and 2003 c 157 s 2 are each amended to read as follows:

Membership in the retirement system shall consist of all regularly compensated classified employees and appointive and elective officials of employers, as defined in this chapter, with the following exceptions:

(1) Persons in ineligible positions;

(2)(a) Persons holding elective offices or persons appointed directly by the governor: PROVIDED, That such persons shall have the option of applying for membership during such periods of employment: AND PROVIDED FURTHER, That any persons holding or who have held elective offices or persons appointed by the governor who are members in the retirement system and who have, prior to becoming such members, previously held an elective office, and did not at the start of such initial or successive terms of office exercise their option to become members, may apply for membership to be effective during such term or terms of office, and shall be allowed to establish the service credit applicable to such term or terms of office upon payment of the employee contributions therefor by the employee with interest as determined by the director and employer contributions therefor by the employer or employee with interest as determined by the director: AND PROVIDED FURTHER, That all contributions with interest submitted by the employee under this subsection shall be placed in the employee's individual account in the employee's savings fund and be treated as any other contribution made by the employee, with the exception that any contributions submitted by the employee in payment of the employer's obligation, together with the interest the director may apply to the employer's contribution, shall not be considered part of the member's annuity for any purpose except withdrawal of contributions;

(b) A member holding elective office who has elected to apply for membership pursuant to (a) of this subsection and who later wishes to be eligible for a retirement allowance shall have the option of ending his or her membership in the retirement system. A member wishing to end his or her membership under this subsection must file on a form supplied by the department a statement indicating that the member agrees to irrevocably abandon any claim for service for future periods served as an elected official. A member who receives more than fifteen thousand dollars per year in compensation for his or her elective service, adjusted annually for inflation by the director, is not eligible for the option provided by this subsection (2)(b);

(3) Retirement system retirees: PROVIDED, That following reemployment in an eligible position, a retiree may elect to prospectively become a member of the retirement system if otherwise eligible;

(4) Persons enrolled in state-approved apprenticeship programs, authorized under chapter 49.04 RCW, and who are employed by employers to earn hours to complete such apprenticeship programs, if the employee is a member of a union-sponsored retirement plan and is making contributions to such a retirement plan or if the employee is a member of a Taft-Hartley retirement plan;

(5) Persons rendering professional services to an employer on a fee, retainer, or contract basis or when the income from these services is less than fifty percent of the gross income received from the person's practice of a profession;

(6) Substitute employees, except for the purposes of the purchase of service credit under rcw 41.35.033. Upon the return or termination of the absent employee a substitute employee is replacing, that substitute employee shall no longer be ineligible under this subsection;

(7) Employees who (a) are not citizens of the United States, (b) do not reside in the United States, and (c) perform duties outside of the United States;

(8) Employees who (a) are not citizens of the United States, (b) are not covered by chapter 41.48 RCW, (c) are not excluded from membership under this chapter or chapter 41.04 RCW, (d) are residents of this state, and (e) make an irrevocable election to be excluded from membership, in writing, which is submitted to the director within thirty days after employment in an eligible position;

(9) Employees who are citizens of the United States and who reside and perform duties for an employer outside of the United States: PROVIDED, That unless otherwise excluded under this chapter or chapter 41.04 RCW, the employee may apply for membership (a) within thirty days after employment in an eligible position and membership service credit shall be granted from the first day of membership service, and (b) after this thirty-day period, but membership service credit shall be granted only if payment is made for the noncredited membership service under RCW 41.50.165(2), otherwise service shall be from the date of application; and

(10) Employees who are removed from membership under section 3 or 6 of this act.

NEW SECTION. Sec. 10. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate March 9, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 21, 2005.

Filed in Office of Secretary of State April 21, 2005.

CHAPTER 132

[Engrossed Substitute House Bill 1475]

CHILD PASSENGER RESTRAINT SYSTEMS

AN ACT Relating to child passenger restraint; amending RCW 46.61.687; adding a new section to chapter 46.61 RCW; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.61.687 and 2003 c 353 s 5 are each amended to read as follows:

(1) Whenever a child who is less than sixteen years of age is being transported in a motor vehicle that is in operation and that is required by RCW 46.37.510 to be equipped with a safety belt system in a passenger seating position, or is being transported in a neighborhood electric vehicle that is in operation, the driver of the vehicle shall keep the child properly restrained as follows:

(a) A child must be restrained in a child restraint system, if ((the child is less than six years old and/or sixty pounds and)) the passenger seating position equipped with a safety belt system allows sufficient space for installation, ((then the child will be restrained in a)) until the child is eight years old, unless the child is four feet nine inches or taller. The child restraint system ((that complies)) must comply with standards of the United States department of transportation and ((that is)) must be secured in the vehicle in accordance with instructions of the ((manufacturer of)) vehicle manufacturer and the child restraint system(;

~~(b) If the child is less than one year of age or weighs less than twenty pounds, the child shall be properly restrained in a rear-facing infant seat;~~

~~(c) If the child is more than one but less than four years of age or weighs less than forty pounds but at least twenty pounds, the child shall be properly restrained in a forward-facing child safety seat restraint system;~~

~~(d) If the child is less than six but at least four years of age or weighs less than sixty pounds but at least forty pounds, the child shall be properly restrained in a child booster seat;~~

~~(e) If the)) manufacturer.~~

(b) A child who is ((six)) eight years of age or older ((or weighs more than sixty pounds, the child)) or four feet nine inches or taller shall be properly restrained with the motor vehicle's safety belt properly adjusted and fastened around the child's body or an appropriately fitting ((booster seat; and)) child restraint system.

(c) The driver of a vehicle transporting a child who is under thirteen years old shall transport the child in the back seat positions in the vehicle where it is practical to do so.

((f)) (2) Enforcement of ((a) through (e) of this)) subsection (1) of this section is subject to a visual inspection by law enforcement to determine if the child restraint system in use is appropriate for the child's individual height, weight, and age. The visual inspection for usage of a ((forward-facing child safety seat)) child restraint system must ensure that ((the seat in use is equipped with a four-point shoulder harness system. The visual inspection for usage of a booster seat must ensure that the seat belt properly fits across the child's lap and the shoulder strap crosses the center of the child's chest. The visual inspection for the usage of a seat belt by a child must ensure that the lap belt properly fits across the child's lap and the shoulder strap crosses the center of the child's chest. In determining violations, consideration to the above criteria must be given in conjunction with the provisions of (a) through (e) of this subsection)) the child restraint system is being used in accordance with the instruction of the vehicle and the child restraint system manufacturers. The driver of a vehicle

transporting a child who is under ~~((the age of six))~~ thirteen years old ~~((or weighs less than sixty pounds, when the vehicle is equipped with a passenger side air bag supplemental restraint system, and the air bag system is activated,))~~ shall transport the child in the back seat positions in the vehicle where it is practical to do so.

~~((2))~~ (3) A person violating subsection ~~(1)((a) through (e))~~ of this section may be issued a notice of traffic infraction under chapter 46.63 RCW. If the person to whom the notice was issued presents proof of acquisition of an approved child passenger restraint system or a child booster seat, as appropriate, within seven days to the jurisdiction issuing the notice and the person has not previously had a violation of this section dismissed, the jurisdiction shall dismiss the notice of traffic infraction.

~~((3))~~ (4) Failure to comply with the requirements of this section shall not constitute negligence by a parent or legal guardian ~~((nor shall))~~. Failure to use a child restraint system shall not be admissible as evidence of negligence in any civil action.

~~((4))~~ (5) This section does not apply to: (a) For hire vehicles, (b) vehicles designed to transport sixteen or less passengers, including the driver, operated by auto transportation companies, as defined in RCW 81.68.010, (c) vehicles providing customer shuttle service between parking, convention, and hotel facilities, and airport terminals, and (d) school buses.

~~((5))~~ (6) As used in this section, "child ~~((booster seat))~~ restraint system" means a child passenger restraint system that meets the Federal Motor Vehicle Safety Standards set forth in 49 C.F.R. 571.213 ~~((that is designed to elevate a child to properly sit in a federally approved lap/shoulder belt system)).~~

~~((6))~~ (7) The requirements of subsection ~~(1)((a) through (e))~~ of this section do not apply in any seating position where there is only a lap belt available and the child weighs more than forty pounds.

NEW SECTION. Sec. 2. A new section is added to chapter 46.61 RCW to read as follows:

A person who has a current national certification as a child passenger safety technician and who in good faith provides inspection, adjustment, or educational services regarding child passenger restraint systems is not liable for civil damages resulting from any act or omission in providing the services, other than acts or omissions constituting gross negligence or willful or wanton misconduct.

NEW SECTION. Sec. 3. Section 1 of this act takes effect June 1, 2007.

Passed by the House March 8, 2005.

Passed by the Senate April 13, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 133

[Engrossed House Bill 2255]

UNEMPLOYMENT INSURANCE—BENEFITS—CONTRIBUTIONS—TASK FORCE ON BENEFIT EQUITY

AN ACT Relating to making adjustments to improve benefit equity in the unemployment insurance system; amending RCW 50.01.010, 50.20.120, 50.29.021, 50.29.025, and 50.16.030;

adding a new section to chapter 50.29 RCW; creating new sections; providing expiration dates; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that the unemployment insurance system was created to set aside unemployment reserves to be used for the benefit of persons who are unemployed through no fault of their own and to maintain purchasing power and limit the social consequences of unemployment. The legislature further finds that the system is falling short of these goals by failing to recognize the importance of applying liberal construction for the purpose of reducing involuntary unemployment, and the suffering caused by it, to the minimum, and by failing to provide equitable benefits to unemployed workers. The legislature also recognizes the desirability of managing the system to take into account the goal of reducing costs to foster a competitive business climate. The legislature intends to adjust the balance between these goals by reinstating the requirement for liberal construction and making other adjustments in the system that will allow reasonable improvements in benefit equity, including reinstating a weekly benefit calculation based on the wages in the two quarters of the claimant's base year in which wages were the highest. The legislature finds that these adjustments are critical to the health and welfare of unemployed workers, and to the purchasing power essential to the economic health and welfare of communities and the state, and should be implemented as soon as feasible.

Sec. 2. RCW 50.01.010 and 2003 2nd sp.s. c 4 s 1 are each amended to read as follows:

Whereas, economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this state; involuntary unemployment is, therefore, a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. Social security requires protection against this greatest hazard of our economic life. This can be provided only by application of the insurance principle of sharing the risks, and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing powers and limiting the serious social consequences of relief assistance. The state of Washington, therefore, exercising herein its police and sovereign power endeavors by this title to remedy any widespread unemployment situation which may occur and to set up safeguards to prevent its recurrence in the years to come. The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, and that this title shall be liberally construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum.

Sec. 3. RCW 50.20.120 and 2003 2nd sp.s. c 4 s 11 are each amended to read as follows:

(1)(a) Subject to the other provisions of this title, benefits shall be payable to any eligible individual during the individual's benefit year in a maximum amount equal to the lesser of thirty times the weekly benefit amount, as determined in subsection (2) of this section, or one-third of the individual's base year wages under this title: PROVIDED, That as to any week which falls in an extended benefit period as defined in RCW 50.22.010(1), an individual's eligibility for maximum benefits in excess of twenty-six times his or her weekly benefit amount will be subject to the terms and conditions set forth in RCW 50.22.020.

(b) With respect to claims that have an effective date on or after the first Sunday of the calendar month immediately following the month in which the commissioner finds that the state unemployment rate is six and eight-tenths percent or less, benefits shall be payable to any eligible individual during the individual's benefit year in a maximum amount equal to the lesser of twenty-six times the weekly benefit amount, as determined in subsection (2) of this section, or one-third of the individual's base year wages under this title.

(2)(a) For claims with an effective date before January 4, 2004, an individual's weekly benefit amount shall be an amount equal to one twenty-fifth of the average quarterly wages of the individual's total wages during the two quarters of the individual's base year in which such total wages were highest.

(b) With respect to claims with an effective date on or after January 4, 2004, and before January 2, 2005, an individual's weekly benefit amount shall be an amount equal to one twenty-fifth of the average quarterly wages of the individual's total wages during the three quarters of the individual's base year in which such total wages were highest.

(c)(i) With respect to claims with an effective date on or after January 2, 2005, except as provided in (c)(ii) of this subsection, an individual's weekly benefit amount shall be an amount equal to one percent of the total wages paid in the individual's base year.

(ii) With respect to claims with an effective date on or after the first Sunday following the day on which the governor signs this act, and before July 1, 2007, an individual's weekly benefit amount shall be an amount equal to three and eighty-five one-hundredths percent of the average quarterly wages of the individual's total wages during the two quarters of the individual's base year in which such total wages were highest.

(3) The maximum and minimum amounts payable weekly shall be determined as of each June 30th to apply to benefit years beginning in the twelve-month period immediately following such June 30th.

(a)(i) With respect to claims that have an effective date before January 4, 2004, the maximum amount payable weekly shall be seventy percent of the "average weekly wage" for the calendar year preceding such June 30th.

(ii) With respect to claims that have an effective date on or after January 4, 2004, the maximum amount payable weekly shall be either four hundred ninety-six dollars or sixty-three percent of the "average weekly wage" for the calendar year preceding such June 30th, whichever is greater.

(b) The minimum amount payable weekly shall be fifteen percent of the "average weekly wage" for the calendar year preceding such June 30th.

(4) If any weekly benefit, maximum benefit, or minimum benefit amount computed herein is not a multiple of one dollar, it shall be reduced to the next lower multiple of one dollar.

Sec. 4. RCW 50.29.021 and 2003 2nd sp.s. c 4 s 21 are each amended to read as follows:

(1) This section applies to benefits charged to the experience rating accounts of employers for claims that have an effective date on or after January 4, 2004.

(2)(a) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department.

(b) Benefits paid to an eligible individual shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(c) When the eligible individual's separating employer is a covered contribution paying base year employer, benefits paid to the eligible individual shall be charged to the experience rating account of only the individual's separating employer if the individual qualifies for benefits under:

(i) RCW 50.20.050(2)(b)(i), as applicable, and became unemployed after having worked and earned wages in the bona fide work; or

(ii) RCW 50.20.050(2)(b)(v) through (x).

(3) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individual later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer.

(b) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer only if:

(i) The individual files under RCW 50.06.020(1) after receiving crime victims' compensation for a disability resulting from a nonwork-related occurrence; or

(ii) The individual files under RCW 50.06.020(2).

(c) Benefits paid which represent the state's share of benefits payable as extended benefits defined under RCW 50.22.010(6) shall not be charged to the experience rating account of any contribution paying employer.

(d) In the case of individuals who qualify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(e) Individuals who qualify for benefits under RCW 50.20.050(2)(b)(iv), as applicable, shall not have their benefits charged to the experience rating account of any contribution paying employer.

(f) With respect to claims with an effective date on or after the first Sunday following the day on which the governor signs this act, and before July 1, 2007, benefits paid that exceed the benefits that would have been paid if the weekly benefit amount for the claim had been determined as one percent of the total wages paid in the individual's base year shall not be charged to the experience rating account of any contribution paying employer.

(4)(a) A contribution paying base year employer, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

(i) Last left the employ of such employer voluntarily for reasons not attributable to the employer;

(ii) Was discharged for misconduct or gross misconduct connected with his or her work not a result of inability to meet the minimum job requirements;

(iii) Is unemployed as a result of closure or severe curtailment of operation at the employer's plant, building, worksite, or other facility. This closure must be for reasons directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster; or

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.60 RCW.

(b) The employer requesting relief of charges under this subsection must request relief in writing within thirty days following mailing to the last known address of the notification of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued employment. The commissioner, upon investigation of the request, shall determine whether relief should be granted.

Sec. 5. RCW 50.29.025 and 2003 2nd sp.s. c 4 s 14 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the contribution rate for each employer subject to contributions under RCW 50.24.010 shall be determined under this subsection.

(a) A fund balance ratio shall be determined by dividing the balance in the unemployment compensation fund as of the September 30th immediately preceding the rate year by the total remuneration paid by all employers subject to contributions during the second calendar year preceding the rate year and reported to the department by the following March 31st. The division shall be carried to the fourth decimal place with the remaining fraction, if any, disregarded. The fund balance ratio shall be expressed as a percentage.

(b) The interval of the fund balance ratio, expressed as a percentage, shall determine which tax schedule in (e) of this subsection shall be in effect for assigning tax rates for the rate year. The intervals for determining the effective tax schedule shall be:

Interval of the Fund Balance Ratio Expressed as a Percentage	Effective Tax Schedule
2.90 and above	AA
2.10 to 2.89	A
1.70 to 2.09	B
1.40 to 1.69	C
1.00 to 1.39	D
0.70 to 0.99	E
Less than 0.70	F

(c) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (i) Identification number; (ii) benefit ratio; (iii) taxable payrolls for the four calendar quarters immediately preceding the computation date and reported to the department by the cut-off date; (iv) a cumulative total of taxable payrolls consisting of the employer's taxable payroll plus the taxable payrolls of all other employers preceding him or her in the array; and (v) the percentage equivalent of the cumulative total of taxable payrolls.

(d) Each employer in the array shall be assigned to one of twenty rate classes according to the percentage intervals of cumulative taxable payrolls set forth in (e) of this subsection: PROVIDED, That if an employer's taxable payroll falls within two or more rate classes, the employer and any other employer with the same benefit ratio shall be assigned to the lowest rate class which includes any portion of the employer's taxable payroll.

(e) Except as provided in RCW 50.29.026, the contribution rate for each employer in the array shall be the rate specified in the following tables for the rate class to which he or she has been assigned, as determined under (d) of this subsection, within the tax schedule which is to be in effect during the rate year:

Percent of Cumulative Taxable Payrolls			Schedules of Contributions Rates for Effective Tax Schedule						
From	To	Rate Class	AA	A	B	C	D	E	F
0.00	5.00	1	0.47	0.47	0.57	0.97	1.47	1.87	2.47
5.01	10.00	2	0.47	0.47	0.77	1.17	1.67	2.07	2.67
10.01	15.00	3	0.57	0.57	0.97	1.37	1.77	2.27	2.87
15.01	20.00	4	0.57	0.73	1.11	1.51	1.90	2.40	2.98
20.01	25.00	5	0.72	0.92	1.30	1.70	2.09	2.59	3.08
25.01	30.00	6	0.91	1.11	1.49	1.89	2.29	2.69	3.18
30.01	35.00	7	1.00	1.29	1.69	2.08	2.48	2.88	3.27
35.01	40.00	8	1.19	1.48	1.88	2.27	2.67	3.07	3.47
40.01	45.00	9	1.37	1.67	2.07	2.47	2.87	3.27	3.66

45.01	50.00	10	1.56	1.86	2.26	2.66	3.06	3.46	3.86
50.01	55.00	11	1.84	2.14	2.45	2.85	3.25	3.66	3.95
55.01	60.00	12	2.03	2.33	2.64	3.04	3.44	3.85	4.15
60.01	65.00	13	2.22	2.52	2.83	3.23	3.64	4.04	4.34
65.01	70.00	14	2.40	2.71	3.02	3.43	3.83	4.24	4.54
70.01	75.00	15	2.68	2.90	3.21	3.62	4.02	4.43	4.63
75.01	80.00	16	2.87	3.09	3.42	3.81	4.22	4.53	4.73
80.01	85.00	17	3.27	3.47	3.77	4.17	4.57	4.87	4.97
85.01	90.00	18	3.67	3.87	4.17	4.57	4.87	4.97	5.17
90.01	95.00	19	4.07	4.27	4.57	4.97	5.07	5.17	5.37
95.01	100.00	20	5.40	5.40	5.40	5.40	5.40	5.40	5.40

(f) The contribution rate for each employer not qualified to be in the array shall be as follows:

(i) Employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due shall be assigned a contribution rate two-tenths higher than that in rate class 20 for the applicable rate year, except employers who have an approved agency-deferred payment contract by September 30 of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to a contribution rate two-tenths higher than that in rate class 20 for the applicable rate year; and

(ii) For all other employers not qualified to be in the array, the contribution rate shall be a rate equal to the average industry rate as determined by the commissioner; however, the rate may not be less than one percent.

(2) Beginning with contributions assessed for rate year 2005, the contribution rate for each employer subject to contributions under RCW 50.24.010 shall be the sum of the array calculation factor rate and the graduated social cost factor rate determined under this subsection, and the solvency surcharge determined under RCW 50.29.041, if any.

(a) The array calculation factor rate shall be determined as follows:

(i) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (A) Identification number; (B) benefit ratio; and (C) taxable payrolls for the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(ii) Each employer in the array shall be assigned to one of forty rate classes according to his or her benefit ratio as follows, and, except as provided in RCW 50.29.026, the array calculation factor rate for each employer in the array shall be the rate specified in the rate class to which the employer has been assigned:

Benefit Ratio		Rate	Rate
At least	Less than	Class	(percent)
	0.000001	1	0.00
0.000001	0.001250	2	0.13
0.001250	0.002500	3	0.25

0.002500	0.003750	4	0.38
0.003750	0.005000	5	0.50
0.005000	0.006250	6	0.63
0.006250	0.007500	7	0.75
0.007500	0.008750	8	0.88
0.008750	0.010000	9	1.00
0.010000	0.011250	10	1.15
0.011250	0.012500	11	1.30
0.012500	0.013750	12	1.45
0.013750	0.015000	13	1.60
0.015000	0.016250	14	1.75
0.016250	0.017500	15	1.90
0.017500	0.018750	16	2.05
0.018750	0.020000	17	2.20
0.020000	0.021250	18	2.35
0.021250	0.022500	19	2.50
0.022500	0.023750	20	2.65
0.023750	0.025000	21	2.80
0.025000	0.026250	22	2.95
0.026250	0.027500	23	3.10
0.027500	0.028750	24	3.25
0.028750	0.030000	25	3.40
0.030000	0.031250	26	3.55
0.031250	0.032500	27	3.70
0.032500	0.033750	28	3.85
0.033750	0.035000	29	4.00
0.035000	0.036250	30	4.15
0.036250	0.037500	31	4.30
0.037500	0.040000	32	4.45
0.040000	0.042500	33	4.60
0.042500	0.045000	34	4.75
0.045000	0.047500	35	4.90
0.047500	0.050000	36	5.05
0.050000	0.052500	37	5.20
0.052500	0.055000	38	5.30
0.055000	0.057500	39	5.35
0.057500		40	5.40

(b) The graduated social cost factor rate shall be determined as follows:

(i)(A) Except as provided in (b)(i)(B) ~~((and)),~~ (C), and (D) of this subsection, the commissioner shall calculate the flat social cost factor for a rate year by dividing the total social cost by the total taxable payroll. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The flat social cost factor shall be expressed as a percentage.

(B) If, on the cut-off date, the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide more than ten months of unemployment benefits, the commissioner shall calculate the flat social cost factor for the rate year immediately following the cut-off date by reducing the total social cost by the dollar amount that represents the number of months for which the balance in the unemployment compensation fund on the cut-off date will provide benefits above ten months and dividing the result by the total taxable payroll. However, the calculation under this subsection (2)(b)(i)(B) for a rate year may not result in a flat social cost factor that is more than two-tenths lower than the calculation under (b)(i)(A) of this subsection for that rate year. For the purposes of this subsection, the commissioner shall determine the number of months of unemployment benefits in the unemployment compensation fund using the benefit cost rate for the average of the three highest calendar benefit cost rates in the twenty consecutive completed calendar years immediately preceding the cut-off date or a period of consecutive calendar years immediately preceding the cut-off date that includes three recessions, if longer.

(C) The minimum flat social cost factor calculated under this subsection (2)(b) shall be six-tenths of one percent.

(D) With respect to rate year 2007, the flat social cost factor shall be the lesser of:

(I) The flat social cost factor determined under (b)(i)(A) through (C) of this subsection; or

(II) The flat social cost factor that would be determined under (b)(i)(A) through (C) of this subsection if RCW 50.20.120(2)(c)(i) had been in effect during the immediately preceding rate year.

(ii)(A) Except as provided in (b)(ii)(B) of this subsection, the graduated social cost factor rate for each employer in the array is the flat social cost factor multiplied by the percentage specified as follows for the rate class to which the employer has been assigned in (a)(ii) of this subsection, except that the sum of an employer's array calculation factor rate and the graduated social cost factor rate may not exceed six and five-tenths percent or, for employers whose ~~((standard industrial classification))~~ North American industry classification system code is within ((major group "01," "02," "07," "091," "203," "209," or "5148," or the equivalent code in the North American industry classification system code,)) "111," "112," "1141," "115," "3114," "3117," or "42448," may not exceed six percent:

~~((A))~~ (I) Rate class 1 - 78 percent;

~~((B))~~ (II) Rate class 2 - 82 percent;

~~((C))~~ (III) Rate class 3 - 86 percent;

~~((D))~~ (IV) Rate class 4 - 90 percent;

~~((E))~~ (V) Rate class 5 - 94 percent;

- ~~((F))~~ (VI) Rate class 6 - 98 percent;
- ~~((G))~~ (VII) Rate class 7 - 102 percent;
- ~~((H))~~ (VIII) Rate class 8 - 106 percent;
- ~~((I))~~ (IX) Rate class 9 - 110 percent;
- ~~((J))~~ (X) Rate class 10 - 114 percent;
- ~~((K))~~ (XI) Rate class 11 - 118 percent; and
- ~~((L))~~ (XII) Rate classes 12 through 40 - 120 percent.

(B) For contributions assessed beginning July 1, 2005, through June 30, 2007, for employers whose North American industry classification system code is "111," "112," "1141," "115," "3114," "3117," "42448," or "49312," the graduated social cost factor rate is zero.

(iii) For the purposes of this section:

(A) "Total social cost" means:

(I) Except as provided in (b)(iii)(A)(II) of this subsection, the amount calculated by subtracting the array calculation factor contributions paid by all employers with respect to the four consecutive calendar quarters immediately preceding the computation date and paid to the employment security department by the cut-off date from the total unemployment benefits paid to claimants in the same four consecutive calendar quarters. To calculate the flat social cost factor for rate year 2005, the commissioner shall calculate the total social cost using the array calculation factor contributions that would have been required to be paid by all employers in the calculation period if (a) of this subsection had been in effect for the relevant period.

(II) For rate year 2007, the amount calculated under (b)(iii)(A)(I) of this subsection reduced by the amount of benefits charged that exceed the contributions paid in the four consecutive calendar quarters immediately preceding the applicable computation date because, as applicable, specified employers are subject to the social cost contributions under (b)(ii)(B) of this subsection, and/or because the social cost factor contributions are paid under (b)(i)(D)(II) of this subsection.

(B) "Total taxable payroll" means the total amount of wages subject to tax, as determined under RCW 50.24.010, for all employers in the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(c) The array calculation factor rate for each employer not qualified to be in the array shall be as follows:

(i) Employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due shall be assigned an array calculation factor rate two-tenths higher than that in rate class 40, except employers who have an approved agency-deferred payment contract by September 30th of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to an array calculation factor rate two-tenths higher than that in rate class 40; and

(ii) For all other employers not qualified to be in the array, the array calculation factor rate shall be a rate equal to the average industry array calculation factor rate as determined by the commissioner, plus fifteen percent of

that amount; however, the rate may not be less than one percent or more than the array calculation factor rate in rate class 40.

(d) The graduated social cost factor rate for each employer not qualified to be in the array shall be as follows:

(i) For employers whose array calculation factor rate is determined under (c)(i) of this subsection, the social cost factor rate shall be the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(ii) For employers whose array calculation factor rate is determined under (c)(ii) of this subsection, the social cost factor rate shall be a rate equal to the average industry social cost factor rate as determined by the commissioner, plus fifteen percent of that amount, but not more than the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(3) Assignment of employers by the commissioner to industrial classification, for purposes of this section, shall be in accordance with established classification practices found in the "Standard Industrial Classification Manual" issued by the federal office of management and budget to the third digit provided in the standard industrial classification code, or in the North American industry classification system code.

Sec. 6. RCW 50.16.030 and 1999 c 36 s 1 are each amended to read as follows:

(1)(a) Except as provided in (b) and (c) of this subsection, moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and repayment of loans from the federal government to guarantee solvency of the unemployment compensation fund in accordance with regulations prescribed by the commissioner, except that money credited to this state's account pursuant to section 903 of the social security act, as amended, shall be used exclusively as provided in RCW 50.16.030(5). The commissioner shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to its account therein, as he or she deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall issue his or her warrants for the payment of benefits solely from such benefits account.

(b) Moneys for the payment of regular benefits as defined in RCW 50.22.010 shall be requisitioned during fiscal years 2006 and 2007 in the following order:

(i) First, from the moneys credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended in section 209 of the temporary extended unemployment compensation act of 2002 (42 U.S.C. Sec. 1103(d)), the amount equal to the amount of benefits charged that exceed the contributions paid in the four consecutive calendar quarters ending on June 30, 2006, for the fiscal year 2006 calculation, and ending on June 30, 2007, for the fiscal year 2007 calculation, because the social cost factor contributions that employers are subject to under RCW 50.29.025(2)(b)(ii)(B) are less than the social cost factor contributions that these employers would have been subject to if RCW 50.29.025(2)(b)(ii)(A) had applied to these employers; and

(i) Second, after the requisitioning required under (b)(i) of this subsection in the respective fiscal year, from all other moneys credited to this state's account in the unemployment trust fund.

(c) After the requisitioning required under (b) of this subsection, if applicable, moneys for the payment of regular benefits as defined in RCW 50.22.010 shall be requisitioned during calendar year 2007 in the following order:

(i) First, from the moneys credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended in section 209 of the temporary extended unemployment compensation act of 2002 (42 U.S.C. Sec. 1103(d)), the amount equal to the amount of benefits paid under RCW 50.20.120(2)(c)(ii) beginning on the first Sunday following the day on which the governor signs this act and ending on June 30, 2007, that exceed the amount of benefits that would have been paid if the weekly benefit amount had been determined as one percent of the total wages paid in the individual's base year; and

(ii) Second, after the requisitioning required under (c)(i) of this subsection in the respective calendar year, from all other moneys credited to this state's account in the unemployment trust fund.

(2) Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody, and RCW 43.01.050, as amended, shall not apply. All warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the countersignature of the commissioner, or his or her duly authorized agent for that purpose.

(3) Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or in the discretion of the commissioner, shall be redeposited with the secretary of the treasury of the United States of America to the credit of this state's account in the unemployment trust fund.

(4) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the social security act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this title pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) Specifies the purposes for which such money is appropriated and the amounts appropriated therefor;

(b) Limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law; and

(c) Limits the amount which may be obligated during a twelve-month period beginning on July 1st and ending on the next June 30th to an amount which does not exceed the amount by which (i) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the social security

act, as amended, during the same twelve-month period and the thirty-four preceding twelve-month periods, exceeds (ii) the aggregate of the amounts obligated pursuant to RCW 50.16.030 (4), (5) and (6) and charged against the amounts credited to the account of this state during any of such thirty-five twelve-month periods. For the purposes of RCW 50.16.030 (4), (5) and (6), amounts obligated during any such twelve-month period shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during any such twelve-month period may be charged against any amount credited during such a twelve-month period earlier than the thirty-fourth twelve-month period preceding such period: **PROVIDED**, That any amount credited to this state's account under section 903 of the social security act, as amended, which has been appropriated for expenses of administration, whether or not withdrawn from the trust fund shall be excluded from the unemployment compensation fund balance for the purpose of experience rating credit determination.

(5) Money credited to the account of this state pursuant to section 903 of the social security act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses of administration and of public employment offices pursuant to RCW 50.16.030 (4), (5) and (6). However, moneys credited because of excess amounts in federal accounts in federal fiscal years 1999, 2000, and 2001 shall be used solely for the administration of the unemployment compensation program and are not subject to appropriation by the legislature for any other purpose.

(6) Money requisitioned as provided in RCW 50.16.030 (4), (5) and (6) for the payment of expenses of administration shall be deposited in the unemployment compensation fund, but until expended, shall remain a part of the unemployment compensation fund. The commissioner shall maintain a separate record of the deposit, obligation, expenditure and return of funds so deposited. Any money so deposited which either will not be obligated within the period specified by the appropriation law or remains unobligated at the end of the period, and any money which has been obligated within the period but will not be expended, shall be returned promptly to the account of this state in the unemployment trust fund.

NEW SECTION. Sec. 7. A new section is added to chapter 50.29 RCW to read as follows:

(1) By October 1, 2006, and October 1, 2007, the employment security department must report to the appropriate committees of the legislature on the impact, or projected impact, of sections 2 and 3, chapter ..., Laws of 2005 (sections 2 and 3 of this act) on the unemployment trust fund in the three consecutive fiscal years beginning with the year before the report date.

(2) This section expires January 1, 2008.

NEW SECTION. Sec. 8. To establish additional capacity within the employment security department, the department is authorized to add two full-time equivalent employees to develop economic models for estimating the impacts of policy changes on the unemployment insurance system and the unemployment trust fund.

NEW SECTION. Sec. 9. (1)(a) The joint legislative task force on unemployment insurance benefit equity is established. The joint legislative task force shall consist of the following members:

(i) The chair and ranking minority member of the senate labor, commerce, research and development committee;

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

(iii) Four members representing business, selected from nominations submitted by statewide business organizations representing a cross-section of industries and appointed jointly by the president of the senate and the speaker of the house of representatives; and

(iv) Four members representing labor, selected from nominations submitted by statewide labor organizations representing a cross-section of industries and appointed jointly by the president of the senate and the speaker of the house of representatives.

(b) In addition, the employment security department shall cooperate with the task force and maintain a liaison representative, who shall be a nonvoting member. The department shall cooperate with the task force and provide information as the task force may reasonably request.

(2) The task force shall review the unemployment insurance system, including, but not limited to, whether the benefit structure provides for equitable benefits, whether the structure fairly accounts for changes in the work force and industry work patterns, including seasonality, and for claimants' annual work patterns, whether the tax structure provides for an equitable distribution of taxes, and whether the trust fund is adequate in the long term.

(3)(a) The task force shall use legislative facilities, and staff support shall be provided by senate committee services and the house of representatives office of program research. The task force may hire additional staff with specific technical expertise if such expertise is necessary to carry out the mandates of this study.

(b) Legislative members of the task force shall be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(c) The expenses of the task force shall be paid jointly by the senate and the house of representatives.

(5) The task force shall report its findings and recommendations to the legislature by January 1, 2006.

(6) This section expires July 1, 2006.

NEW SECTION. Sec. 10. (1) Section 2 of this act expires June 30, 2007.

(2) It is the intent of the legislature that the expiration of sections or subsections of this act results in those sections of law being returned to the law in effect immediately before the effective date of this act.

NEW SECTION. Sec. 11. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the

operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

NEW SECTION. Sec. 12. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House April 18, 2005.

Passed by the Senate April 15, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 134

[House Bill 1385]

RECORDED INSTRUMENTS

AN ACT Relating to recorded instruments; and amending RCW 65.04.045 and 65.04.080.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 65.04.045 and 1999 c 233 s 12 are each amended to read as follows:

(1) When any instrument is presented to a county auditor or recording officer for recording, the first page of the instrument shall contain:

(a) A top margin of at least three inches and a one-inch margin on the bottom and sides, except that an instrument may be recorded if a minor portion of a notary seal, incidental writing, or minor portion of a signature extends beyond the margins;

(b) The top left-hand side of the page shall contain the name and address to whom the instrument will be returned;

(c) The title or titles, or type or types, of the instrument to be recorded indicating the kind or kinds of documents or transactions contained therein immediately below the three-inch margin at the top of the page. The auditor or recording officer shall be required to index only the title or titles captioned on the document;

(d) Reference numbers of documents assigned or released with reference to the document page number where additional references can be found, if applicable;

(e) The names of the grantor(s) and grantee(s), as defined under RCW 65.04.015, with reference to the document page number where additional names are located, if applicable;

(f) An abbreviated legal description of the property, and for purposes of this subsection, "abbreviated legal description of the property" means lot, block, plat, or section, township, range, and quarter/quarter section, and reference to the document page number where the full legal description is included, if applicable;

(g) The assessor's property tax parcel or account number set forth separately from the legal description or other text.

(2) All pages of the document shall be on sheets of paper of a weight and color capable of producing a legible image that are not larger than fourteen inches long and eight and one-half inches wide with text printed or written in

eight point type or larger. All text within the document must be of sufficient color and clarity to ensure that when the text is imaged all text is readable. Further, all pages presented for recording must have at minimum a one-inch margin on the top, bottom, and sides for all pages except page one, except that an instrument may be recorded if a minor portion of a notary seal, incidental writing, or minor portion of a signature extends beyond the margins, be prepared in ink color capable of being imaged, and have all seals legible and capable of being imaged. No attachments, except firmly attached bar code or address labels, may be affixed to the pages.

(3) When any instrument, except those generated by governmental agencies, is presented to a county auditor or recording officer for recording, the document may not contain the following information: (a) A social security number; (b) a date of birth identified with a particular person; or (c) the maiden name of a person's parent so as to be identified with a particular person.

The information provided on the instrument must be in substantially the following form:

This Space Provided for Recorder's Use

When Recorded Return to:

.....

Document Title(s)

Grantor(s)

Grantee(s)

Legal Description

Assessor's Property Tax Parcel or Account Number

Reference Numbers of Documents Assigned or Released

Sec. 2. RCW 65.04.080 and 1996 c 229 s 4 are each amended to read as follows:

(1) When any instrument, paper, or notice, authorized or required by law to be filed or recorded, is deposited in or electronically transmitted to the county auditor's office for filing or record, that officer must indorse upon the same the time when it was received, noting the year, month, day, hour and minute of its reception, and note that the document was received by electronic transmission, and must file, or file and record the same without delay, together with the acknowledgments, proofs, and certificates written or printed upon or annexed to the same, with the plats, surveys, schedules and other papers thereto annexed, in the order and as of the time when the same was received for filing or record, and must note on the instrument filed, or at the foot of the record the exact time of its reception, and the name of the person at whose request it was filed or filed and recorded(~~(:—PROVIDED, That)~~). However, the county auditor shall not be required to accept for filing, or filing and recording, any instrument unless there appear upon the face thereof, the name and nature of the instrument offered for filing, or filing and recording, as the case may be.

(2) When any instrument, except those generated by governmental agencies, is presented to a county auditor or recording officer for recording, the document may not contain the following information: (a) A social security number; (b) a date of birth identified with a particular person; or (c) the maiden name of a person's parent so as to be identified with a particular person.

Passed by the House March 10, 2005.

Passed by the Senate April 11, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 135

[Senate Bill 5175]

EXCISE TAX INCENTIVES—INTERNATIONAL COMPANIES

AN ACT Relating to excise tax incentives for international companies investing in Washington; adding a new section to chapter 43.330 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that many international companies with an interest in operating in Washington are not aware of the various tax incentives that are available. It is the intent of the legislature to ensure that these international companies understand that they are eligible for these business and occupation tax and sales and use tax deferrals when investing in Washington. It is the further intent of the legislature that the department of community, trade, and economic development and associate development organizations make clear to international companies that they are eligible for the state's various tax incentives.

NEW SECTION. Sec. 2. A new section is added to chapter 43.330 RCW to read as follows:

An international company investing in Washington is included within the definition of person in RCW 82.04.030 and is eligible for excise tax incentives provided in Title 82 RCW in the same manner as any domestic company.

Passed by the Senate March 4, 2005.

Passed by the House April 8, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 136

[Substitute Senate Bill 5176]

DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT— STATUTORY CONSOLIDATION

AN ACT Relating to consolidation of department of community, trade, and economic development statutory obligations and repealing obsolete statutes; amending RCW 43.21J.010, 43.63A.230, 43.168.020, 43.168.040, 43.168.050, 43.168.060, 43.168.070, 43.168.090, 43.168.100, 43.168.130, 43.168.150, 43.330.050, 43.330.060, 43.330.090, 43.330.092, 47.36.330, and 43.31.522; creating a new section; repealing RCW 43.31.057, 43.31.093, 43.31.145, 43.31.390, 43.31.403, 43.31.406, 43.31.409, 43.31.411, 43.31.414, 43.31.417, 43.31.526, 43.63A.240, 43.63A.245, 43.63A.247, 43.63A.249, 43.63A.265, 43.63A.270, 43.63A.715, 43.160.115, 43.160.180, 43.165.010, 43.168.031, 43.170.010, 43.170.020, 43.170.030, 43.170.040, 43.170.060,

43.170.070, 43.172.005, 43.172.010, 43.172.011, 43.172.020, 43.172.030, 43.172.040, 43.172.050, 43.172.060, 43.172.070, 43.172.080, 43.172.090, 43.172.100, 43.172.110, 43.172.120, 43.172.900, 43.172.901, 43.172.902, 43.172.903, 43.330.180, 43.21A.670, 43.23.240, 43.30.470, 43.70.450, 77.12.750, 79A.05.350, and 90.71.090; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 43.21J.010 and 1995 c 226 s 26 are each amended to read as follows:

(1) It is the intent of this chapter to provide financial resources to make substantial progress toward: (a) Implementing the Puget Sound water quality management plan and other watershed-based management strategies and plans; (b) ameliorating degradation to watersheds; and (c) keeping and creating stable, environmentally sound, good wage employment in Washington state. The legislature intends that employment under this chapter is not to result in the displacement or partial displacement, whether by the reduction of hours of nonovertime work, wages, or other employment benefits, of currently employed workers, including but not limited to state civil service employees, or of currently or normally contracted services.

(2) It is the purpose of this chapter to:

(a) Implement clean water, forest, and habitat restoration projects that will produce measurable improvements in water and habitat quality, that rate highly when existing environmental ranking systems are applied, and that provide economic stability.

(b) Facilitate the coordination and consistency of federal, state, tribal, local, and private water and habitat protection and enhancement programs in the state's watersheds.

(c) Fund necessary projects for which a public planning process has been completed.

(d) Provide immediate funding to create jobs and training for environmental restoration and enhancement jobs for unemployed workers and displaced workers in impact areas, especially rural natural resources-dependent communities.

(3) For purposes of this chapter "impact areas" means: (a) Distressed counties as defined in RCW ~~((43.165.010(3)(a)))~~ 43.168.020; and (b) ~~((subcounty areas in those counties not covered under (a) of this subsection that are rural natural resources impact areas as defined in RCW 43.31.601; (c) urban subcounty areas as defined in RCW 43.165.010(3)(c); and (d)))~~ areas that the task force determines are likely to experience dislocations in the near future from downturns in natural resource-based industries.

(4) For purposes of this chapter, "high-risk youth" means youth eligible for Washington conservation corps programs under chapter 43.220 RCW or Washington service corps programs under chapter 50.65 RCW.

(5) For purposes of this chapter, "dislocated forest products worker" has the meaning set forth in *RCW 50.70.010.

(6) For purposes of this chapter, "task force" means the environmental enhancement and job creation task force created under RCW 43.21J.030.

Sec. 2. RCW 43.63A.230 and 1993 c 280 s 63 are each amended to read as follows:

~~((+))~~ The department of community, trade, and economic development shall ~~((integrate an employee ownership program within its existing technical~~

~~assistance programs. The employee ownership program shall~~) provide technical assistance to cooperatives authorized under chapter 23.78 RCW and conduct educational programs on employee ownership and self-management. The department shall include information on the option of employee ownership wherever appropriate in its various programs.

~~((2) The department shall maintain a list of firms and individuals with expertise in the field of employee ownership and utilize such firms and individuals, as appropriate, in delivering and coordinating the delivery of technical, managerial, and educational services. In addition, the department shall work with and rely on the services of the employment security department and state institutions of higher education to promote employee ownership.~~

~~(3) The department shall report to the governor, the appropriate economic development committees of the senate and the house of representatives, and the ways and means committees of each house by December 1 of 1988, and each year thereafter, on the accomplishments of the employee ownership program. Such reports shall include the number and types of firms assisted, the number of jobs created by such firms, the types of services, the number of workshops presented, the number of employees trained, and the results of client satisfaction surveys distributed to those using the services of the program.~~

~~(4) For purposes of this section, an employee stock ownership plan qualifies as a cooperative if at least fifty percent, plus one share, of its voting shares of stock are voted on a one person one vote basis.))~~

Sec. 3. RCW 43.168.020 and 1999 c 164 s 502 are each amended to read as follows:

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

(1) "Department" means the department of community, trade, and economic development.

(2) "Director" means the director of community, trade, and economic development.

(3) "Distressed area" means: (a) A rural county; (b) a county which has an unemployment rate which is twenty percent above the state average for the immediately previous three years; (c) a county that has a median household income that is less than seventy-five percent of the state median household income for the previous three years; (d) a metropolitan statistical area, as defined by the office of federal statistical policy and standards, United States department of commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under this chapter exceeds the average state unemployment for such calendar year by twenty percent; or (e) an area within a county, which area: (i) Is composed of contiguous census tracts; (ii) has a minimum population of five thousand persons; (iii) has at least seventy percent of its families and unrelated individuals with incomes below eighty percent of the county's median income for families and unrelated individuals; and (iv) has an unemployment rate which is at least forty percent higher than the county's unemployment rate (~~or (f) a county designated as a rural natural resources impact area under RCW 43.31.601 if an application is filed by July 1, 1997~~). For purposes of this definition, "families and unrelated individuals" has the same meaning that is ascribed to that term by the federal department of housing and urban development in its regulations

authorizing action grants for economic development and neighborhood revitalization projects.

(4) "Fund" means the rural Washington loan fund.

(5) "Local development organization" means a nonprofit organization which is organized to operate within an area, demonstrates a commitment to a long-standing effort for an economic development program, and makes a demonstrable effort to assist in the employment of unemployed or underemployed residents in an area.

(6) "Project" means the establishment of a new or expanded business in an area which when completed will provide employment opportunities. "Project" also means the retention of an existing business in an area which when completed will provide employment opportunities.

(7) "Rural county" means a county with a population density of fewer than one hundred persons per square mile as determined by the office of financial management.

Sec. 4. RCW 43.168.040 and 1987 c 461 s 3 are each amended to read as follows:

Subject to the restrictions contained in this chapter, the ~~((committee))~~ director is authorized to approve applications of local governments for federal community development block grant funds which the local governments would use to make loans to finance business projects within their jurisdictions. Applications approved by the ~~((committee))~~ director under this chapter shall conform to applicable federal requirements.

Sec. 5. RCW 43.168.050 and 1993 c 512 s 12 are each amended to read as follows:

(1) The ~~((committee))~~ director may only approve an application providing a loan for a project which the ~~((committee))~~ director finds:

(a) Will result in the creation of employment opportunities, the maintenance of threatened employment, or development or expansion of business ownership by minorities and women;

(b) ~~((Has been approved by the director as conforming))~~ Will conform to federal rules and regulations governing the spending of federal community development block grant funds;

(c) Will be of public benefit and for a public purpose, and that the benefits, including increased or maintained employment, improved standard of living, the employment of disadvantaged workers, and development or expansion of business ownership by minorities and women, will primarily accrue to residents of the area;

(d) Will probably be successful;

(e) Would probably not be completed without the loan because other capital or financing at feasible terms is unavailable or the return on investment is inadequate.

(2) The ~~((committee))~~ director shall, subject to federal block grant criteria, give higher priority to economic development projects that contain provisions for child care.

(3) The ~~((committee))~~ director may not approve an application if it fails to provide for adequate reporting or disclosure of financial data to the

~~((committee))~~ director. The ~~((committee))~~ director may require an annual or other periodic audit of the project books.

(4) The ~~((committee))~~ director may require that the project be managed in whole or in part by a local development organization and may prescribe a management fee to be paid to such organization by the recipient of the loan or grant.

~~((a))~~ Except as provided in ~~((b))~~ of this subsection, the committee shall not approve any application which would result in a loan or grant in excess of three hundred fifty thousand dollars.

~~((b))~~ The ~~((committee))~~ director may approve an application which results in a loan or grant of up to ~~((seven hundred thousand))~~ one million dollars ~~((if the application has been approved by the director))~~.

(6) The ~~((committee))~~ director shall fix the terms and rates pertaining to ~~((its))~~ fund loans.

(7) Should there be more demand for loans than funds available for lending, the ~~((committee))~~ director shall provide loans for those projects which will lead to the greatest amount of employment or benefit to a community. In determining the "greatest amount of employment or benefit" the ~~((committee))~~ director shall also consider the employment which would be saved by its loan and the benefit relative to the community, not just the total number of new jobs or jobs saved.

(8) To the extent permitted under federal law the ~~((committee))~~ director shall require applicants to provide for the transfer of all payments of principal and interest on loans to the ~~((Washington state development loan))~~ fund created under this chapter. Under circumstances where the federal law does not permit the ~~((committee))~~ director to require such transfer, the ~~((committee))~~ director shall give priority to applications where the applicants on their own volition make commitments to provide for the transfer.

(9) The ~~((committee))~~ director shall not approve any application to finance or help finance a shopping mall.

(10) For loans not made to minority and women-owned businesses, the ~~((committee))~~ director shall make at least eighty percent of the appropriated funds available to projects located in distressed areas, and may make up to twenty percent available to projects located in areas not designated as distressed. For loans not made to minority and women-owned businesses, the ~~((committee))~~ director shall not make funds available to projects located in areas not designated as distressed if the fund's net worth is less than seven million one hundred thousand dollars.

(11) If an objection is raised to a project on the basis of unfair business competition, the ~~((committee))~~ director shall evaluate the potential impact of a project on similar businesses located in the local market area. A grant may be denied by the ~~((committee))~~ director if a project is not likely to result in a net increase in employment within a local market area.

(12) For loans to minority and women-owned businesses who do not meet the credit criteria, the ~~((committee))~~ director may consider nontraditional credit standards to offset past discrimination that has precluded full participation of minority or women-owned businesses in the economy. For applicants with high potential who do not meet the credit criteria, the ~~((committee))~~ director shall consider developing alternative borrowing methods. For applicants denied loans due to credit problems, the ~~((committee))~~ department shall provide financial

counseling within available resources and provide referrals to credit rehabilitation services. In circumstances of competing applications, priority shall be given to members of eligible groups which previously have been least served by this fund.

Sec. 6. RCW 43.168.060 and 1985 c 164 s 6 are each amended to read as follows:

~~((The department shall provide adequate and appropriate staff and other support to the committee. A record of committee proceedings shall be maintained by the department.))~~ The department is encouraged to work with local development organizations to promote applications for loans by the fund. The department shall also provide assistance to local development organizations and local governments to identify viable projects for consideration ~~((by the committee))~~. The department shall adopt such rules and regulations as are appropriate for ~~((the committee to carry out its authority under))~~ implementation of this chapter.

Sec. 7. RCW 43.168.070 and 1993 c 512 s 14 are each amended to read as follows:

The ~~((committee))~~ director may receive and approve applications on a monthly basis but shall receive and approve applications on at least a quarterly basis for each fiscal year. The ~~((committee))~~ director shall make every effort to simplify the loan process for applicants. Department staff shall process and assist in the preparation of applications. Each application shall show in detail the nature of the project, the types and numbers of jobs to be created, wages to be paid to new employees, and methods to hire unemployed persons from the area. Each application shall contain a credit analysis of the business to receive the loan. ~~((The chairperson of the committee may convene the committee))~~ The director may respond on short notice ~~((to respond))~~ to applications of a serious or immediate nature.

Sec. 8. RCW 43.168.090 and 1985 c 164 s 9 are each amended to read as follows:

The department shall ~~((make available for))~~ use ~~((by the committee))~~ for the fund an amount of federal community development block grant funds equal to the amount of state funds transferred or appropriated to the department for purposes of supplementing the department's block grant funds.

Sec. 9. RCW 43.168.100 and 1993 c 512 s 15 are each amended to read as follows:

The ~~((committee))~~ director may make grants of state funds to local governments which qualify as "entitlement communities" under the federal law authorizing community development block grants. These grants may only be made on the condition that the entitlement community provide the ~~((committee))~~ director with assurances that it will: (1) Spend the grant moneys for purposes and in a manner which satisfies state constitutional requirements; (2) spend the grant moneys for purposes and in a manner which would satisfy federal requirements; and (3) spend at least the same amount of the grant for loans to businesses from the federal funds received by the entitlement community.

Sec. 10. RCW 43.168.130 and 1998 c 245 s 52 are each amended to read as follows:

The ~~((committee))~~ director shall develop performance standards for judging the effectiveness of the program. Such standards shall include, to the extent possible, examining the effectiveness of grants in regard to:

- (1) Job creation for individuals of low and moderate income;
- (2) Retention of existing employment;
- (3) The creation of new employment opportunities;
- (4) The diversification of the economic base of local communities;
- (5) The establishment of employee cooperatives;
- (6) The provision of assistance in cases of employee buy-outs of firms to prevent the loss of existing employment;
- (7) The degree of risk assumed by the ~~((development loan))~~ fund, with emphasis on loans which did not receive financing from commercial lenders, but which are considered financially sound.

Sec. 11. RCW 43.168.150 and 1993 c 512 s 13 are each amended to read as follows:

Subject to the restrictions contained in this chapter, the ~~((committee))~~ director is authorized to approve applications of minority and women-owned businesses for loans or loan guarantees from the fund. Applications approved by the ~~((committee))~~ director under this chapter shall conform to applicable federal requirements. The ~~((committee))~~ director shall prioritize available funds for loan guarantees rather than loans when possible. The ~~((committee))~~ director may enter into agreements with other public or private lending institutions to develop a joint loan guarantee program for minority and women-owned businesses. If such a program is developed, the ~~((committee))~~ director may provide funds, in conjunction with the other organizations, to operate the program. This section does not preclude the ~~((committee))~~ director from making individual loan guarantees.

To the maximum extent practicable, the funds available under this section shall be made available on an equal basis to minority and women-owned businesses. The ~~((committee))~~ director shall submit to the appropriate committees of the senate and house of representatives quarterly reports that detail the number of loans approved and the characteristics of the recipients by ethnic and gender groups.

Sec. 12. RCW 43.330.050 and 1993 c 280 s 7 are each amended to read as follows:

The department shall be responsible for promoting community and economic development within the state by assisting the state's communities to increase the quality of life of their citizens and their economic vitality, and by assisting the state's businesses to maintain and increase their economic competitiveness, while maintaining a healthy environment. Community and economic development efforts shall include: Efforts to increase economic opportunity; local planning to manage growth; the promotion and provision of affordable housing and housing-related services; providing public infrastructure; business and trade development; assisting firms and industrial sectors to increase their competitiveness; fostering the development of minority and women-owned businesses; facilitating technology development, transfer, and diffusion; community services and advocacy for low-income persons; and public safety

efforts. The department shall have the following general functions and responsibilities:

(1) Provide advisory assistance to the governor, other state agencies, and the legislature on community and economic development matters and issues;

(2) Assist the governor in coordinating the activities of state agencies that have an impact on local government and communities;

(3) Cooperate with the Washington state economic development commission, the legislature, and the governor in the development and implementation of strategic plans for the state's community and economic development efforts;

(4) Solicit private and federal grants for economic and community development programs and administer such programs in conjunction with other programs assigned to the department by the governor or the legislature;

(5) Cooperate with and provide technical and financial assistance to local governments, businesses, and community-based organizations serving the communities of the state for the purpose of aiding and encouraging orderly, productive, and coordinated development of the state, and, unless stipulated otherwise, give additional consideration to local communities and individuals with the greatest relative need and the fewest resources;

(6) Participate with other states or subdivisions thereof in interstate programs and assist cities, counties, municipal corporations, governmental conferences or councils, and regional planning commissions to participate with other states and provinces or their subdivisions;

(7) Hold public hearings and meetings to carry out the purposes of this chapter;

(8) Conduct research and analysis in furtherance of the state's economic and community development efforts including maintenance of current information on market, demographic, and economic trends as they affect different industrial sectors, geographic regions, and communities with special economic and social problems in the state; and

(9) Develop a schedule of fees for services where appropriate.

Sec. 13. RCW 43.330.060 and 1993 c 280 s 9 are each amended to read as follows:

(1) The department shall (a) assist in expanding the state's role as an international center of trade, culture, and finance~~(--The department shall)~~; (b) promote and market the state's products and services both nationally and internationally; (c) work in close cooperation with other private and public international trade efforts ~~((and))~~; (d) act as a centralized location for the assimilation and distribution of trade information; and (e) establish and operate foreign offices promoting overseas trade and commerce.

(2) The department shall identify and work with Washington businesses that can use local, state, and federal assistance to increase domestic and foreign exports of goods and services.

(3) The department shall work generally with small businesses and other employers to facilitate resolution of siting, regulatory, expansion, and retention problems. This assistance shall include but not be limited to assisting in work force training and infrastructure needs, identifying and locating suitable business sites, and resolving problems with government licensing and regulatory requirements. The department shall identify gaps in needed services and

develop steps to address them including private sector support and purchase of these services.

(4) The department shall work to increase the availability of capital to small businesses by developing new and flexible investment tools ~~((and))~~; by assisting in targeting and improving the efficiency of existing investment mechanisms; and by assisting in the procurement of managerial and technical assistance necessary to attract potential investors.

(5) The department shall assist women and minority-owned businesses in overcoming barriers to ~~((increased investment and employment and becoming full participants in Washington's traded sector economy))~~ entrepreneurial success. The department shall contract with public and private agencies, institutions, and organizations to conduct entrepreneurial training courses for minority and women-owned businesses. The instruction shall be intensive, practical training courses in financing, marketing, managing, accounting, and recordkeeping for a small business, with an emphasis on federal, state, local, or private programs available to assist small businesses. Instruction shall be offered in major population centers throughout the state at times and locations that are convenient for minority and women small business owners.

Sec. 14. RCW 43.330.090 and 2003 c 153 s 2 are each amended to read as follows:

(1) The department shall work with private sector organizations, local governments, local associate development organizations, and higher education and training institutions to assist in the development of strategies to diversify the economy, facilitate technology transfer and diffusion, and increase value-added production by focusing on targeted sectors. The targeted sectors may include, but are not limited to, software, forest products, biotechnology, environmental industries, recycling markets and waste reduction, aerospace, food processing, tourism, film and video, microelectronics, new materials, robotics, and machine tools. The department shall, on a continuing basis, evaluate the potential return to the state from devoting additional resources to a targeted sector's approach to economic development and including additional sectors in its efforts. The department shall use information gathered in each service delivery region in formulating its sectoral strategies and in designating new targeted sectors.

(2) The department shall pursue a coordinated program to expand the tourism industry throughout the state in cooperation with the public and private tourism development organizations. The department, in operating its tourism program, shall:

(a) Promote Washington as a tourism destination to national and international markets to include nature-based and wildlife viewing tourism;

(b) Provide information to businesses and local communities on tourism opportunities that could expand local revenues;

(c) Assist local communities to strengthen their tourism partnerships, including their relationships with state and local agencies;

(d) Provide leadership training and assistance to local communities to facilitate the development and implementation of local tourism plans;

(e) Coordinate the development of a statewide tourism and marketing plan. The department's tourism planning efforts shall be carried out in conjunction with public and private tourism development organizations including the department of fish and wildlife and other appropriate agencies. The plan shall

specifically address mechanisms for: (i) Funding national and international marketing and nature-based tourism efforts; (ii) interagency cooperation; and (iii) integrating the state plan with local tourism plans.

(3) The department may, in carrying out its efforts to expand the tourism industry in the state:

(a) Solicit and receive gifts, grants, funds, fees, and endowments, in trust or otherwise, from tribal, local or other governmental entities, as well as private sources, and may expend the same or any income therefrom for tourism purposes. All revenue received for tourism purposes shall be deposited into the tourism development and promotion account created in RCW 43.330.094;

(b) Host conferences and strategic planning workshops relating to the promotion of nature-based and wildlife viewing tourism;

(c) Conduct or contract for tourism-related studies;

(d) Contract with individuals, businesses, or public entities to carry out its tourism-related activities under this section;

(e) Provide tourism-related organizations with marketing and other technical assistance;

(f) Evaluate and make recommendations on proposed tourism-related policies.

(4)(a) The department shall promote, market, and encourage growth in the production of films and videos, as well as television commercials within the state; to this end the department is directed to assist in the location of a film and video production studio within the state.

(b) The department may, in carrying out its efforts to encourage film and video production in the state, solicit and receive gifts, grants, funds, fees, and endowments, in trust or otherwise, from tribal, local, or other governmental entities, as well as private sources, and may expend the same or any income therefrom for the encouragement of film and video production. All revenue received for such purposes shall be deposited into the film and video promotion account created in RCW 43.330.092.

(5) In assisting in the development of a targeted sector, the department's activities may include, but are not limited to:

(a) Conducting focus group discussions, facilitating meetings, and conducting studies to identify members of the sector, appraise the current state of the sector, and identify issues of common concern within the sector;

(b) Supporting the formation of industry associations, publications of association directories, and related efforts to create or expand the activities or industry associations;

(c) Assisting in the formation of flexible networks by providing (i) agency employees or private sector consultants trained to act as flexible network brokers and (ii) funding for potential flexible network participants for the purpose of organizing or implementing a flexible network;

(d) Helping establish research consortia;

(e) Facilitating joint training and education programs;

(f) Promoting cooperative market development activities;

(g) Analyzing the need, feasibility, and cost of establishing product certification and testing facilities and services; and

(h) Providing for methods of electronic communication and information dissemination among firms and groups of firms to facilitate network activity.

Sec. 15. RCW 43.330.092 and 1997 c 220 s 222 are each amended to read as follows:

The film and video promotion account is created in the state treasury. All revenue received for film and video promotion purposes under RCW 43.330.090(4)(b) and all receipts from RCW 36.102.060(14) must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used by the department of community, trade, and economic development only for the purposes of promotion of the film and video production industry in the state of Washington.

Sec. 16. RCW 47.36.330 and 1999 c 213 s 2 are each amended to read as follows:

(1) Not more than six business signs may be permitted on motorist information sign panels authorized by RCW 47.36.310 and 47.36.320.

(2) The maximum distance that eligible service facilities may be located on either side of an interchange or intersection to qualify for a business sign are as follows:

(a) On interstate highways, gas, food, or lodging activities shall be located within three miles. Camping or tourist-oriented activities shall be within five miles.

(b) On noninterstate highways, gas, food, lodging, recreation, or tourist-oriented activities shall be located within five miles.

(3)(a) If no eligible services are located within the distance limits prescribed in subsection (2) of this section, the distance limits shall be increased until an eligible service of a type being considered is reached, up to a maximum of fifteen miles.

(b) The department may erect and maintain signs on an alternate route that is longer than fifteen miles if it is safer and still provides reasonable and convenient travel to an eligible service.

(c) The department may erect and maintain signs on a route up to a maximum of twenty miles if it qualifies as an eligible service and is within a distressed area (~~(under the criteria of chapter 43.165 RCW)~~ as defined in RCW 43.168.020.

Sec. 17. RCW 43.31.522 and 1993 c 280 s 46 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.31.524 (~~and 43.31.526~~):

(1) "Department" means the department of community, trade, and economic development.

(2) (~~"Center" means the business assistance center established under RCW 43.31.083.~~

~~(3))~~ "Director" means the director of community, trade, and economic development.

~~((4))~~ (3) "Local nonprofit organization" means a local nonprofit organization organized to provide economic development or community development services, including but not limited to associate development organizations, economic development councils, and community development corporations.

NEW SECTION. Sec. 18. The following acts or parts of acts are each repealed:

(1) RCW 43.31.057 (Washington products—Expansion of market—Pamphlet) and 1993 c 280 s 39 & 1986 c 183 s 2;

(2) RCW 43.31.093 (Minority and women-owned small businesses—Entrepreneurial training courses) and 1995 c 399 s 71 & 1993 c 512 s 6;

(3) RCW 43.31.145 (Foreign offices—Promotion of overseas trade and commerce) and 1991 c 24 s 7 & 1985 c 466 s 18;

(4) RCW 43.31.390 (Information from environmental profile—Use in brochures and presentations—Availability to local economic development groups) and 1985 c 466 s 33 & 1984 c 94 s 4;

(5) RCW 43.31.403 (Investment opportunities office—Finding and purpose) and 1989 c 312 s 1;

(6) RCW 43.31.406 (Investment opportunities office—Definitions) and 1989 c 312 s 2;

(7) RCW 43.31.409 (Investment opportunities office—Created) and 1993 c 280 s 42 & 1989 c 312 s 3;

(8) RCW 43.31.411 (Investment opportunities office—Duties) and 1998 c 245 s 61, 1993 c 280 s 43, & 1989 c 312 s 4;

(9) RCW 43.31.414 (Investment opportunities office—Service fees) and 1989 c 312 s 5;

(10) RCW 43.31.417 (Investment opportunities office—Contracting authority) and 1989 c 312 s 6;

(11) RCW 43.31.526 (Marketplace program—Contracts to foster linkages—Department duties) and 1998 c 245 s 62, 1994 c 47 s 2, 1993 c 280 s 48, 1990 c 57 s 4, & 1989 c 417 s 4;

(12) RCW 43.63A.240 (Senior environmental corps—Finding) and 1992 c 63 s 1;

(13) RCW 43.63A.245 (Senior environmental corps—Definitions) and 1999 c 151 s 1201, 1993 c 280 s 64, & 1992 c 63 s 2;

(14) RCW 43.63A.247 (Senior environmental corps—Created) and 1994 c 264 s 25, 1993 c 280 s 65, & 1992 c 63 s 3;

(15) RCW 43.63A.249 (Senior environmental corps—Goals) and 1992 c 63 s 4;

(16) RCW 43.63A.265 (Senior environmental corps—Department duties—Volunteers may not displace currently employed workers) and 1992 c 63 s 6;

(17) RCW 43.63A.270 (Senior environmental corps—Volunteer activity to be governed by agreement) and 1992 c 63 s 7;

(18) RCW 43.63A.715 (Rural enterprise zones—Establishment—Applications—Authority of zones) and 1997 c 366 s 9;

(19) RCW 43.160.115 (Cooperation with Washington state development loan fund committee required—Transfer of funds) and 1995 c 399 s 87, 1987 c 422 s 7, 1987 c 195 s 12, & 1985 c 164 s 14;

(20) RCW 43.160.180 (Private activity bond subcommittee) and 1995 c 399 s 88, 1987 c 422 s 9, & 1985 c 446 s 15;

(21) RCW 43.165.010 (Definitions) and 1996 c 290 s 2, 1995 c 399 s 91, 1987 c 461 s 1, & 1985 c 229 s 1;

(22) RCW 43.168.031 (State development loan fund committee—Terminated June 30, 1994—Powers and duties transferred) and 1995 c 399 s 92 & 1988 c 186 s 7;

(23) RCW 43.170.010 (Legislative findings) and 1982 c 44 s 1;

(24) RCW 43.170.020 (Definitions) and 1995 c 399 s 93, 1985 c 466 s 60, & 1982 c 44 s 2;

(25) RCW 43.170.030 (Small business innovators' opportunity program—Pilot project established—Composition and structure—User fee) and 1995 c 399 s 94, 1985 c 466 s 61, & 1982 c 44 s 3;

(26) RCW 43.170.040 (Chairman of program) and 1982 c 44 s 4;

(27) RCW 43.170.060 (Eligibility) and 1982 c 44 s 6;

(28) RCW 43.170.070 (Referral to investment opportunities office) and 1995 c 399 s 95 & 1989 c 312 s 9;

(29) RCW 43.172.005 (Intent) and 1993 c 512 s 1;

(30) RCW 43.172.010 (Definitions) and 1993 c 512 s 2;

(31) RCW 43.172.011 (Definitions—Bonding program) and 1995 c 399 s 96 & 1993 c 512 s 16;

(32) RCW 43.172.020 (Small business bonding assistance program—Implementation—Rules) and 1995 c 399 s 97 & 1993 c 512 s 17;

(33) RCW 43.172.030 (Assistance from other agencies) and 1993 c 512 s 18;

(34) RCW 43.172.040 (Entrepreneurial training course) and 1993 c 512 s 19;

(35) RCW 43.172.050 (Entrepreneurial accreditation of small contracting businesses) and 1993 c 512 s 20;

(36) RCW 43.172.060 (Professional services assistance—One-time grants) and 1993 c 512 s 21;

(37) RCW 43.172.070 (Grant administration) and 1993 c 512 s 22;

(38) RCW 43.172.080 (Bond guarantees—Generally) and 1993 c 512 s 23;

(39) RCW 43.172.090 (Bond guarantees—Approval process) and 1993 c 512 s 24;

(40) RCW 43.172.100 (Small business bonding assistance program fund—Expenditures) and 1993 c 512 s 25;

(41) RCW 43.172.110 (Small business bonding assistance program fund—Support) and 1993 c 512 s 26;

(42) RCW 43.172.120 (Gifts, grants, endowments) and 1993 c 512 s 27;

(43) RCW 43.172.900 (Short title—1993 c 512) and 1993 c 512 s 38;

(44) RCW 43.172.901 (Part headings and section captions—1993 c 512) and 1993 c 512 s 40;

(45) RCW 43.172.902 (Severability—1993 c 512) and 1993 c 512 s 41;

(46) RCW 43.172.903 (Effective date—1993 c 512) and 1993 c 512 s 42;

(47) RCW 43.330.180 (Grant program for business recruitment efforts) and 1999 c 108 s 2;

(48) RCW 43.21A.670 (Senior environmental corps—Department powers and duties) and 1992 c 63 s 9;

(49) RCW 43.23.240 (Senior environmental corps—Department powers and duties) and 1992 c 63 s 8;

(50) RCW 43.30.470 (Senior environmental corps) and 2003 c 334 s 124 & 1992 c 63 s 10;

(51) RCW 43.70.450 (Senior environmental corps—Department powers and duties) and 1992 c 63 s 12;

(52) RCW 77.12.750 (Senior environmental corps—Department powers and duties) and 1993 sp.s. c 2 s 72 & 1992 c 63 s 13;

(53) RCW 79A.05.350 (Senior environmental corps—Commission powers and duties) and 1992 c 63 s 14; and

(54) RCW 90.71.090 (Senior environmental corps—Authority powers and duties) and 1992 c 63 s 15.

NEW SECTION. Sec. 19. This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections.

NEW SECTION. Sec. 20. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005.

Passed by the Senate March 9, 2005.

Passed by the House April 6, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 137

[Senate Bill 5180]

ECONOMIC DEVELOPMENT FINANCE AUTHORITY—BOND AUTHORITY

AN ACT Relating to the Washington economic development finance authority; amending RCW 43.163.210; and reenacting and amending RCW 43.163.130.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 43.163.130 and 2001 c 304 s 2 and 2001 c 32 s 2 are each reenacted and amended to read as follows:

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

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

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

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

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

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

(4) Any security interest created against the unexpended bond proceeds and against the special funds created by the authority shall be immediately valid and binding against the money and any securities in which the money may be invested without authority or trustee possession. The security interest shall be prior to any party having any competing claim against the moneys or securities, without filing or recording under Article 9A of the Uniform Commercial Code, Title 62A RCW, and regardless of whether the party has notice of the security interest.

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

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

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

(8) Neither the members of the authority, nor its employees or agents, nor any person executing the bonds shall be personally liable on the bonds or be

subject to any personal liability or accountability by reason of the issuance of the bonds.

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

(10) The authority shall not exceed ~~((seven hundred fifty million))~~ one billion dollars in total outstanding debt at any time.

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

~~((12) The authority may not issue any bonds after June 30, 2006.))~~

Sec. 2. RCW 43.163.210 and 2001 c 304 s 3 are each amended to read as follows:

For the purpose of facilitating economic development in the state of Washington and encouraging the employment of Washington workers at meaningful wages:

(1) The authority may develop and conduct a program or programs to provide nonrecourse revenue bond financing for the project costs for economic development activities.

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

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

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

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

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

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

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

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

(vii) To the extent permitted under its contract with eligible persons, to consent to a termination, modification, forgiveness, or other change of a term of

a contractual right, payment, royalty, contract, or agreement of any kind to which the authority is a party.

(b) Eligible persons seeking financial and other assistance under this program shall forward an application, together with an application fee prescribed by rule, to the authority. An investigation and report concerning the advisability of approving an application for assistance shall be completed by the staff of the authority. The investigation and report may include, but is not limited to, facts about the company under consideration as its history, wage standards, job opportunities, stability of employment, past and present financial condition and structure, pro forma income statements, present and future markets and prospects, integrity of management as well as the feasibility of the proposed product and invention to be granted financial aid, including the state of development of the product as well as the likelihood of its commercial feasibility. After receipt and consideration of the report set out in this subsection and after other action as is deemed appropriate, the application shall be approved or denied by the authority. The applicant shall be promptly notified of action by the authority. In making the decision as to approval or denial of an application, priority shall be given to those persons operating or planning to operate businesses of special importance to Washington's economy, including, but not limited to: (i) Existing resource-based industries of agriculture, forestry, and fisheries; (ii) existing advanced technology industries of electronics, computer and instrument manufacturing, computer software, and information and design; and (iii) emerging industries such as environmental technology, biotechnology, biomedical sciences, materials sciences, and optics.

(3) The authority may also develop and implement, if authorized by the legislature, such other economic development financing programs adopted in future general plans of economic development finance objectives developed under RCW 43.163.090.

~~((4) The authority may not issue any bonds for the programs authorized under this section after June 30, 2006.))~~

Passed by the Senate February 23, 2005.

Passed by the House April 8, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 138

[Senate Bill 5142]

AIR REGISTRATIONS—GRAIN ELEVATORS—GRAIN WAREHOUSES

AN ACT Relating to air registrations for elevators and warehouses; and amending RCW 70.94.151.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 70.94.151 and 1997 c 410 s 1 are each amended to read as follows:

(1) The board of any activated authority or the department, may classify air contaminant sources, by ordinance, resolution, rule or regulation, which in its judgment may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which cause or contribute to air pollution,

and may require registration or reporting or both for any such class or classes. Classifications made pursuant to this section may be for application to the area of jurisdiction of such authority, or the state as a whole or to any designated area within the jurisdiction, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

(2) Except as provided in subsection (3) of this section, any person operating or responsible for the operation of air contaminant sources of any class for which the ordinances, resolutions, rules or regulations of the department or board of the authority, require registration and reporting shall register therewith and make reports containing information as may be required by such department or board concerning location, size and height of contaminant outlets, processes employed, nature of the contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. The department or board may require that such registration be accompanied by a fee and may determine the amount of such fee for such class or classes: PROVIDED, That the amount of the fee shall only be to compensate for the costs of administering such registration program which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering analysis for accuracy and currentness, of information provided by sources pursuant to registration program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program: PROVIDED FURTHER, That any such registration made with either the board or the department shall preclude a further registration with any other board or the department.

All registration program fees collected by the department shall be deposited in the air pollution control account. All registration program fees collected by the local air authorities shall be deposited in their respective treasuries.

(3) If a registration or report has been filed for a grain warehouse or grain elevator as required under this section, registration, reporting, or a registration program fee shall not, after January 1, 1997, again be required under this section for the warehouse or elevator unless the capacity of the warehouse or elevator as listed as part of the license issued for the facility has been increased since the date the registration or reporting was last made. If the capacity of the warehouse or elevator listed as part of the license is increased, any registration or reporting required for the warehouse or elevator under this section must be made by the date the warehouse or elevator receives grain from the first harvest season that occurs after the increase in its capacity is listed in the license.

This subsection does not apply to a grain warehouse or grain elevator if the warehouse or elevator handles more than ten million bushels of grain annually.

(4) For the purposes of ~~((this))~~ subsection~~(-)~~ (3) of this section:

(a) A "grain warehouse" or "grain elevator" is an establishment classified in standard industrial classification (SIC) code 5153 for wholesale trade for which

a license is required and includes, but is not limited to, such a licensed facility that also conducts cleaning operations for grain; (~~and~~)

(b) A "license" is a license issued by the department of agriculture licensing a facility as a grain warehouse or grain elevator under chapter 22.09 RCW or a license issued by the federal government licensing a facility as a grain warehouse or grain elevator for purposes similar to those of licensure for the facility under chapter 22.09 RCW; and

(c) "Grain" means a grain or a pulse.

~~((This subsection does not apply to a grain warehouse or grain elevator if the warehouse or elevator handles more than ten million bushels of grain annually.))~~

Passed by the Senate February 23, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 139

[Substitute House Bill 1100]

FINANCIAL AID ACCOUNT

AN ACT Relating to creating a state financial aid account to ensure that all statewide financial aid is made available; and adding a new section to chapter 28B.10 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 28B.10 RCW to read as follows:

(1) The state financial aid account is created in the custody of the state treasurer. The primary purpose of the account is to ensure that all appropriations designated for financial aid through statewide student financial aid programs are made available to eligible students. The account shall be a nontreasury account.

(2) The higher education coordinating board shall deposit in the account all money received for the state need grant program established under RCW 28B.92.010, the state work-study program established under chapter 28B.12 RCW, the Washington scholars program established under RCW 28A.600.110, the Washington award for vocational excellence program established under RCW 28C.04.525, and the educational opportunity grant program established under chapter 28B.101 RCW. The account shall consist of funds appropriated by the legislature for the programs listed in this subsection and private contributions to the programs. Moneys deposited in the account do not lapse at the close of the fiscal period for which they were appropriated. Both during and after the fiscal period in which moneys were deposited in the account, the board may expend moneys in the account only for the purposes for which they were appropriated, and the expenditures are subject to any other conditions or limitations placed on the appropriations.

(3) Expenditures from the account shall be used for scholarships to students eligible for the programs according to program rules and policies.

(4) Disbursements from the account are exempt from appropriations and the allotment provisions of chapter 43.88 RCW.

(5) Only the executive director of the higher education coordinating board or the executive director's designee may authorize expenditures from the account.

Passed by the House March 3, 2005.

Passed by the Senate April 14, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 140

[House Bill 1211]

HUNTING—MULTIPLE SEASON BIG GAME PERMIT

AN ACT Relating to deer and elk hunting; and amending RCW 77.32.450.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 77.32.450 and 2000 c 109 s 1 are each amended to read as follows:

(1) A big game hunting license is required to hunt for big game. A big game license allows the holder to hunt for forest grouse, unclassified wildlife, and the individual species identified within a specific big game combination license package. Each big game license includes one transport tag for each species purchased in that package. A hunter may not purchase more than one license for each big game species except as authorized by rule of the commission. The fees for annual big game combination packages are as follows:

(a) Big game number 1: Deer, elk, bear, and cougar. The fee for this license is sixty-six dollars for residents, six hundred sixty dollars for nonresidents, and thirty-three dollars for youth.

(b) Big game number 2: Deer and elk. The fee for this license is fifty-six dollars for residents, five hundred sixty dollars for nonresidents, and twenty-eight dollars for youth.

(c) Big game number 3: Deer or elk, bear, and cougar. At the time of purchase, the holder must identify either deer or elk. The fee for this license is forty-six dollars for residents, four hundred sixty dollars for nonresidents, and twenty-three dollars for youth.

(d) Big game number 4: Deer or elk. At the time of purchase, the holder must identify either deer or elk. The fee for this license is thirty-six dollars for residents, three hundred sixty dollars for nonresidents, and eighteen dollars for youth.

(e) Big game number 5: Bear and cougar. The fee for this license is twenty dollars for residents, two hundred dollars for nonresidents, and ten dollars for youth.

(2) In the event that the commission authorizes a two animal big game limit, the fees for the second animal are as follows:

(a) Elk: The fee is twenty dollars for residents, two hundred dollars for nonresidents, and ten dollars for youth.

(b) Deer: The fee is twenty dollars for residents, two hundred dollars for nonresidents, and ten dollars for youth.

(c) Bear: The fee is ten dollars for residents, one hundred dollars for nonresidents, and five dollars for youth.

(d) Cougar: The fee is ten dollars for residents, one hundred dollars for nonresidents, and five dollars for youth.

(3) In the event that the commission authorizes a special permit hunt for goat, sheep, or moose, the permit fees are as follows:

(a) Mountain goat: The fee is one hundred dollars for residents, one thousand dollars for nonresidents, and fifty dollars for youth.

(b) Sheep: The fee is one hundred dollars for residents, one thousand dollars for nonresidents, and fifty dollars for youth.

(c) Moose: The fee is one hundred dollars for residents, one thousand dollars for nonresidents, and fifty dollars for youth.

(4) Multiple season big game permit: The commission may, by rule, offer permits for hunters to hunt deer or elk during more than one general season. Only one deer or elk may be harvested annually under a multiple season big game permit. The fee is one hundred fifty dollars for residents and one thousand five hundred dollars for nonresidents.

(5) Authorization to hunt the species set out under subsection (3)(a) through (c) of this section or in multiple seasons as set out in subsection (4) of this section is by special permit ((identified)) issued under RCW 77.32.370.

~~((4))~~ (6) The commission may adopt rules to reduce the price of a license or eliminate the transportation tag requirements concerning bear or cougar when necessary to meet harvest objectives.

Passed by the House March 9, 2005.

Passed by the Senate April 11, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 141

[House Bill 1261]

VETERANS' AND MILITARY AFFAIRS—EXECUTIVE COMMITTEE

AN ACT Relating to the joint committee on veterans' and military affairs; and amending RCW 73.04.150.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 73.04.150 and 2001 c 268 s 1 are each amended to read as follows:

(1) There is hereby created a joint committee on veterans' and military affairs. The committee shall consist of: (a) Eight members of the senate appointed by the president of the senate, four of whom shall be members of the majority party and four of whom shall be members of the minority party; and (b) eight members of the house of representatives appointed by the speaker, four of whom shall be members of the majority party and four of whom shall be members of the minority party. Members of the committee shall be appointed before the close of the ~~((2004))~~ 2005 legislative session, and before the close of each regular session during an odd-numbered year thereafter.

(2) Each member's term of office shall run from the close of the session in which he or she was appointed until the close of the next regular session held in an odd-numbered year. If a successor is not appointed during a session, the member's term shall continue until the member is reappointed or a successor is

appointed. The term of office for a committee member who does not continue as a member of the senate or house of representatives shall cease upon the convening of the next session of the legislature during an odd-numbered year after the member's appointment, or upon the member's resignation, whichever is earlier. Vacancies on the committee shall be filled by appointment in the same manner as described in subsection (1) of this section. All such vacancies shall be filled from the same political party and from the same house as the member whose seat was vacated.

(3) The committee shall establish an executive committee of four members ~~((representing the majority and minority caucuses of each)), two of whom are members of the senate and two of whom are members of the house of representatives. The executive committee shall appoint one cochair from the two executive committee members who are senators and one cochair from the two executive committee members who are representatives. The two cochairs shall be from different political parties and their terms of office shall run from the close of the session in which they are appointed until the close of the next regular session in an odd-numbered year.~~ The executive committee is responsible for performing all general administrative and personnel duties assigned to it in the rules and procedures adopted by the joint committee, as well as other duties delegated to it by the joint committee.

(4) The joint committee on veterans' and military affairs has the following powers and duties:

(a) To study veterans' issues, active military forces issues, and national guard and reserve component issues, and make recommendations to the legislature; and

(b) To study structure and administration of the department of veterans affairs and the military department, and make recommendations to the legislature.

(5) The joint committee shall adopt rules and procedures for its orderly operation. The joint committee may create subcommittees to perform duties under this section.

~~((6) This section expires December 31, 2005.))~~

Passed by the House February 25, 2005.

Passed by the Senate April 14, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 142

[House Bill 1262]

JUDGE PRO TEMPORE—COMPENSATION

AN ACT Relating to judicial compensation; and amending RCW 2.08.180.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 2.08.180 and 2003 c 247 s 1 are each amended to read as follows:

A case in the superior court of any county may be tried by a judge pro tempore, who must be either: (1) A member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and

sworn to try the case; or (2) pursuant to supreme court rule, any sitting elected judge. Any action in the trial of such cause shall have the same effect as if it was made by a judge of such court. However, if a previously elected judge of the superior court retires leaving a pending case in which the judge has made discretionary rulings, the judge is entitled to hear the pending case as a judge pro tempore without any written agreement.

A judge pro tempore shall, before entering upon his or her duties in any cause, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and the Constitution of the State of Washington, and that I will faithfully discharge the duties of the office of judge pro tempore in the cause wherein is plaintiff and defendant, according to the best of my ability."

A judge pro tempore who is a practicing attorney and who is not a retired justice of the supreme court or judge of a superior court of the state of Washington, or who is not an active judge of a court of the state of Washington, shall receive a compensation of one-two hundred fiftieth of the annual salary of a superior court judge for each day engaged in said trial, to be paid in the same manner as the salary of the superior judge. A judge who is an active full-time judge of a court of the state of Washington shall receive no compensation as judge pro tempore. A judge who is an active part-time judge of a court of the state of Washington may receive compensation as a judge pro tempore only when sitting as a judge pro tempore during time for which he or she is not compensated as a part-time judge. A justice or judge who has retired from the supreme court, court of appeals, or superior court of the state of Washington shall receive compensation as judge pro tempore in the amount of sixty percent of the amount payable to a judge pro tempore under this section, provided that a retired justice or judge may decline to accept compensation.

Passed by the House February 25, 2005.

Passed by the Senate April 8, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 143

[House Bill 1286]

MEDICAL FLEXIBLE SPENDING ACCOUNT

AN ACT Relating to creating the medical flexible spending account; amending RCW 41.05.011 and 41.05.120; and adding new sections to chapter 41.05 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 41.05.011 and 2001 c 165 s 2 are each amended to read as follows:

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

(1) "Administrator" means the administrator of the authority.

(2) "State purchased health care" or "health care" means medical and health care, pharmaceuticals, and medical equipment purchased with state and federal funds by the department of social and health services, the department of health,

the basic health plan, the state health care authority, the department of labor and industries, the department of corrections, the department of veterans affairs, and local school districts.

(3) "Authority" means the Washington state health care authority.

(4) "Insuring entity" means an insurer as defined in chapter 48.01 RCW, a health care service contractor as defined in chapter 48.44 RCW, or a health maintenance organization as defined in chapter 48.46 RCW.

(5) "Flexible benefit plan" means a benefit plan that allows employees to choose the level of health care coverage provided and the amount of employee contributions from among a range of choices offered by the authority.

(6) "Employee" includes all full-time and career seasonal employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; and includes any or all part-time and temporary employees under the terms and conditions established under this chapter by the authority; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature or of the legislative authority of any county, city, or town who are elected to office after February 20, 1970. "Employee" also includes: (a) Employees of a county, municipality, or other political subdivision of the state if the legislative authority of the county, municipality, or other political subdivision of the state seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205; (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization, and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for the purpose of purchasing insurance benefits, at the option of each such employee organization; and (c) employees of a school district if the authority agrees to provide any of the school districts' insurance programs by contract with the authority as provided in RCW 28A.400.350.

(7) "Board" means the public employees' benefits board established under RCW 41.05.055.

(8) "Retired or disabled school employee" means:

(a) Persons who separated from employment with a school district or educational service district and are receiving a retirement allowance under chapter 41.32 or 41.40 RCW as of September 30, 1993;

(b) Persons who separate from employment with a school district or educational service district on or after October 1, 1993, and immediately upon separation receive a retirement allowance under chapter 41.32, 41.35, or 41.40 RCW;

(c) Persons who separate from employment with a school district or educational service district due to a total and permanent disability, and are eligible to receive a deferred retirement allowance under chapter 41.32, 41.35, or 41.40 RCW.

(9) "Benefits contribution plan" means a premium only contribution plan, a medical flexible spending arrangement, or a cafeteria plan whereby state and public employees may agree to a contribution to benefit costs which will allow the employee to participate in benefits offered pursuant to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

(10) "Salary" means a state employee's monthly salary or wages.

(11) "Participant" means an individual who fulfills the eligibility and enrollment requirements under the benefits contribution plan.

(12) "Plan year" means the time period established by the authority.

(13) "Separated employees" means persons who separate from employment with an employer as defined in:

(a) RCW 41.32.010(11) on or after July 1, 1996; or

(b) RCW 41.35.010 on or after September 1, 2000; or

(c) RCW 41.40.010 on or after March 1, 2002;

and who are at least age fifty-five and have at least ten years of service under the teachers' retirement system plan 3 as defined in RCW 41.32.010(40), the Washington school employees' retirement system plan 3 as defined in RCW 41.35.010, or the public employees' retirement system plan 3 as defined in RCW 41.40.010.

(14) "Emergency service personnel killed in the line of duty" means law enforcement officers and fire fighters as defined in RCW 41.26.030, and reserve officers and fire fighters as defined in RCW 41.24.010 who die as a result of injuries sustained in the course of employment as determined consistent with Title 51 RCW by the department of labor and industries.

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

(16) "Employing agency" means a division, department, or separate agency of state government and a county, municipality, school district, educational service district, or other political subdivision, covered by this chapter.

NEW SECTION. Sec. 2. A new section is added to chapter 41.05 RCW to read as follows:

(1) The medical flexible spending account is created in the custody of the state treasurer. All receipts from the following must be deposited in the account: (a) Revenues from employing agencies for costs associated with operating the program; and (b) unclaimed moneys at the end of the plan year after all timely submitted claims for that plan year have been processed. Expenditures from the account may be used only for administrative and other expenses related to operating the medical flexible spending account program. Only the administrator or the administrator'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.

(2) Program claims reserves and money necessary for start-up costs transferred from the public employees' and retirees' insurance account established in RCW 41.05.120 may be deposited in the account. Moneys in excess of the amount necessary for administrative and operating expenses of the medical flexible spending account program may be transferred to the public employees' and retirees' insurance account.

(3) The authority may periodically bill employing agencies for costs associated with operating the medical flexible spending account program.

Sec. 3. RCW 41.05.120 and 1994 c 153 s 9 are each amended to read as follows:

(1) The public employees' and retirees' insurance account is hereby established in the custody of the state treasurer, to be used by the administrator for the deposit of contributions, the remittance paid by school districts and

educational service districts under RCW ((28A.400.400)) 28A.400.410, reserves, dividends, and refunds, ((and)) for payment of premiums for employee and retiree insurance benefit contracts and subsidy amounts provided under RCW 41.05.085, and transfers from the medical flexible spending account as authorized in section 2 of this act. Moneys from the account shall be disbursed by the state treasurer by warrants on vouchers duly authorized by the administrator. Moneys from the account may be transferred to the medical flexible spending account to provide reserves and start-up costs for the operation of the medical flexible spending account program.

(2) The state treasurer and the state investment board may invest moneys in the public employees' and retirees' insurance account. All such investments shall be in accordance with RCW 43.84.080 or 43.84.150, whichever is applicable. The administrator shall determine whether the state treasurer or the state investment board or both shall invest moneys in the public employees' insurance account.

NEW SECTION. Sec. 4. A new section is added to chapter 41.05 RCW to read as follows:

(1) Every employing agency shall fully cooperate with the authority and shall carry out all actions necessary for the operation of benefit plans, education of employees, claims administration, and other activities that may be required by the authority for administration of this chapter.

(2) Employing agencies shall report all data relating to employees eligible to participate in benefits or plans administered by the authority in a format designed and communicated by the authority.

Passed by the House March 4, 2005.

Passed by the Senate April 7, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 144

[House Bill 1294]

HARASSMENT—HEARINGS

AN ACT Relating to hearings for antiharassment protection orders; and amending RCW 10.14.070.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 10.14.070 and 1992 c 143 s 10 are each amended to read as follows:

Upon receipt of the petition alleging a prima facie case of harassment, other than a petition alleging a sex offense as defined in chapter 9A.44 RCW, the court shall order a hearing which shall be held not later than fourteen days from the date of the order. If the petition alleges a sex offense as defined in chapter 9A.44 RCW, the court shall order a hearing which shall be held not later than fourteen days from the date of the order. Except as provided in RCW 10.14.085, personal service shall be made upon the respondent not less than five court days before the hearing. If timely personal service cannot be made, the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided by RCW 10.14.085. If the

court permits service by publication, the court shall set the hearing date not later than twenty-four days from the date of the order. The court may issue an ex parte order for protection pending the hearing as provided in RCW 10.14.080 and 10.14.085.

Passed by the House March 8, 2005.

Passed by the Senate April 13, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 145

[Substitute House Bill 1310]

WORKERS' COMPENSATION SELF-INSURERS—ELECTRONIC REPORTING

AN ACT Relating to mandatory electronic data reporting under Title 51 RCW for workers' compensation self-insurers; amending RCW 51.14.110, 51.14.110, and 51.14.030; providing an effective date; and providing an expiration date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 51.14.110 and 1971 ex.s. c 289 s 35 are each amended to read as follows:

(1) Every self-insurer shall maintain a record of all payments of compensation made under this title. The self-insurer shall furnish to the director all information (~~he~~) the self-insurer has in (~~his~~) its possession as to any disputed claim, upon forms approved by the director.

(2)(a) The department shall establish an electronic reporting system for the submission to the department of specified self-insurance claims data to more effectively monitor the performance of self-insurers and to obtain claims information in an efficient manner.

(b) Claims data reported to the department electronically by individual self-insurers are confidential in accordance with RCW 51.16.070 and 51.28.070. The department may publish, for statistical purposes, aggregated claims data that contain no personal identifiers.

(3) The department shall adopt rules to administer this section.

Sec. 2. RCW 51.14.110 and 1971 ex.s. c 289 s 35 are each amended to read as follows:

(1) Every self-insurer shall maintain a record of all payments of compensation made under this title. The self-insurer shall furnish to the director all information (~~he~~) the self-insurer has in (~~his~~) its possession as to any disputed claim, upon forms approved by the director.

(2)(a) The department shall establish an electronic reporting system for the submission to the department of specified self-insurance claims data to more effectively monitor the performance of self-insurers and to obtain claims information in an efficient manner.

(b) Self-insurers shall submit claims data electronically in the format and frequency prescribed by the department.

(c) Electronic submittal to the department of specified claims data is required to maintain self-insurance certification. The department shall establish an escalating schedule of penalties for noncompliance with this requirement, up to and including withdrawal of self-insurance certification.

(d) Claims data reported to the department electronically by individual self-insurers are confidential in accordance with RCW 51.16.070 and 51.28.070. The department may publish, for statistical purposes, aggregated claims data that contain no personal identifiers.

(3) The department shall adopt rules to administer this section.

Sec. 3. RCW 51.14.030 and 1977 ex.s. c 323 s 10 are each amended to read as follows:

The director may issue a certification that an employer is qualified as a self-insurer when such employer meets the following requirements:

(1) He or she has fulfilled the requirements of RCW 51.14.020.

(2) He or she has submitted to the department a payroll report for the preceding consecutive twelve month period.

(3) He or she has submitted to the department a sworn itemized statement accompanied by an independent audit of the employer's books demonstrating to the director's satisfaction that the employer has sufficient liquid assets to meet his or her estimated liabilities as a self-insurer.

(4) He or she has demonstrated to the department the existence of the safety organization maintained by him or her within his or her establishment that indicates a record of accident prevention.

(5) He or she has submitted to the department a description of the administrative organization to be maintained by him or her to manage industrial insurance matters including:

(a) The reporting of injuries;

(b) The authorization of medical care;

(c) The payment of compensation;

(d) The handling of claims for compensation;

(e) The name and location of each business location of the employer; and

(f) The qualifications of the personnel of the employer to perform this service.

(6) He or she has demonstrated to the department the ability and commitment to submit electronically the claims required by RCW 51.14.110.

Such certification shall remain in effect until withdrawn by the director or surrendered by the employer with the approval of the director. An employer's qualification as a self-insurer shall become effective on the date of certification or any date specified in the certificate after the date of certification.

NEW SECTION. Sec. 4. Section 1 of this act expires July 1, 2008.

NEW SECTION. Sec. 5. Sections 2 and 3 of this act take effect July 1, 2008.

Passed by the House February 28, 2005.

Passed by the Senate April 14, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 146

[Second Substitute House Bill 1346]

HYDRAULIC PROJECT APPROVAL PROGRAM

AN ACT Relating to regulatory reform of the hydraulic project approval program; amending RCW 77.55.330, 77.55.150, 77.55.270, 77.55.280, 77.55.300, 77.55.130, 77.55.010, 77.55.200, 77.55.220, 77.55.340, 77.55.210, 77.55.290, 77.55.160, 77.55.350, 77.55.230, 77.55.090, 77.55.120, 77.55.140, 77.55.170, 77.55.180, 77.55.040, 77.55.050, 77.55.060, 77.55.320, 76.09.050, 77.12.865, and 77.65.250; adding new sections to chapter 77.55 RCW; adding a new chapter to Title 77 RCW; creating a new section; recodifying RCW 77.55.330, 77.55.030, 77.55.360, 77.55.150, 77.55.270, 77.55.020, 77.55.280, 77.55.300, 77.55.130, 77.55.200, 77.55.220, 77.55.340, 77.55.210, 77.55.290, 77.55.160, 77.55.010, 77.55.350, 77.55.230, 77.55.090, 77.55.120, 77.55.260, 77.55.140, 77.55.170, 77.55.180, 77.55.040, 77.55.050, 77.55.060, 77.55.070, 77.55.080, 77.55.310, 77.55.320, and 77.55.240; and repealing RCW 77.55.100, 77.55.110, 77.55.190, 77.55.250, and 77.55.370.

Be it enacted by the Legislature of the State of Washington:

PART 1
DEFINITIONS

NEW SECTION. **Sec. 101.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Bed" means the land below the ordinary high water lines of state waters. This definition does not include irrigation ditches, canals, storm water runoff devices, or other artificial watercourses except where they exist in a natural watercourse that has been altered by man.

(2) "Board" means the hydraulic appeals board created in RCW 77.55.170 (as recodified by this act).

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

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

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

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

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

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

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

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

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

of mean higher high water and the ordinary high water line adjoining fresh water is the elevation of the mean annual flood.

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

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

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

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

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

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

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

PART 2 DETERMINING HOW TO OBTAIN A HYDRAULIC PROJECT APPROVAL PERMIT

NEW SECTION. Sec. 201. (1) Except as provided in sections 301 and 303 of this act and RCW 77.55.330 (as recodified by this act), in the event that any person or government agency desires to undertake a hydraulic project, the person or government agency shall, before commencing work thereon, secure the approval of the department in the form of a permit as to the adequacy of the means proposed for the protection of fish life.

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

(a) General plans for the overall project;

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

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

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

(3)(a) Protection of fish life is the only ground upon which approval of a permit may be denied or conditioned. Approval of a permit may not be unreasonably withheld or unreasonably conditioned. Except as provided in this subsection and subsections (8), (10), and (11) of this section, the department has forty-five calendar days upon receipt of a complete application to grant or deny approval of a permit. The forty-five day requirement is suspended if:

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

(ii) The site is physically inaccessible for inspection;

(iii) The applicant requests a delay; or

(iv) The department is issuing a permit for a storm water discharge and is complying with the requirements of RCW 77.55.340(3)(b) (as recodified by this act).

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

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

(4) If the department denies approval of a permit, the department shall provide the applicant a written statement of the specific reasons why and how the proposed project would adversely affect fish life. Issuance, denial, conditioning, or modification of a permit shall be appealable to the department or the board as specified in RCW 77.55.170 (as recodified by this act) within thirty days of the notice of decision.

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

(b) Approval of a permit is valid for a period of up to five years from the date of issuance, except as provided in (c) of this subsection and in RCW 77.55.220 (as recodified by this act).

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

(6) The department may, after consultation with the permittee, modify a permit due to changed conditions. The modification becomes effective unless appealed to the department or the board as specified in RCW 77.55.170 (as recodified by this act) within thirty days from the notice of the proposed modification. For hydraulic projects that divert water for agricultural irrigation or stock watering purposes, or when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the department to show that changed conditions warrant the modification in order to protect fish life.

(7) A permittee may request modification of a permit due to changed conditions. The request must be processed within forty-five calendar days of receipt of the written request. A decision by the department may be appealed to the board within thirty days of the notice of the decision. For hydraulic projects

that divert water for agricultural irrigation or stock watering purposes, or when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the permittee to show that changed conditions warrant the requested modification and that such a modification will not impair fish life.

(8) The department or the county legislative authority may declare and continue an emergency. The county legislative authority shall immediately notify the department if it declares an emergency under this subsection. The department, through its authorized representatives, shall issue immediately, upon request, oral approval for a stream crossing, or work to remove any obstructions, repair existing structures, restore streambanks, protect fish life, or protect property threatened by the stream or a change in the stream flow without the necessity of obtaining a written permit prior to commencing work. Conditions of the emergency oral permit must be established by the department and reduced to writing within thirty days and complied with as provided for in this chapter. The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection.

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

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

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

PART 3
EXEMPTION FROM HYDRAULIC PROJECT APPROVAL

NEW SECTION. Sec. 301. The act of driving across an established ford is exempt from a permit. Driving across streams or on wetted streambeds at areas other than established fords requires a permit. Work within the ordinary high water line of state waters to construct or repair a ford or crossing requires a permit.

Sec. 302. RCW 77.55.330 and 2002 c 20 s 4 are each amended to read as follows:

The removal of derelict fishing gear does not require ~~((written approval))~~ a permit under this chapter if the gear is removed according to the guidelines described in RCW 77.12.865.

NEW SECTION. Sec. 303. (1) An activity conducted solely for the removal or control of spartina does not require a permit.

(2) An activity conducted solely for the removal or control of purple loosestrife and which is performed with handheld tools, handheld equipment, or equipment carried by a person does not require a permit.

PART 4
**COMPLIANCE THROUGH GUIDELINES,
AGREEMENTS, AND PAMPHLETS**

Sec. 401. RCW 77.55.150 and 1995 c 255 s 4 are each amended to read as follows:

(1) ~~((An activity conducted solely for the removal or control of spartina shall not require hydraulic project approval.~~

~~(2) An activity conducted solely for the removal or control of purple loosestrife and which is performed with hand held tools, hand held equipment, or equipment carried by a person when used shall not require hydraulic project approval.~~

~~(3))~~ By June 30, 1997, the department ~~((of fish and wildlife))~~ shall develop rules for projects conducted solely for the removal or control of various aquatic noxious weeds other than spartina and purple loosestrife and for activities or hydraulic projects for controlling purple loosestrife not covered by ~~((subsection (2)))~~ section 303(2) of this ~~((section, which projects will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state))~~ act. Following the adoption of the rules, the department shall produce and distribute a pamphlet describing the methods of removing or controlling the aquatic noxious weeds that are approved under the rules. The pamphlet serves as the ~~((hydraulic project approval))~~ permit for any project that is conducted solely for the removal or control of such aquatic noxious weeds and that is conducted as described in the pamphlet~~((;)).~~ No further ((hydraulic project approval)) permit is required for such a project.

(2) From time to time as information becomes available, the department shall adopt similar rules for additional aquatic noxious weeds or additional activities for removing or controlling aquatic noxious weeds not governed by ~~((subsection (1) or (2) of this section))~~ sections 303 (1) and (2) of this act and shall produce and distribute one or more pamphlets describing these methods of

removal or control. Such a pamphlet serves as the ~~((hydraulic project approval))~~ permit for any project that is conducted solely for the removal or control of such aquatic noxious weeds and that is conducted as described in the pamphlet~~((;))~~. No further ~~((hydraulic project approval))~~ permit is required for such a project.

~~((4))~~ As used in this section, "spartina," "purple loosestrife," and "aquatic noxious weeds" have the meanings prescribed by RCW 17.26.020.

~~(5))~~ (3) Nothing in this section shall prohibit the department ~~((of fish and wildlife))~~ from requiring a ~~((hydraulic project approval))~~ permit for those parts of hydraulic projects that are not specifically for the control or removal of spartina, purple loosestrife, or other aquatic noxious weeds.

Sec. 402. RCW 77.55.270 and 1997 c 415 s 2 are each amended to read as follows:

(1) Small scale prospecting and mining shall not require ~~((written approval))~~ a permit under this chapter if the prospecting is conducted in accordance with ~~((provisions))~~ rules established by the department.

(2) By December 31, 1998, the department shall adopt rules applicable to small scale prospecting and mining activities subject to this section. The department shall develop the rules in cooperation with the recreational mining community and other interested parties.

(3) Within two months of adoption of the rules, the department shall distribute an updated gold and fish pamphlet that describes methods of mineral prospecting that are consistent with the department's rule. The pamphlet shall be written to clearly indicate the prospecting methods that require ~~((written approval))~~ a permit under this chapter and the prospecting methods that require compliance with the pamphlet. To the extent possible, the department shall use the provisions of the gold and fish pamphlet to minimize the number of specific provisions of a written ~~((approval))~~ permit issued under this chapter.

~~((4))~~ For the purposes of this chapter, "small scale prospecting and mining" means only the use of the following methods: Pans, nonmotorized sluice boxes, concentrators, and minirocker boxes for the discovery and recovery of minerals~~(;))~~

Sec. 403. RCW 77.55.280 and 2001 c 253 s 54 are each amended to read as follows:

When a private landowner is applying for ~~((hydraulic project approval))~~ a permit under this chapter and that landowner has entered into a habitat incentives agreement with the department and the department of natural resources as provided in RCW 77.55.300 (as recodified by this act), the department shall comply with the terms of that agreement when evaluating the request for ~~((hydraulic project approval))~~ a permit.

Sec. 404. RCW 77.55.300 and 2000 c 107 s 229 are each amended to read as follows:

(1) Beginning in January 1998, the department ~~((of fish and wildlife))~~ and the department of natural resources shall implement a habitat incentives program based on the recommendations of federally recognized Indian tribes, landowners, the regional fisheries enhancement groups, the timber, fish, and wildlife cooperators, and other interested parties. The program shall allow a private landowner to enter into an agreement with the departments to enhance habitat on the landowner's property for food fish, game fish, or other wildlife

species. In exchange, the landowner shall receive state regulatory certainty with regard to future applications for (~~(hydraulic project approval)~~) a permit or a forest practices permit on the property covered by the agreement. The overall goal of the program is to provide a mechanism that facilitates habitat development on private property while avoiding an adverse state regulatory impact to the landowner at some future date. A single agreement between the departments and a landowner may encompass up to one thousand acres. A landowner may enter into multiple agreements with the departments, provided that the total acreage covered by such agreements with a single landowner does not exceed ten thousand acres. The departments are not obligated to enter into an agreement unless the departments find that the agreement is in the best interest of protecting fish or wildlife species or their habitat.

(2) A habitat incentives agreement shall be in writing and shall contain at least the following: (a) A description of the property covered by the agreement~~((:));~~ (b) an expiration date~~((:));~~ (c) a description of the condition of the property prior to the implementation of the agreement~~((:));~~ and (d) other information needed by the landowner and the departments for future reference and decisions.

(3) As part of the agreement, the department (~~(of fish and wildlife)~~) may stipulate the factors that will be considered when the department evaluates a landowner's application for (~~(hydraulic project approval under RCW 77.55.100 or 77.55.110)~~) a permit on property covered by the agreement. The department's identification of these evaluation factors shall be in concurrence with the department of natural resources and affected federally recognized Indian tribes. In general, future decisions related to the issuance, conditioning, or denial of (~~(hydraulic project approval shall)~~) a permit must be based on the conditions present on the landowner's property at the time of the agreement, unless all parties agree otherwise.

(4) As part of the agreement, the department of natural resources may stipulate the factors that will be considered when the department of natural resources evaluates a landowner's application for a forest practices permit under chapter 76.09 RCW on property covered by the agreement. The (~~(department's)~~) department of natural resources' identification of these evaluation factors shall be in concurrence with the department (~~(of fish and wildlife)~~) and affected federally recognized Indian tribes. In general, future decisions related to the issuance, conditioning, or denial of forest practices permits shall be based on the conditions present on the landowner's property at the time of the agreement, unless all parties agree otherwise.

(5) The agreement is binding on and may be used by only the landowner who entered into the agreement with the department. The agreement shall not be appurtenant with the land. However, if a new landowner chooses to maintain the habitat enhancement efforts on the property, the new landowner and the (~~(departments)~~) department and the department of natural resources may jointly choose to retain the agreement on the property.

(6) If the (~~(departments)~~) department and the department of natural resources receive multiple requests for agreements with private landowners under the habitat incentives program, the departments shall prioritize these requests and shall enter into as many agreements as possible within available budgetary resources.

Sec. 405. RCW 77.55.130 and 2000 c 107 s 18 are each amended to read as follows:

The department and the department of ecology will work cooperatively with the United States army corps of engineers to develop a memorandum of agreement outlining dike vegetation management guidelines so that dike owners are eligible for coverage under P.L. 84-99, and state requirements established pursuant to ((~~RCW 77.55.100 and 77.55.110~~)) section 201 of this act are met.

Sec. 406. RCW 77.55.010 and 1993 sp.s. c 2 s 28 are each amended to read as follows:

The department ((~~of fish and wildlife~~)), the department of ecology, and the department of natural resources shall jointly develop an informational brochure that describes when permits and any other authorizations are required for flood damage prevention and reduction projects, and recommends ways to best proceed through the various regulatory permitting processes.

PART 5 SPECIAL PERMITS

Sec. 501. RCW 77.55.200 and 1991 c 279 s 1 are each amended to read as follows:

(1) In order to protect the property of marine waterfront shoreline owners it is necessary to facilitate issuance of ((~~hydraulic~~)) permits for bulkheads or rockwalls under certain conditions.

(2) The department shall issue a ((~~hydraulic~~)) permit with or without conditions within forty-five days of receipt of a complete and accurate application which authorizes commencement of construction, replacement, or repair of a marine beach front protective bulkhead or rockwall for single-family residences or property under the following conditions:

(a) The waterward face of a new bulkhead or rockwall shall be located only as far waterward as is necessary to excavate for footings or place base rock for the structure and under no conditions shall be located more than six feet waterward of the ordinary high water line;

(b) Any bulkhead or rockwall to replace or repair an existing bulkhead or rockwall shall be placed along the same alignment as the bulkhead or rockwall it is replacing((;)). However, the replaced or repaired bulkhead or rockwall may be placed waterward of and directly abutting the existing structure only in cases where removal of the existing bulkhead or rockwall would result in environmental degradation or removal problems related to geological, engineering, or safety considerations; and

(c) Construction of a new bulkhead or rockwall, or replacement or repair of an existing bulkhead or rockwall waterward of the existing structure shall not result in the permanent loss of critical food fish or shellfish habitats; and

(d) Timing constraints shall be applied on a case-by-case basis for the protection of critical habitats, including but not limited to migration corridors, rearing and feeding areas, and spawning habitats, for the proper protection of fish life.

(3) Any bulkhead or rockwall construction, replacement, or repair not meeting the conditions in this section shall be processed under this chapter in the same manner as any other application.

(4) Any person aggrieved by the approval, denial, conditioning, or modification of a ~~((hydraulic))~~ permit ~~((approval))~~ under this section may formally appeal the decision to the ~~((hydraulic appeals))~~ board pursuant to this chapter.

Sec. 502. RCW 77.55.220 and 2002 c 368 s 7 are each amended to read as follows:

~~(1) ((The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.~~

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

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

~~(2))~~ (2) For a marina or marine terminal in existence on June 6, 1996, or a marina or marine terminal that has received a ~~((hydraulic project approval))~~ permit for its initial construction, a renewable, five-year ~~((hydraulic project approval))~~ permit shall be issued, upon request, for regular maintenance activities of the marina or marine terminal.

~~((3))~~ (2) Upon construction of a new marina or marine terminal that has received ~~((hydraulic project approval))~~ a permit, a renewable, five-year ~~((hydraulic project approval))~~ permit shall be issued, upon request, for regular maintenance activities of the marina or marine terminal.

~~((4))~~ (3) For the purposes of this section, regular maintenance activities are only those activities necessary to restore the marina or marine terminal to the conditions approved in the initial ~~((hydraulic project approval))~~ permit. These activities may include, but are not limited to, dredging, piling replacement, and float replacement.

~~((5))~~ (4) The five-year permit must include a requirement that a fourteen-day notice be given to the department before regular maintenance activities begin.

Sec. 503. RCW 77.55.340 and 2002 c 368 s 4 are each amended to read as follows:

(1) Notwithstanding any other provision of this chapter, all ~~((hydraulic project approvals))~~ permits related to storm water discharges must follow the provisions established in this section.

(2) ~~((Hydraulic project approvals))~~ Permits issued in locations covered by a national pollution discharge elimination system municipal storm water general permit may not be conditioned or denied for water quality or quantity impacts arising from storm water discharges. A ~~((hydraulic project approval))~~ permit is required only for the actual construction of any storm water outfall or associated structures pursuant to this chapter.

(3)(a) In locations not covered by a national pollution discharge elimination system municipal storm water general permit, the department may issue ~~((hydraulic project approvals))~~ permits that contain provisions that protect fish life from adverse effects, such as scouring or erosion of the bed of the water body, resulting from the direct hydraulic impacts of the discharge.

(b) Prior to the issuance of a (~~hydraulic project approval~~) permit issued under this subsection (3), the department must:

(i) Make a finding that the discharge from the outfall will cause harmful effects to fish life;

(ii) Transmit the findings to the applicant and to the city or county where the project is being proposed; and

(iii) Allow the applicant an opportunity to use local ordinances or other mechanisms to avoid the adverse effects resulting from the direct hydraulic discharge. The forty-five day requirement for (~~hydraulic project approval~~) permit issuance (~~pursuant to RCW 77.55.100~~) under section 201 of this act is suspended during the time period the department is meeting the requirements of this subsection (3)(b).

(c) After following the procedures set forth in (b) of this subsection, the department may issue a (~~hydraulic project approval~~) permit that prescribes the discharge rates from an outfall structure that will prevent adverse effects to the bed or flow of the waterway. The department may recommend, but not specify, the measures required to meet these discharge rates. The department may not require changes to the project design above the mean higher high water mark of marine waters, or the ordinary high water mark of freshwaters of the state. Nothing in this section alters any authority the department may have to regulate other types of projects under this chapter.

Sec. 504. RCW 77.55.210 and 1995 c 378 s 14 are each amended to read as follows:

A (~~hydraulic project approval~~) permit required by the department for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510.

Sec. 505. RCW 77.55.290 and 2001 c 253 s 55 are each amended to read as follows:

(1) In order to receive the permit review and approval process created in this section, a fish habitat enhancement project must meet the criteria under (a) and (b) of this subsection:

(a) A fish habitat enhancement project must be a project to accomplish one or more of the following tasks:

(i) Elimination of human-made fish passage barriers, including culvert repair and replacement;

(ii) Restoration of an eroded or unstable streambank employing the principle of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or

(iii) Placement of woody debris or other instream structures that benefit naturally reproducing fish stocks.

The department shall develop size or scale threshold tests to determine if projects accomplishing any of these tasks should be evaluated under the process created in this section or under other project review and approval processes. A project proposal shall not be reviewed under the process created in this section if the department determines that the scale of the project raises concerns regarding public health and safety; and

(b) A fish habitat enhancement project must be approved in one of the following ways:

- (i) By the department pursuant to chapter 77.95 or 77.100 RCW;
- (ii) By the sponsor of a watershed restoration plan as provided in chapter 89.08 RCW;
- (iii) By the department as a department-sponsored fish habitat enhancement or restoration project;
- (iv) Through the review and approval process for the jobs for the environment program;
- (v) Through the review and approval process for conservation district-sponsored projects, where the project complies with design standards established by the conservation commission through interagency agreement with the United States fish and wildlife service and the natural resource conservation service;
- (vi) Through a formal grant program established by the legislature or the department for fish habitat enhancement or restoration; and
- (vii) Through other formal review and approval processes established by the legislature.

(2) Fish habitat enhancement projects meeting the criteria of subsection (1) of this section are expected to result in beneficial impacts to the environment. Decisions pertaining to fish habitat enhancement projects meeting the criteria of subsection (1) of this section and being reviewed and approved according to the provisions of this section are not subject to the requirements of RCW 43.21C.030(2)(c).

(3) ~~((Hydraulic project approval))~~ (a) A permit is required for projects that meet the criteria of subsection (1) of this section and are being reviewed and approved under this section. An applicant shall use a joint aquatic resource permit application form developed by the ~~((department of ecology permit))~~ office of regulatory assistance ~~((center))~~ to apply for approval under this chapter. On the same day, the applicant shall provide copies of the completed application form to the department and to each appropriate local government. Local governments shall accept the application as notice of the proposed project. The department shall provide a fifteen-day comment period during which it will receive comments regarding environmental impacts. ~~((In no more than))~~ Within forty-five days, the department shall either issue ~~((hydraulic project approval))~~ a permit, with or without conditions, deny approval, or make a determination that the review and approval process created by this section is not appropriate for the proposed project. The department shall base this determination on identification during the comment period of adverse impacts that cannot be mitigated by ~~((hydraulic project approval))~~ the conditioning of a permit. If the department determines that the review and approval process created by this section is not appropriate for the proposed project, the department shall notify the applicant and the appropriate local governments of its determination. The applicant may reapply for approval of the project under other review and approval processes.

(b) Any person aggrieved by the approval, denial, conditioning, or modification of ~~((hydraulic project approval))~~ a permit under this section may formally appeal the decision to the ~~((hydraulic appeals))~~ board pursuant to the provisions of this chapter.

(4) No local government may require permits or charge fees for fish habitat enhancement projects that meet the criteria of subsection (1) of this section and that are reviewed and approved according to the provisions of this section.

Sec. 506. RCW 77.55.160 and 1998 c 190 s 89 are each amended to read as follows:

(1) Except for the north fork of the Lewis river and the White Salmon river, all streams and rivers tributary to the Columbia river downstream from McNary dam are established as an anadromous fish sanctuary. This sanctuary is created to preserve and develop the food fish and game fish resources in these streams and rivers and to protect them against undue industrial encroachment.

(2) Within the sanctuary area:

(a) The department shall not issue (~~(hydraulic project approval)~~) a permit to construct a dam greater than twenty-five feet high within the migration range of anadromous fish as determined by the department.

(b) A person shall not divert water from rivers and streams in quantities that will reduce the respective stream flow below the annual average low flow, based upon data published in United States geological survey reports.

(3) The commission may acquire and abate a dam or other obstruction, or acquire any water right vested on a sanctuary stream or river, which is in conflict with the provisions of subsection (2) of this section.

(4) Subsection (2)(a) of this section does not apply to the sediment retention structure to be built on the North Fork Toutle river by the United States army corps of engineers.

NEW SECTION. Sec. 507. A landscape management plan approved by the department and the department of natural resources under RCW 76.09.350(2) shall serve as a permit for the life of the plan if fish are selected as one of the public resources for coverage under such a plan.

NEW SECTION. Sec. 508. The department shall, at the request of a county, develop five-year maintenance permit agreements, consistent with comprehensive flood control management plans adopted under the authority of RCW 86.12.200, or other watershed plan approved by a county legislative authority, to allow for work on public and private property for bank stabilization, bridge repair, removal of sandbars and debris, channel maintenance, and other flood damage repair and reduction activity under agreed-upon conditions and times without obtaining permits for specific projects.

PART 6 DENIAL OR CONDITIONING OF PERMIT

Sec. 601. RCW 77.55.350 and 2002 c 368 s 5 are each amended to read as follows:

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

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

Sec. 602. RCW 77.55.230 and 1996 c 276 s 1 are each amended to read as follows:

(1) The legislature finds that the construction of hydraulic projects may require mitigation for the protection of fish life, and that the mitigation may be most cost-effective and provide the most benefit to the fish resource if the mitigation is allowed to be applied in locations that are off-site of the hydraulic project location. The department may approve off-site mitigation plans that are submitted by ~~((hydraulic project))~~ permit applicants.

(2) If a ~~((hydraulic project))~~ permit applicant proposes off-site mitigation and the department does not approve the ~~((hydraulic))~~ permit or conditions the permit ~~((approval))~~ in such a manner as to render off-site mitigation unpracticable, the ~~((hydraulic))~~ project proponent must be given the opportunity to submit the ~~((hydraulic project))~~ permit application to the ~~((hydraulic appeals))~~ board for approval.

Sec. 603. RCW 77.55.090 and 2000 c 107 s 15 are each amended to read as follows:

When reviewing a mitigation plan under ~~((RCW 77.55.100 or 77.55.110))~~ section 201 of this act, the department shall, at the request of the project proponent, follow the guidance contained in RCW 90.74.005 through 90.74.030.

Sec. 604. RCW 77.55.120 and 2000 c 107 s 17 are each amended to read as follows:

Whenever the placement of woody debris is required as a condition of a ~~((hydraulic))~~ permit ~~((approval))~~ issued ~~((pursuant to RCW 77.55.100 or 77.55.110))~~ under section 201 of this act, the department, upon request, shall invite comment regarding that placement from the local governmental authority, affected tribes, affected federal and state agencies, and the project applicant.

NEW SECTION. Sec. 605. (1) The department may not require a fishway on a tide gate, flood gate, or other associated man-made agricultural drainage facilities as a condition of a permit if such a fishway was not originally installed as part of an agricultural drainage system existing on or before May 20, 2003.

(2) Any condition requiring a self-regulating tide gate to achieve fish passage in an existing permit under this chapter may not be enforced.

PART 7 PENALTIES

Sec. 701. RCW 77.55.140 and 2000 c 107 s 19 are each amended to read as follows:

(1) The department may levy civil penalties of up to one hundred dollars per day for violation of any provisions of ~~((RCW 77.55.100 or 77.55.110))~~ section 201 of this act. The penalty provided shall be imposed by notice in writing, either by certified mail or personal service to the person incurring the penalty, from the director or the director's designee describing the violation.

(2) Any person incurring any penalty under this chapter may appeal the same under chapter 34.05 RCW to the director. Appeals shall be filed within thirty days of receipt of notice imposing any penalty.

(3) The penalty imposed shall become due and payable thirty days after receipt of a notice imposing the penalty unless an appeal is filed. Whenever an

appeal of any penalty incurred under this chapter is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part.

(4) If the amount of any penalty is not paid within thirty days after it becomes due and payable, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action. All penalties recovered under this section shall be paid into the state's general fund.

PART 8 APPEALS

Sec. 801. RCW 77.55.170 and 2003 c 393 s 21 are each amended to read as follows:

(1) There is ~~((hereby))~~ created within the environmental hearings office under RCW 43.21B.005 the hydraulic appeals board of the state of Washington.

(2) The ~~((hydraulic appeals))~~ board ~~((shall))~~ consists of three members: The director of the department of ecology or the director's designee, the director of the department of agriculture or the director's designee, and the director or the director's designee of the department ~~((whose action is appealed under subsection (6) of this section))~~. A decision must be agreed to by at least two members of the board to be final.

(3) The board may adopt rules necessary for the conduct of its powers and duties or for transacting other official business.

(4) The board shall make findings of fact and prepare a written decision in each case decided by it ~~((, and that))~~. The finding and decision shall be effective upon being signed by two or more board members and upon being filed at the ~~((hydraulic appeals))~~ board's principal office, and shall be open to public inspection at all reasonable times.

(5) The board has exclusive jurisdiction to hear appeals arising from the approval, denial, conditioning, or modification of a ~~((hydraulic approval))~~ permit issued by the department: (a) Under the authority granted in ~~((RCW 77.55.110))~~ section 201 of this act for the diversion of water for agricultural irrigation or stock watering purposes or when associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020; ~~((or))~~ (b) under the authority granted in RCW 77.55.230 (as recodified by this act) for off-site mitigation proposals; (c) under the authority granted in RCW 77.55.200 (as recodified by this act); or (d) under the authority granted in RCW 77.55.290 (as recodified by this act).

(6)(a) Any person aggrieved by the approval, denial, conditioning, or modification of a ~~((hydraulic approval pursuant to RCW 77.55.110))~~ permit under section 201 of this act may, except as otherwise provided in chapter 43.21L RCW, seek review from the board by filing a request for the same within thirty days of notice of the approval, denial, conditioning, or modification of ~~((such approval))~~ the permit.

(b) The review proceedings authorized in (a) of this subsection are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings.

Sec. 802. RCW 77.55.180 and 1995 c 382 s 7 are each amended to read as follows:

(1) In all appeals, the ((~~hydraulic appeals~~)) board shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions, but such powers shall be exercised in conformity with chapter 34.05 RCW.

(2) In all appeals, the ((~~hydraulic appeals~~)) board, and each member thereof, shall be subject to all duties imposed upon and shall have all powers granted to, an agency by those provisions of chapter 34.05 RCW relating to adjudicative proceedings.

(3) All proceedings before the ((~~hydraulic appeals~~)) board or any of its members shall be conducted in accordance with such rules of practice and procedure as the board may prescribe. Such rules shall be published and distributed.

(4) Judicial review of a decision of the ((~~hydraulic appeals~~)) board may be obtained only pursuant to RCW 34.05.510 through 34.05.598.

PART 9 FISHWAYS, FLOW, AND SCREENING

Sec. 901. RCW 77.55.040 and 1998 c 190 s 85 are each amended to read as follows:

(1) A diversion device used for conducting water from a lake, river, or stream for any purpose shall be equipped with a fish guard approved by the director to prevent the passage of fish into the diversion device. The fish guard shall be maintained at all times when water is taken into the diversion device. The fish guards shall be installed at places and times prescribed by the director upon thirty days' notice to the owner of the diversion device.

(2) Each day the diversion device is not equipped with an approved fish guard is a separate offense. If within thirty days after notice to equip a diversion device the owner fails to do so, the director may take possession of the diversion device and close the device until it is properly equipped. Expenses incurred by the department constitute the value of a lien upon the diversion device and upon the real and personal property of the owner. Notice of the lien shall be filed and recorded in the office of the county auditor of the county in which the action is taken.

Sec. 902. RCW 77.55.050 and 1993 sp.s. c 2 s 29 are each amended to read as follows:

It is the policy of this state that a flow of water sufficient to support game fish and food fish populations be maintained at all times in the streams of this state.

The director of ecology shall give the director notice of each application for a permit to divert or store water. The director has thirty days after receiving the notice to state his or her objections to the application. The permit shall not be issued until the thirty-day period has elapsed.

The director of ecology may refuse to issue a permit if, in the opinion of the director of ecology, issuing the permit might result in lowering the flow of water in a stream below the flow necessary to adequately support food fish and game fish populations in the stream.

The provisions of this section shall in no way affect existing water rights.

Sec. 903. RCW 77.55.060 and 2003 c 391 s 1 are each amended to read as follows:

(1) Subject to subsection (3) of this section, a dam or other obstruction across or in a stream shall be provided with a durable and efficient fishway approved by the director. Plans and specifications shall be provided to the department prior to the director's approval. The fishway shall be maintained in an effective condition and continuously supplied with sufficient water to freely pass fish.

(2)(a) If a person fails to construct and maintain a fishway or to remove the dam or obstruction in a manner satisfactory to the director, then within thirty days after written notice to comply has been served upon the owner, his or her agent, or the person in charge, the director may construct a fishway or remove the dam or obstruction. Expenses incurred by the department constitute the value of a lien upon the dam and upon the personal property of the person owning the dam. Notice of the lien shall be filed and recorded in the office of the county auditor of the county in which the dam or obstruction is situated. The lien may be foreclosed in an action brought in the name of the state.

(b) If, within thirty days after notice to construct a fishway or remove a dam or obstruction, the owner, his or her agent, or the person in charge fails to do so, the dam or obstruction is a public nuisance and the director may take possession of the dam or obstruction and destroy it. No liability shall attach for the destruction.

(3) For the purposes of this section, "other obstruction" does not include tide gates, flood gates, and associated man-made agricultural drainage facilities that were originally installed as part of an agricultural drainage system on or before May 20, 2003, or the repair, replacement, or improvement of such tide gates or flood gates.

Sec. 904. RCW 77.55.320 and 2001 c 253 s 48 are each amended to read as follows:

(1) A person shall not divert water from a lake, river, or stream containing game fish unless the water diversion device is equipped at or near its intake with a fish guard or screen to prevent the passage of game fish into the device and, if necessary, with a means of returning game fish from immediately in front of the fish guard or screen to the waters of origin. A person who was, on June 11, 1947, otherwise lawfully diverting water from a lake, river, or stream shall not be deemed guilty of a violation of this section.

(2) Plans for the fish guard, screen, and bypass shall be approved by the director prior to construction. The installation shall be approved by the director prior to the diversion of water.

(3) The director or the director's designee may close a water diversion device operated in violation of this section and keep it closed until it is properly equipped with a fish guard, screen, or bypass.

**PART 10
MISCELLANEOUS**

NEW SECTION. Sec. 1001. The following sections are each codified or recodified in chapter 77.55 RCW in the following order:

Section 101 of this act
Section 201 of this act
Section 301 of this act
RCW 77.55.330
Section 303 of this act
RCW 77.55.030
RCW 77.55.360
RCW 77.55.150
RCW 77.55.270
RCW 77.55.020
RCW 77.55.280
RCW 77.55.300
RCW 77.55.130
RCW 77.55.200
RCW 77.55.220
RCW 77.55.340
RCW 77.55.210
RCW 77.55.290
RCW 77.55.160
Section 507 of this act
RCW 77.55.010
Section 508 of this act
RCW 77.55.350
RCW 77.55.230
RCW 77.55.090
RCW 77.55.120
RCW 77.55.260
Section 605 of this act
RCW 77.55.140
RCW 77.55.170
RCW 77.55.180.

NEW SECTION. Sec. 1002. The following sections are each recodified as a new chapter in Title 77 RCW in the following order:

RCW 77.55.040
RCW 77.55.050
RCW 77.55.060
RCW 77.55.070
RCW 77.55.080
RCW 77.55.310
RCW 77.55.320
RCW 77.55.240.

Sec. 1003. RCW 76.09.050 and 2003 c 314 s 4 are each amended to read as follows:

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

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

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

(a) On lands platted after January 1, 1960, as provided in chapter 58.17 RCW or on lands that have or are being converted to another use;

(b) Which require approvals under the provisions of the hydraulics act, ((RCW 77.55.100)) section 201 of this act;

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

(d) Excluded from Class II by the board; or

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

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

Class IV: Forest practices other than those contained in Class I or II: (a) On lands platted after January 1, 1960, as provided in chapter 58.17 RCW, (b) on lands that have or are being converted to another use, (c) on lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, (d) involving timber harvesting or road construction on lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except where the forest landowner provides: (i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or (ii) a conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application, and/or (e) which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. Such evaluation

shall be made within ten days from the date the department receives the application: PROVIDED, That nothing herein shall be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action pursuant to a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. A Class IV application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, unless the department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty calendar days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department.

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

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

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

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

(5) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, the department of natural resources shall notify the applicant in writing of either its approval of the application or its disapproval of the application and the specific manner in which the application fails to comply with the provisions of this section or with the forest practices regulations. Except as provided otherwise in this section, if the department fails to either approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed

approved and the operation may be commenced: PROVIDED, That this provision shall not apply to applications which are neither approved nor disapproved pursuant to the provisions of subsection (7) of this section: PROVIDED, FURTHER, That if seasonal field conditions prevent the department from being able to properly evaluate the application, the department may issue an approval conditional upon further review within sixty days: PROVIDED, FURTHER, That the department shall have until April 1, 1975, to approve or disapprove an application involving forest practices allowed to continue to April 1, 1975, under the provisions of subsection (2) of this section. Upon receipt of any notification or any satisfactorily completed application the department shall in any event no later than two business days after such receipt transmit a copy to the departments of ecology and fish and wildlife, and to the county, city, or town in whose jurisdiction the forest practice is to be commenced. Any comments by such agencies shall be directed to the department of natural resources.

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

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

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

(b) The objections relate to lands either:

(i) Platted after January 1, 1960, as provided in chapter 58.17 RCW; or

(ii) On lands that have or are being converted to another use.

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

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

(9) For those forest practices regulated by the board and the department, appeals under this section shall be made to the appeals board in the manner and

time provided in RCW 76.09.220(8). In such appeals there shall be no presumption of correctness of either the county, city, or town or the department position.

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

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

(12) Notwithstanding subsections (2) through (5) of this section, forest practices applications or notifications are not required for exotic insect and disease control operations conducted in accordance with RCW 76.09.060(8) where eradication can reasonably be expected.

Sec. 1004. RCW 77.12.865 and 2002 c 20 s 2 are each amended to read as follows:

(1) As used in this section and RCW 77.12.870, "derelict fishing gear" includes lost or abandoned fishing nets, fishing lines, crab pots, shrimp pots, and other commercial and recreational fishing equipment. The term does not include lost or abandoned vessels.

(2) The department, in partnership with the Northwest straits commission, the department of natural resources, and other interested parties, must publish guidelines for the safe removal and disposal of derelict fishing gear. The guidelines must be completed by August 31, 2002, and made available to any person interested in derelict fishing gear removal.

(3) Derelict fishing gear removal conducted in accordance with the guidelines prepared in subsection (2) of this section is not subject to permitting under ~~((RCW 77.55.100))~~ section 201 of this act.

Sec. 1005. RCW 77.65.250 and 2000 c 107 s 46 are each amended to read as follows:

A hardshell clam mechanical harvester fishery license is required to operate a mechanical or hydraulic device for commercially harvesting clams, other than geoduck clams, unless the requirements of ~~((RCW 77.55.100))~~ section 201 of this act are fulfilled for the proposed activity.

NEW SECTION. **Sec. 1006.** The following acts or parts of acts are each repealed:

(1) RCW 77.55.100 (Hydraulic projects or other work—Plans and specifications—Permits—Approval—Emergencies—Tide gates) and 2004 c 32 s 2, 2003 c 391 s 2, 2002 c 368 s 2, 2000 c 107 s 16, & 1998 c 190 s 87;

(2) RCW 77.55.110 (Hydraulic projects for irrigation, stock watering, or streambank stabilization—Plans and specifications—Approval—Emergencies) and 2002 c 368 s 3, 1998 c 190 s 88, 1993 sp.s. c 2 s 32, 1991 c 322 s 31, 1988 c 272 s 2, 1988 c 36 s 34, & 1986 c 173 s 2;

(3) RCW 77.55.190 (Processing of permits or authorizations for emergency water withdrawal and facilities to be expedited) and 1989 c 171 s 8 & 1987 c 343 s 6;

(4) RCW 77.55.250 (Wetlands filled under RCW 75.20.300—Mitigation not required) and 2000 c 107 s 21 & 1995 c 328 s 1; and

(5) RCW 77.55.370 ("Tide gate" defined) and 2003 c 391 s 6.

NEW SECTION. Sec. 1007. Part headings used in this act are not any part of the law.

Passed by the House March 11, 2005.

Passed by the Senate April 14, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 147

[House Bill 1356]

LOCAL GOVERNMENTS—JOINT SELF-INSURANCE PROGRAMS

AN ACT Relating to local government insurance transactions; amending RCW 48.62.031; and adding a new section to chapter 48.62 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 48.62.031 and 1991 sp.s. c 30 s 3 are each amended to read as follows:

(1) The governing body of a local government entity may individually self-insure, may join or form a self-insurance program together with other entities, and may jointly purchase insurance or reinsurance with other entities for property and liability risks, and health and welfare benefits only as permitted under this chapter. In addition, the entity or entities may contract for or hire personnel to provide risk management, claims, and administrative services in accordance with this chapter.

(2) The agreement to form a joint self-insurance program shall be made under chapter 39.34 RCW and may create a separate legal or administrative entity with powers delegated thereto. Such entity may include or create a nonprofit corporation organized under chapter 24.03 or 24.06 RCW or a partnership organized under chapter 25.04 RCW.

(3) Every individual and joint self-insurance program is subject to audit by the state auditor.

(4) If provided for in the agreement or contract established under chapter 39.34 RCW, a joint self-insurance program may, in conformance with this chapter:

(a) Contract or otherwise provide for risk management and loss control services;

(b) Contract or otherwise provide legal counsel for the defense of claims and other legal services;

(c) Consult with the state insurance commissioner and the state risk manager;

(d) Jointly purchase insurance and reinsurance coverage in such form and amount as the program's participants agree by contract; (~~and~~)

(e) Obligate the program's participants to pledge revenues or contribute money to secure the obligations or pay the expenses of the program, including the establishment of a reserve or fund for coverage; and

(f) Possess any other powers and perform all other functions reasonably necessary to carry out the purposes of this chapter.

(5) A local government entity that has decided to assume a risk of loss must have available for inspection by the state auditor a written report indicating the class of risk or risks the governing body of the entity has decided to assume.

(6) Every joint self-insurance program governed by this chapter shall appoint the risk manager as its attorney to receive service of, and upon whom shall be served, all legal process issued against it in this state upon causes of action arising in this state.

(a) Service upon the risk manager as attorney shall constitute service upon the program. Service upon joint insurance programs subject to chapter 30, Laws of 1991 1st sp. sess. can be had only by service upon the risk manager. At the time of service, the plaintiff shall pay to the risk manager a fee to be set by the risk manager, taxable as costs in the action.

(b) With the initial filing for approval with the risk manager, each joint self-insurance program shall designate by name and address the person to whom the risk manager shall forward legal process so served upon him or her. The joint self-insurance program may change such person by filing a new designation.

(c) The appointment of the risk manager as attorney shall be irrevocable, shall bind any successor in interest or to the assets or liabilities of the joint self-insurance program, and shall remain in effect as long as there is in force in this state any contract made by the joint self-insurance program or liabilities or duties arising therefrom.

(d) The risk manager shall keep a record of the day and hour of service upon him or her of all legal process. A copy of the process, by registered mail with return receipt requested, shall be sent by the risk manager, to the person designated for the purpose by the joint self-insurance program in its most recent such designation filed with the risk manager. No proceedings shall be had against the joint self-insurance program, and the program shall not be required to appear, plead, or answer, until the expiration of forty days after the date of service upon the risk manager.

NEW SECTION. Sec. 2. A new section is added to chapter 48.62 RCW to read as follows:

(1) For the purpose of carrying out a joint self-insurance program, a joint self-insurance program and a separate legal entity created under RCW 48.62.031 each may:

(a) Contract indebtedness and issue and sell revenue bonds evidencing such indebtedness or establish lines of credit pursuant to and in the manner provided for local governments in chapter 39.46 RCW with the joint board under RCW 39.34.030; board of directors under RCW 48.62.081; or governing board of a separate legal entity formed under RCW 48.62.031, performing the functions to be performed by the governing body of a local government under chapter 39.46 RCW and appointing a treasurer to perform the functions to be performed by the treasurer under chapter 39.46 RCW;

(b) Contract indebtedness and issue and sell short-term obligations evidencing such indebtedness pursuant to and in the manner provided for municipal corporations in chapter 39.50 RCW with the joint board under RCW 39.34.030; board of directors under RCW 48.62.081; or governing board of a separate legal entity formed under RCW 48.62.031, performing the functions to

be performed by the governing body of a municipal corporation under chapter 39.50 RCW; and

(c) Contract indebtedness and issue and sell refunding bonds pursuant to and in the manner provided for public bodies in chapter 39.53 RCW with the joint board under RCW 39.34.030; board of directors under RCW 48.62.081; or governing board of a separate legal entity formed under RCW 48.62.031, performing the functions to be performed by the governing body of a public body under chapter 39.53 RCW.

(2) For the purpose of carrying out a joint self-insurance program, a joint self-insurance program and a separate legal entity formed under RCW 48.62.031 each may make loans of the proceeds of revenue bonds issued under this section to a joint self-insurance program or a local government entity that has joined or formed a joint self-insurance program.

(3) For the purpose of carrying out a joint self-insurance program, a joint self-insurance program and each local government entity that has joined or formed a joint self-insurance program may accept loans of the proceeds of revenue bonds issued under this section.

Passed by the House March 3, 2005.

Passed by the Senate April 7, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 148

[Engrossed Substitute House Bill 1401]

AUTOMATIC SPRINKLERS—NIGHTCLUBS

AN ACT Relating to fire safety; adding new sections to chapter 19.27 RCW; and adding a new section to chapter 84.36 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 19.27 RCW to read as follows:

The building code council shall adopt rules by December 1, 2005, requiring that all nightclubs be provided with an automatic sprinkler system. Rules adopted by the council shall consider applicable nationally recognized fire and building code standards and local conditions.

By December 15, 2005, the council shall transmit to the fire protection policy board copies of the rules as adopted. The fire protection policy board shall respond to the council by February 15, 2006. If changes are recommended by the fire protection policy board the council shall immediately consider those changes to the rules through its rule-making procedures. The rules shall be effective December 1, 2007.

NEW SECTION. Sec. 2. A new section is added to chapter 19.27 RCW to read as follows:

As used in this chapter:

"Nightclub" means an establishment, other than a theater with fixed seating, which is characterized by all of the following:

(1) Provides live entertainment by paid performing artists or by way of recorded music conducted by a person employed or engaged to do so;

(2) Has as its primary source of revenue (a) the sale of beverages of any kind for consumption on the premises, (b) cover charges, or (c) both; and

(3) Has an occupant load of one hundred or more where the occupant load for any portion of the occupancy is calculated at one person per ten square feet or less, excluding the entry foyer.

NEW SECTION. Sec. 3. A new section is added to chapter 19.27 RCW to read as follows:

No building shall be constructed for, used for, or converted to, occupancy as a nightclub except in accordance with this chapter.

NEW SECTION. Sec. 4. A new section is added to chapter 84.36 RCW to read as follows:

(1) Prior to installation of an automatic sprinkler system under sections 1 through 3 of this act, an owner of property may apply to the assessor of the county in which the property is located for a special property tax exemption. This application shall be made upon forms prescribed by the department of revenue and supplied by the county assessor.

(2) As used in this chapter, "special property tax exemption" means the determination of the assessed value of the property subtracting, for ten years, the increase in value attributable to the installation of an automatic sprinkler system under sections 1 through 3 of this act.

(3) The county assessor shall, for ten consecutive assessment years following the calendar year in which application is made, place a special property tax exemption on property classified as eligible.

Passed by the House March 9, 2005.

Passed by the Senate April 8, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 149

[House Bill 1405]

FISH AND WILDLIFE ADVISORY COMMITTEE—DISABLED HUNTERS, FISHERS

AN ACT Relating to the advisory committee to the fish and wildlife commission composed of disabled individuals; and amending RCW 77.04.150.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 77.04.150 and 2001 c 312 s 1 are each amended to read as follows:

(1) The commission must appoint an advisory committee to generally represent the interests of disabled hunters and fishers on matters including, but not limited to, special hunts, modified sporting equipment, access to public land, and hunting and fishing opportunities. The advisory committee is composed of seven members, each being a person with a disability. The advisory committee members must represent the entire state. The members must be appointed so that each of the six department administrative regions, as they existed on January 1, 2001, are represented with one resident on the advisory committee. One additional member must be appointed at large. The chair of the advisory committee must be a member of the advisory committee and shall be selected by the members of the advisory committee.

(2) For the purposes of this section, a person with a disability includes but is not limited to:

(a) A permanently disabled person who is not ambulatory over natural terrain without a prosthesis or assistive device;

(b) A permanently disabled person who is unable to walk without the use of assistance from a brace, cane, crutch, wheelchair, scooter, walker, or other assistive device;

(c) A person who has a cardiac condition to the extent that the person's functional limitations are severe;

(d) A person who is restricted by lung disease to the extent that the person's functional limitations are severe;

(e) A person who is totally blind or visually impaired; or

(f) A permanently disabled person with upper or lower extremity impairments who does not have the use of one or both upper or lower extremities.

(3) The members of the advisory committee are appointed for a four-year term. If a vacancy occurs on the advisory committee prior to the expiration of a term, the commission must appoint a replacement within sixty days to complete the term.

(4) The advisory committee must meet at least semiannually, and may meet at other times as requested by a majority of the advisory committee members for any express purpose that directly relates to the duties set forth in subsection (1) of this section. A majority of members currently serving on the advisory committee constitutes a quorum. The department must provide staff support for all official advisory committee meetings.

(5) Each member of the advisory committee shall serve without compensation but may be reimbursed for travel expenses as authorized in RCW 43.03.050 and 43.03.060.

(6) The members of the advisory committee, or individuals acting on their behalf, are immune from civil liability for official acts performed in the course of their duties.

(7) The provisions of this section constitute a pilot program that expires July 1, ~~((2005))~~ 2008. On December 1, ~~((2004))~~ 2007, the commission shall present a report to the appropriate legislative committees detailing the effectiveness of the advisory committee, including ~~((the))~~, but not limited to, the participation levels, general interest, quality of advice, and recommendations as to the advisory committee's continuance or modification.

Passed by the House March 3, 2005.

Passed by the Senate April 6, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 150

[House Bill 1407]

BUSINESS AND OCCUPATION TAX DEDUCTION—BEEF PRODUCTS

AN ACT Relating to providing an expiration date for the tax deduction for certain businesses impacted by the ban on American beef products; amending RCW 82.04.4336; and providing an expiration date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 82.04.4336 and 2004 c 235 s 2 are each amended to read as follows:

(1) In computing tax there may be deducted from the measure of tax those amounts received for:

(a) Slaughtering cattle, but only if the taxpayer sells the resulting slaughtered cattle at wholesale and not at retail;

(b) Breaking or processing perishable beef products, but only if the perishable beef products are derived from cattle slaughtered by the taxpayer and sold at wholesale only and not at retail;

(c) Wholesale sales of perishable beef products derived from cattle slaughtered by the taxpayer;

(d) Processing nonperishable beef products, but only if the products are derived from cattle slaughtered by the taxpayer and sold at wholesale only and not at retail; and

(e) Wholesale sales of nonperishable beef products derived from cattle slaughtered by the taxpayer.

(2) For the purposes of this section, "beef products" means the carcass, parts of carcass, meat, and meat by-products, derived exclusively from cattle and containing no other ingredients.

(3) The deduction allowed under this section is allowed only for tax liability incurred after March 31, 2004, and until the first day of the month following the date on which the bans on the importation of beef and beef products from the United States of America by Japan, Mexico, and the Republic of South Korea have all been lifted.

(4) The department must provide notice, on the department's web site, of the date on which this deduction is no longer available. The notice required by this section does not affect the availability of the deduction under this section.

(5) This section expires December 31, 2007.

Passed by the House March 7, 2005.

Passed by the Senate April 7, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 151

[House Bill 1409]

CONTRACT LIQUOR STORES

AN ACT Relating to updating references to contract liquor stores; amending RCW 66.04.010, 66.08.026, 66.08.050, 66.08.235, 66.16.040, 66.16.041, 66.16.080, 66.20.160, 66.20.180, 66.24.380, 66.44.120, and 41.40.023; and repealing RCW 66.16.030.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 66.04.010 and 2004 c 160 s 1 are each amended to read as follows:

In this title, unless the context otherwise requires:

(1) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all

dilutions and mixtures of this substance. The term "alcohol" does not include alcohol in the possession of a manufacturer or distiller of alcohol fuel, as described in RCW 66.12.130, which is intended to be denatured and used as a fuel for use in motor vehicles, farm implements, and machines or implements of husbandry.

(2) "Authorized representative" means a person who:

(a) Is required to have a federal basic permit issued pursuant to the federal alcohol administration act, 27 U.S.C. Sec. 204;

(b) Has its business located in the United States outside of the state of Washington;

(c) Acquires ownership of beer or wine for transportation into and resale in the state of Washington; and which beer or wine is produced anywhere outside Washington by a brewery or winery which does not hold a certificate of approval issued by the board; and

(d) Is appointed by the brewery or winery referenced in (c) of this subsection as its exclusive authorized representative for marketing and selling its products within the United States in accordance with a written agreement between the authorized representative and such brewery or winery pursuant to this title. The board may waive the requirement for the written agreement of exclusivity in situations consistent with the normal marketing practices of certain products, such as classified growths.

(3) "Beer" means any malt beverage or malt liquor as these terms are defined in this chapter.

(4) "Beer distributor" means a person who buys beer from a domestic brewery, microbrewery, beer certificate of approval holder, or beer importers, or who acquires foreign produced beer from a source outside of the United States, for the purpose of selling the same pursuant to this title, or who represents such brewer or brewery as agent.

(5) "Beer importer" means a person or business within Washington who purchases beer from a beer certificate of approval holder or who acquires foreign produced beer from a source outside of the United States for the purpose of selling the same pursuant to this title.

(6) "Brewer" or "brewery" means any person engaged in the business of manufacturing beer and malt liquor. Brewer includes a brand owner of malt beverages who holds a brewer's notice with the federal bureau of alcohol, tobacco, and firearms at a location outside the state and whose malt beverage is contract-produced by a licensed in-state brewery, and who may exercise within the state, under a domestic brewery license, only the privileges of storing, selling to licensed beer distributors, and exporting beer from the state.

(7) "Board" means the liquor control board, constituted under this title.

(8) "Club" means an organization of persons, incorporated or unincorporated, operated solely for fraternal, benevolent, educational, athletic or social purposes, and not for pecuniary gain.

(9) "Consume" includes the putting of liquor to any use, whether by drinking or otherwise.

(10) "Contract liquor store" means a business that sells liquor on behalf of the board through a contract with a contract liquor store manager.

~~(11)~~ (11) "Dentist" means a practitioner of dentistry duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.32 RCW.

~~((11))~~ (12) "Distiller" means a person engaged in the business of distilling spirits.

~~((12))~~ (13) "Domestic brewery" means a place where beer and malt liquor are manufactured or produced by a brewer within the state.

~~((13))~~ (14) "Domestic winery" means a place where wines are manufactured or produced within the state of Washington.

~~((14))~~ (15) "Druggist" means any person who holds a valid certificate and is a registered pharmacist and is duly and regularly engaged in carrying on the business of pharmaceutical chemistry pursuant to chapter 18.64 RCW.

~~((15))~~ (16) "Drug store" means a place whose principal business is, the sale of drugs, medicines and pharmaceutical preparations and maintains a regular prescription department and employs a registered pharmacist during all hours the drug store is open.

~~((16))~~ (17) "Employee" means any person employed by the board (~~including a vendor, as hereinafter in this section defined~~).

~~((17))~~ (18) "Fund" means 'liquor revolving fund.'

~~((18))~~ (19) "Hotel" means every building or other structure kept, used, maintained, advertised or held out to the public to be a place where food is served and sleeping accommodations are offered for pay to transient guests, in which twenty or more rooms are used for the sleeping accommodation of such transient guests and having one or more dining rooms where meals are served to such transient guests, such sleeping accommodations and dining rooms being conducted in the same building and buildings, in connection therewith, and such structure or structures being provided, in the judgment of the board, with adequate and sanitary kitchen and dining room equipment and capacity, for preparing, cooking and serving suitable food for its guests: PROVIDED FURTHER, That in cities and towns of less than five thousand population, the board shall have authority to waive the provisions requiring twenty or more rooms.

~~((19))~~ (20) "Importer" means a person who buys distilled spirits from a distillery outside the state of Washington and imports such spirituous liquor into the state for sale to the board or for export.

~~((20))~~ (21) "Imprisonment" means confinement in the county jail.

~~((21))~~ (22) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating. Liquor does not include confections or food products that contain one percent or less of alcohol by weight.

~~((22))~~ (23) "Manufacturer" means a person engaged in the preparation of liquor for sale, in any form whatsoever.

~~((23))~~ (24) "Malt beverage" or "malt liquor" means any beverage such as beer, ale, lager beer, stout, and porter obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. For the purposes of this title, any such beverage containing more than eight percent of alcohol by weight shall be referred to as "strong beer."

~~((24))~~ (25) "Package" means any container or receptacle used for holding liquor.

~~((25))~~ (26) "Permit" means a permit for the purchase of liquor under this title.

~~((26))~~ (27) "Person" means an individual, copartnership, association, or corporation.

~~((27))~~ (28) "Physician" means a medical practitioner duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.71 RCW.

~~((28))~~ (29) "Prescription" means a memorandum signed by a physician and given by him to a patient for the obtaining of liquor pursuant to this title for medicinal purposes.

~~((29))~~ (30) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, and/or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

~~((30))~~ (31) "Regulations" means regulations made by the board under the powers conferred by this title.

~~((31))~~ (32) "Restaurant" means any establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains.

~~((32))~~ (33) "Sale" and "sell" include exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person; and also include a sale or selling within the state to a foreign consignee or his agent in the state. "Sale" and "sell" shall not include the giving, at no charge, of a reasonable amount of liquor by a person not licensed by the board to a person not licensed by the board, for personal use only. "Sale" and "sell" also does not include a raffle authorized under RCW 9.46.0315:

PROVIDED, That the nonprofit organization conducting the raffle has obtained the appropriate permit from the board.

~~((33))~~ (34) "Soda fountain" means a place especially equipped with apparatus for the purpose of dispensing soft drinks, whether mixed or otherwise.

~~((34))~~ (35) "Spirits" means any beverage which contains alcohol obtained by distillation, including wines exceeding twenty-four percent of alcohol by volume.

~~((35))~~ (36) "Store" means a state liquor store established under this title.

~~((36))~~ (37) "Tavern" means any establishment with special space and accommodation for sale by the glass and for consumption on the premises, of beer, as herein defined.

~~((37) "Vendor" means a person employed by the board as a store manager under this title.)~~

(38) "Winery" means a business conducted by any person for the manufacture of wine for sale, other than a domestic winery.

(39) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than twenty-four percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding twenty-four percent of alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this title, any beverage containing no more than fourteen percent of alcohol by volume when bottled or packaged by the manufacturer shall be referred to as "table wine," and any beverage containing alcohol in an amount more than fourteen percent by volume when bottled or packaged by the manufacturer shall be referred to as "fortified wine." However, "fortified wine" shall not include: (a) Wines that are both sealed or capped by cork closure and aged two years or more; and (b) wines that contain more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and that have not been produced with the addition of wine spirits, brandy, or alcohol.

This subsection shall not be interpreted to require that any wine be labeled with the designation "table wine" or "fortified wine."

(40) "Wine distributor" means a person who buys wine from a domestic winery, wine certificate of approval holder, or wine importer, or who acquires foreign produced wine from a source outside of the United States, for the purpose of selling the same not in violation of this title, or who represents such vintner or winery as agent.

(41) "Wine importer" means a person or business within Washington who purchases wine from a wine certificate of approval holder or who acquires foreign produced wine from a source outside of the United States for the purpose of selling the same pursuant to this title.

Sec. 2. RCW 66.08.026 and 2004 c 63 s 1 are each amended to read as follows:

All administrative expenses of the board incurred on and after April 1, 1963, shall be appropriated and paid from the liquor revolving fund. These administrative expenses shall include, but not be limited to: The salaries and expenses of the board and its employees, the cost of establishing, leasing, maintaining, and operating state liquor stores and warehouses, legal services,

pilot projects, annual or other audits, and other general costs of conducting the business of the board, and the costs of supplying, installing, and maintaining equipment used in state liquor stores and ~~((agency))~~ contract liquor ~~((vendor))~~ stores for the purchase of liquor using debit or credit cards. The administrative expenses shall not, however, be deemed to include costs of liquor and lottery tickets purchased, the cost of transportation and delivery to the point of distribution, other costs pertaining to the acquisition and receipt of liquor and lottery tickets, packaging and repackaging of liquor, agency commissions for ~~((agency))~~ contract liquor ~~((vendor))~~ stores, transaction fees associated with credit or debit card purchases for liquor in state liquor stores and in ~~((the))~~ contract liquor stores ~~((of agency liquor vendors))~~ pursuant to RCW 66.16.040 and 66.16.041, sales tax, and those amounts distributed pursuant to RCW 66.08.180, 66.08.190, 66.08.200, 66.08.210 and 66.08.220. Agency commissions for ~~((agency))~~ contract liquor ~~((vendor))~~ stores shall be established by the liquor control board after consultation with and approval by the director of the office of financial management. All expenditures and payment of obligations authorized by this section are subject to the allotment requirements of chapter 43.88 RCW.

Sec. 3. RCW 66.08.050 and 1997 c 228 s 1 are each amended to read as follows:

The board, subject to the provisions of this title and the rules, shall:

(1) Determine the localities within which state liquor stores shall be established throughout the state, and the number and situation of the stores within each locality;

(2) Appoint in cities and towns and other communities, in which no state liquor store is located, contract liquor ~~((vendors))~~ stores. In addition, the board may appoint, in its discretion, a manufacturer that also manufactures liquor products other than wine under a license under this title, as a ~~((vendor))~~ contract liquor store for the purpose of sale of liquor products of its own manufacture on the licensed premises only. Such contract liquor ~~((vendors))~~ stores shall ~~((be agents of the board and))~~ be authorized to sell liquor ~~((to such persons, firms or corporations as provided for the sale of liquor from a state liquor store))~~ under the guidelines provided by law, rule, or contract, and such ~~((vendors))~~ contract liquor stores shall be subject to such additional rules and regulations consistent with this title as the board may require;

(3) Establish all necessary warehouses for the storing and bottling, diluting and rectifying of stocks of liquors for the purposes of this title;

(4) Provide for the leasing for periods not to exceed ten years of all premises required for the conduct of the business; and for remodeling the same, and the procuring of their furnishings, fixtures, and supplies; and for obtaining options of renewal of such leases by the lessee. The terms of such leases in all other respects shall be subject to the direction of the board;

(5) Determine the nature, form and capacity of all packages to be used for containing liquor kept for sale under this title;

(6) Execute or cause to be executed, all contracts, papers, and documents in the name of the board, under such regulations as the board may fix;

(7) Pay all customs, duties, excises, charges and obligations whatsoever relating to the business of the board;

(8) Require bonds from all employees in the discretion of the board, and to determine the amount of fidelity bond of each such employee;

(9) Perform services for the state lottery commission to such extent, and for such compensation, as may be mutually agreed upon between the board and the commission;

(10) Accept and deposit into the general fund-local account and disburse, subject to appropriation, federal grants or other funds or donations from any source for the purpose of improving public awareness of the health risks associated with alcohol consumption by youth and the abuse of alcohol by adults in Washington state. The board's alcohol awareness program shall cooperate with federal and state agencies, interested organizations, and individuals to effect an active public beverage alcohol awareness program;

(11) Perform all other matters and things, whether similar to the foregoing or not, to carry out the provisions of this title, and shall have full power to do each and every act necessary to the conduct of its business, including all buying, selling, preparation and approval of forms, and every other function of the business whatsoever, subject only to audit by the state auditor: PROVIDED, That the board shall have no authority to regulate the content of spoken language on licensed premises where wine and other liquors are served and where there is not a clear and present danger of disorderly conduct being provoked by such language.

Sec. 4. RCW 66.08.235 and 2002 c 371 s 918 are each amended to read as follows:

The liquor control board construction and maintenance account is created within the state treasury. The liquor control board shall deposit into this account a portion of the board's markup, as authorized by chapter 66.16 RCW, placed upon liquor as determined by the board. Moneys in the account may be spent only after appropriation. The liquor control board shall use deposits to this account to fund construction and maintenance of a centralized distribution center for liquor products intended for sale through the board's liquor store and ~~((vendor))~~ contract liquor store system. During the 2001-2003 fiscal biennium, the legislature may transfer from the liquor control board construction and maintenance account to the state general fund such amounts as reflect the appropriations reductions made by the 2002 supplemental appropriations act for administrative efficiencies and savings.

Sec. 5. RCW 66.16.040 and 2004 c 61 s 1 are each amended to read as follows:

Except as otherwise provided by law, an employee in a state liquor store or ~~((agency))~~ contract liquor store may sell liquor to any person of legal age to purchase alcoholic beverages and may also sell to holders of permits such liquor as may be purchased under such permits.

Where there may be a question of a person's right to purchase liquor by reason of age, such person shall be required to present any one of the following officially issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

(1) Liquor control authority card of identification of any state or province of Canada.

(2) Driver's license, instruction permit or identification card of any state or province of Canada, or "identocard" issued by the Washington state department of licensing pursuant to RCW 46.20.117.

(3) United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents, which may include an imbedded, digital signature in lieu of a visible signature.

(4) Passport.

(5) Merchant Marine identification card issued by the United States Coast Guard.

The board may adopt such regulations as it deems proper covering the cards of identification listed in this section.

No liquor sold under this section shall be delivered until the purchaser has paid for the liquor in cash, except as allowed under RCW 66.16.041. The use of a personal credit card does not rely upon the credit of the state as prohibited by Article VIII, section 5 of the state Constitution.

Sec. 6. RCW 66.16.041 and 2004 c 63 s 2 are each amended to read as follows:

(1) The state liquor control board shall accept bank credit card and debit cards for purchases in state liquor stores, under such rules as the board may adopt. The board shall authorize contract liquor (~~vendors~~) stores appointed under RCW 66.08.050 to accept bank credit cards and debit cards for liquor purchases under this title, under such rules as the board may adopt.

(2) If a contract liquor (~~vendor operating an agency~~) store chooses to use credit or debit cards for liquor purchases, the board shall provide equipment and installation and maintenance of the equipment necessary to implement the use of credit and debit cards. Any equipment provided by the board to (~~an agency~~) a contract liquor (~~vendor~~) store for this purpose may be used only for the purchase of liquor.

~~((3) If the revenues and expenditures associated with implementing the use of credit and debit cards for the purchase of alcohol from state liquor stores and agency stores operated by liquor vendors results in a reduction of the liquor revolving fund balance for fiscal year 1999 and the 1999-01 biennium, the board shall consider increasing the price of alcohol products to offset the reduction.))~~

Sec. 7. RCW 66.16.080 and 1988 c 101 s 1 are each amended to read as follows:

No sale or delivery of liquor shall be made on or from the premises of any state liquor store, nor shall any store be open for the sale of liquor, on Sunday, unless the board determines that unique circumstances exist which necessitate Sunday liquor sales by (~~vendors appointed under RCW 66.08.050(2))~~) a contract liquor store of products of (~~their~~) the contract liquor store's own manufacture, not to exceed one case of liquor per customer.

Sec. 8. RCW 66.20.160 and 1973 1st ex.s. c 209 s 4 are each amended to read as follows:

Words and phrases as used in RCW 66.20.160 to 66.20.210, inclusive, shall have the following meaning:

"Card of identification" means any one of those cards described in RCW 66.16.040.

"Licensee" means the holder of a retail liquor license issued by the board, and includes any employee or agent of the licensee.

"Store employee" means a person employed in a state liquor store (~~(or agency)~~) to sell liquor.

Sec. 9. RCW 66.20.180 and 1973 1st ex.s. c 209 s 6 are each amended to read as follows:

A card of identification shall be presented by the holder thereof upon request of any licensee, store employee, contract liquor store manager, contract liquor store employee, peace officer, or enforcement officer of the board for the purpose of aiding the licensee, store employee, contract liquor store manager, contract liquor store employee, peace officer, or enforcement officer of the board to determine whether or not such person is of legal age to purchase liquor when such person desires to procure liquor from a licensed establishment or state liquor store or (~~agency~~) contract liquor store.

Sec. 10. RCW 66.24.380 and 2004 c 133 s 2 are each amended to read as follows:

There shall be a retailer's license to be designated as a special occasion license to be issued to a not-for-profit society or organization to sell spirits, beer, and wine by the individual serving for on-premises consumption at a specified event, such as at picnics or other special occasions, at a specified date and place; fee sixty dollars per day.

(1) The not-for-profit society or organization is limited to sales of no more than twelve calendar days per year. For the purposes of this subsection, special occasion licensees that are "agricultural area fairs" or "agricultural county, district, and area fairs," as defined by RCW 15.76.120, that receive a special occasion license may, once per calendar year, count as one event fairs that last multiple days, so long as alcohol sales are at set dates, times, and locations, and the board receives prior notification of the dates, times, and locations. The special occasion license applicant will pay the sixty dollars per day for this event.

(2) The licensee may sell beer and/or wine in original, unopened containers for off-premises consumption if permission is obtained from the board prior to the event.

(3) Sale, service, and consumption of spirits, beer, and wine is to be confined to specified premises or designated areas only.

(4) Spirituous liquor sold under this special occasion license must be purchased at a state liquor store or (~~agency~~) contract liquor store without discount at retail prices, including all taxes.

(5) Any violation of this section is a class 1 civil infraction having a maximum penalty of two hundred fifty dollars as provided for in chapter 7.80 RCW.

Sec. 11. RCW 66.44.120 and 2003 c 53 s 299 are each amended to read as follows:

(1) No person other than an employee of the board shall keep or have in his or her possession any official seal prescribed under this title, unless the same is attached to a package which has been purchased from a (~~vendor or store employee~~) liquor store or contract liquor store; nor shall any person keep or have in his or her possession any design in imitation of any official seal

prescribed under this title, or calculated to deceive by its resemblance thereto, or any paper upon which any design in imitation thereof, or calculated to deceive as aforesaid, is stamped, engraved, lithographed, printed, or otherwise marked.

(2)(a) Except as provided in (b) of this subsection, every person who willfully violates this section is guilty of a gross misdemeanor and shall be liable on conviction thereof for a first offense to imprisonment in the county jail for a period of not less than three months nor more than six months, without the option of the payment of a fine, and for a second offense, to imprisonment in the county jail for not less than six months nor more than one year, without the option of the payment of a fine.

(b) A third or subsequent offense is a class C felony, punishable by imprisonment in a state correctional facility for not less than one year nor more than two years.

Sec. 12. RCW 41.40.023 and 2001 c 37 s 1 are each amended to read as follows:

Membership in the retirement system shall consist of all regularly compensated employees and appointive and elective officials of employers, as defined in this chapter, with the following exceptions:

(1) Persons in ineligible positions;

(2) Employees of the legislature except the officers thereof elected by the members of the senate and the house and legislative committees, unless membership of such employees be authorized by the said committee;

(3)(a) Persons holding elective offices or persons appointed directly by the governor: PROVIDED, That such persons shall have the option of applying for membership during such periods of employment: AND PROVIDED FURTHER, That any persons holding or who have held elective offices or persons appointed by the governor who are members in the retirement system and who have, prior to becoming such members, previously held an elective office, and did not at the start of such initial or successive terms of office exercise their option to become members, may apply for membership to be effective during such term or terms of office, and shall be allowed to establish the service credit applicable to such term or terms of office upon payment of the employee contributions therefor by the employee with interest as determined by the director and employer contributions therefor by the employer or employee with interest as determined by the director: AND PROVIDED FURTHER, That all contributions with interest submitted by the employee under this subsection shall be placed in the employee's individual account in the employee's savings fund and be treated as any other contribution made by the employee, with the exception that any contributions submitted by the employee in payment of the employer's obligation, together with the interest the director may apply to the employer's contribution, shall not be considered part of the member's annuity for any purpose except withdrawal of contributions;

(b) A member holding elective office who has elected to apply for membership pursuant to (a) of this subsection and who later wishes to be eligible for a retirement allowance shall have the option of ending his or her membership in the retirement system. A member wishing to end his or her membership under this subsection must file, on a form supplied by the department, a statement indicating that the member agrees to irrevocably abandon any claim for service for future periods served as an elected official. A member who receives more

than fifteen thousand dollars per year in compensation for his or her elective service, adjusted annually for inflation by the director, is not eligible for the option provided by this subsection (3)(b);

(4) Employees holding membership in, or receiving pension benefits under, any retirement plan operated wholly or in part by an agency of the state or political subdivision thereof, or who are by reason of their current employment contributing to or otherwise establishing the right to receive benefits from any such retirement plan except as follows:

(a) In any case where the retirement system has in existence an agreement with another retirement system in connection with exchange of service credit or an agreement whereby members can retain service credit in more than one system, such an employee shall be allowed membership rights should the agreement so provide;

(b) An employee shall be allowed membership if otherwise eligible while receiving survivor's benefits;

(c) An employee shall not either before or after June 7, 1984, be excluded from membership or denied service credit pursuant to this subsection solely on account of: (i) Membership in the plan created under chapter 2.14 RCW; or (ii) enrollment under the relief and compensation provisions or the pension provisions of the volunteer fire fighters' relief and pension fund under chapter 41.24 RCW;

(d) Except as provided in RCW 41.40.109, on or after July 25, 1999, an employee shall not be excluded from membership or denied service credit pursuant to this subsection solely on account of participation in a defined contribution pension plan qualified under section 401 of the internal revenue code;

(e) Employees who have been reported in the retirement system prior to July 25, 1999, and who participated during the same period of time in a defined contribution pension plan qualified under section 401 of the internal revenue code and operated wholly or in part by the employer, shall not be excluded from previous retirement system membership and service credit on account of such participation;

(5) Patient and inmate help in state charitable, penal, and correctional institutions;

(6) "Members" of a state veterans' home or state soldiers' home;

(7) Persons employed by an institution of higher learning or community college, primarily as an incident to and in furtherance of their education or training, or the education or training of a spouse;

(8) Employees of an institution of higher learning or community college during the period of service necessary to establish eligibility for membership in the retirement plans operated by such institutions;

(9) Persons rendering professional services to an employer on a fee, retainer, or contract basis or when the income from these services is less than fifty percent of the gross income received from the person's practice of a profession;

(10) Persons appointed after April 1, 1963, by the liquor control board as ~~(agency vendors)~~ contract liquor store managers;

(11) Employees of a labor guild, association, or organization: PROVIDED, That elective officials and employees of a labor guild, association, or

organization which qualifies as an employer within this chapter shall have the option of applying for membership;

(12) Retirement system retirees: PROVIDED, That following reemployment in an eligible position, a retiree may elect to prospectively become a member of the retirement system if otherwise eligible;

(13) Persons employed by or appointed or elected as an official of a first class city that has its own retirement system: PROVIDED, That any member elected or appointed to an elective office on or after April 1, 1971, shall have the option of continuing as a member of this system in lieu of becoming a member of the city system. A member who elects to continue as a member of this system shall pay the appropriate member contributions and the city shall pay the employer contributions at the rates prescribed by this chapter. The city shall also transfer to this system all of such member's accumulated contributions together with such further amounts as necessary to equal all employee and employer contributions which would have been paid into this system on account of such service with the city and thereupon the member shall be granted credit for all such service. Any city that becomes an employer as defined in RCW 41.40.010(4) as the result of an individual's election under this subsection shall not be required to have all employees covered for retirement under the provisions of this chapter. Nothing in this subsection shall prohibit a city of the first class with its own retirement system from: (a) Transferring all of its current employees to the retirement system established under this chapter, or (b) allowing newly hired employees the option of continuing coverage under the retirement system established by this chapter.

Notwithstanding any other provision of this chapter, persons transferring from employment with a first class city of over four hundred thousand population that has its own retirement system to employment with the state department of agriculture may elect to remain within the retirement system of such city and the state shall pay the employer contributions for such persons at like rates as prescribed for employers of other members of such system;

(14) Employees who (a) are not citizens of the United States, (b) do not reside in the United States, and (c) perform duties outside of the United States;

(15) Employees who (a) are not citizens of the United States, (b) are not covered by chapter 41.48 RCW, (c) are not excluded from membership under this chapter or chapter 41.04 RCW, (d) are residents of this state, and (e) make an irrevocable election to be excluded from membership, in writing, which is submitted to the director within thirty days after employment in an eligible position;

(16) Employees who are citizens of the United States and who reside and perform duties for an employer outside of the United States: PROVIDED, That unless otherwise excluded under this chapter or chapter 41.04 RCW, the employee may apply for membership (a) within thirty days after employment in an eligible position and membership service credit shall be granted from the first day of membership service, and (b) after this thirty-day period, but membership service credit shall be granted only if payment is made for the noncredited membership service under RCW 41.50.165(2), otherwise service shall be from the date of application;

(17) The city manager or chief administrative officer of a city or town, other than a retiree, who serves at the pleasure of an appointing authority:

PROVIDED, That such persons shall have the option of applying for membership within thirty days from date of their appointment to such positions. Persons serving in such positions as of April 4, 1986, shall continue to be members in the retirement system unless they notify the director in writing prior to December 31, 1986, of their desire to withdraw from membership in the retirement system. A member who withdraws from membership in the system under this section shall receive a refund of the member's accumulated contributions.

Persons serving in such positions who have not opted for membership within the specified thirty days, may do so by paying the amount required under RCW 41.50.165(2) for the period from the date of their appointment to the date of acceptance into membership;

(18) Persons serving as: (a) The chief administrative officer of a public utility district as defined in RCW 54.16.100; (b) the chief administrative officer of a port district formed under chapter 53.04 RCW; or (c) the chief administrative officer of a county who serves at the pleasure of an appointing authority: PROVIDED, That such persons shall have the option of applying for membership within thirty days from the date of their appointment to such positions. Persons serving in such positions as of July 25, 1999, shall continue to be members in the retirement system unless they notify the director in writing prior to December 31, 1999, of their desire to withdraw from membership in the retirement system. A member who withdraws from membership in the system under this section shall receive a refund of the member's accumulated contributions upon termination of employment or as otherwise consistent with the plan's tax qualification status as defined in internal revenue code section 401.

Persons serving in such positions who have not opted for membership within the specified thirty days, may do so at a later date by paying the amount required under RCW 41.50.165(2) for the period from the date of their appointment to the date of acceptance into membership;

(19) Persons enrolled in state-approved apprenticeship programs, authorized under chapter 49.04 RCW, and who are employed by local governments to earn hours to complete such apprenticeship programs, if the employee is a member of a union-sponsored retirement plan and is making contributions to such a retirement plan or if the employee is a member of a Taft-Hartley retirement plan;

(20) Beginning on July 22, 2001, persons employed exclusively as trainers or trainees in resident apprentice training programs operated by housing authorities authorized under chapter 35.82 RCW, (a) if the trainer or trainee is a member of a union-sponsored retirement plan and is making contributions to such a retirement plan or (b) if the employee is a member of a Taft-Hartley retirement plan.

NEW SECTION. Sec. 13. RCW 66.16.030 (Vendor to be in charge) and 1933 ex.s. c 62 s 6 are each repealed.

Passed by the House February 25, 2005.

Passed by the Senate April 7, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 152

[Substitute House Bill 1431]

BEER, WINE, AND SPIRITOUS LIQUOR—EMPLOYEE INSTRUCTION

AN ACT Relating to courses of instruction on beer, wine, and spiritous liquor; and amending RCW 66.24.320 and 66.24.400.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 66.24.320 and 2004 c 62 s 2 are each amended to read as follows:

There shall be a beer and/or wine restaurant license to sell beer, including strong beer, or wine, or both, at retail, for consumption on the premises. A patron of the licensee may remove from the premises, recorked or recapped in its original container, any portion of wine that was purchased for consumption with a meal.

(1) The annual fee shall be two hundred dollars for the beer license, two hundred dollars for the wine license, or four hundred dollars for a combination beer and wine license.

(2)(a) The board may issue a caterer's endorsement to this license to allow the licensee to remove from the liquor stocks at the licensed premises, only those types of liquor that are authorized under the on-premises license privileges for sale and service at event locations at a specified date and, except as provided in subsection (3) of this section, place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred fifty dollars.

(b) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(3) Licensees under this section that hold a caterer's endorsement are allowed to use this endorsement on a domestic winery premises under the following conditions:

(a) Agreements between the domestic winery and the retail licensee shall be in writing, contain no exclusivity clauses regarding the alcohol beverages to be served, and be filed with the board; and

(b) The domestic winery and the retail licensee shall be separately contracted and compensated by the persons sponsoring the event for their respective services.

(4) The holder of this license or its manager may furnish beer or wine to the licensee's employees free of charge as may be required for use in connection with instruction on beer and wine. The instruction may include the history, nature, values, and characteristics of beer or wine, the use of wine lists, and the methods of presenting, serving, storing, and handling beer or wine. The beer and/or wine licensee must use the beer or wine it obtains under its license for the

sampling as part of the instruction. The instruction must be given on the premises of the beer and/or wine licensee.

Sec. 2. RCW 66.24.400 and 2001 c 199 s 4 are each amended to read as follows:

(1) There shall be a retailer's license, to be known and designated as a spirits, beer, and wine restaurant license, to sell spirituous liquor by the individual glass, beer, and wine, at retail, for consumption on the premises, including mixed drinks and cocktails compounded or mixed on the premises only: PROVIDED, That a hotel, or club licensed under chapter 70.62 RCW with overnight sleeping accommodations, that is licensed under this section may sell liquor by the bottle to registered guests of the hotel or club for consumption in guest rooms, hospitality rooms, or at banquets in the hotel or club: PROVIDED FURTHER, That a patron of a bona fide hotel, restaurant, or club licensed under this section may remove from the premises recorked or recapped in its original container any portion of wine which was purchased for consumption with a meal, and registered guests who have purchased liquor from the hotel or club by the bottle may remove from the premises any unused portion of such liquor in its original container. Such license may be issued only to bona fide restaurants, hotels and clubs, and to dining, club and buffet cars on passenger trains, and to dining places on passenger boats and airplanes, and to dining places at civic centers with facilities for sports, entertainment, and conventions, and to such other establishments operated and maintained primarily for the benefit of tourists, vacationers and travelers as the board shall determine are qualified to have, and in the discretion of the board should have, a spirits, beer, and wine restaurant license under the provisions and limitations of this title.

(2) The board may issue an endorsement to the spirits, beer, and wine restaurant license that allows the holder of a spirits, beer, and wine restaurant license to sell for off-premises consumption wine vinted and bottled in the state of Washington and carrying a label exclusive to the license holder selling the wine. Spirits and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this ~~((chapter [section]))~~ subsection is one hundred twenty dollars.

(3) The holder of a spirits, beer, and wine license or its manager may furnish beer, wine, or spirituous liquor to the licensee's employees free of charge as may be required for use in connection with instruction on beer, wine, or spirituous liquor. The instruction may include the history, nature, values, and characteristics of beer, wine, or spirituous liquor, the use of wine lists, and the methods of presenting, serving, storing, and handling beer, wine, and spirituous liquor. The spirits, beer, and wine restaurant licensee must use the beer, wine, or spirituous liquor it obtains under its license for the sampling as part of the instruction. The instruction must be given on the premises of the spirits, beer, and wine restaurant licensee.

Passed by the House March 8, 2005.

Passed by the Senate April 11, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 153

[House Bill 1447]

ELECTIONS—INSTANT RUNOFF VOTING PILOT PROJECT

AN ACT Relating to establishing a pilot project to examine the use of instant runoff voting for nonpartisan offices; amending RCW 29A.52.220, 29A.60.160, and 29A.60.190; adding a new chapter to Title 29A RCW; creating new sections; and providing expiration dates.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. FINDINGS AND PURPOSE. (1) The legislature finds that it is in the public interest to examine the use of a voting system that requires all victorious candidates to be elected with a majority vote rather than a plurality of effective votes, and that allows voters to designate secondary and other preferences for potential tabulation if their first choice candidate does not receive a majority of the votes cast. The legislature recognizes that the system known as instant runoff voting achieves these purposes.

(2) The legislature wishes to examine whether voter interest and participation in elections will increase when instant runoff voting, a voting method that promotes additional voter choices and a more meaningful recognition of all voter selections, is used to elect nonpartisan candidates. The legislature declares that it is in the interest of participatory democracy for voters to be given the opportunity to vote for their first choice candidate while still making effective secondary choices among the remaining candidates.

(3) The legislature therefore intends to authorize a limited pilot project to study the effects of using instant runoff voting as a local option for nonpartisan offices in any qualifying city.

NEW SECTION. Sec. 2. PILOT PROJECT—INSTANT RUNOFF VOTING. The legislature intends to establish an instant runoff voting pilot project to be completed by willing state and local election administrators in full partnership and cooperation.

If the county auditor of a county containing any city that has demonstrated support for instant runoff voting, as provided by subsection (1)(c) of this section, provides written notification of pilot project participation to the secretary of state by January 1, 2007, the secretary of state shall conduct a pilot project to examine the use of instant runoff voting as a local option for nonpartisan offices in any qualifying city in that county. Following the timely receipt by the secretary of state of the written notification, the pilot project must begin by August 1, 2008, and conclude no later than July 1, 2013.

(1) For the purposes of this act, a qualifying city must:

- (a) Be classified as a first class city as defined by chapter 35.22 RCW;
- (b) Have a population greater than one hundred forty thousand and less than two hundred thousand as of the effective date of this act as determined by the office of financial management; and

(c) Have demonstrated support for instant runoff voting by approving a city charter amendment authorizing the city council to use instant runoff voting for the election of city officers.

(2)(a) Following the timely receipt by the secretary of state of a notification of participation from a county auditor, and in accordance with the provisions of this section, the secretary of state shall certify at least one city in that county to qualify and participate in the pilot project. Only a qualifying city or cities

certified for participation by the secretary of state may participate in the pilot project.

(b) The county auditor of a county containing a qualifying and certified city who has submitted a timely notification of participation shall participate in the pilot project.

(3) Elections conducted under the instant runoff voting method for the pilot project must comply with this chapter and may be held only on the dates specified by RCW 29A.04.330(1).

(4) For the purpose of implementing this chapter, the secretary of state shall develop and adopt:

(a) Rules governing the conduct of instant runoff voting elections; and

(b) A pilot project timeline. The secretary of state may consult with appropriate local officials to develop this timeline. The timeline is subject to review and modification by the secretary of state, as necessary.

(5) All election equipment and related processes shall be certified by the secretary of state before an election may be conducted under the instant runoff voting method.

(6) The secretary of state shall submit a report of findings to the appropriate committees of the legislature by July 1, 2013, that includes, but is not limited to:

(a) An assessment of all elections conducted using the instant runoff voting method;

(b) Recommendations for statutory, rule, and local voting procedural modifications that would be required prior to implementing instant runoff voting as a permanent alternative election method for special and general elections;

(c) An inventory of available election equipment necessary for conducting elections under the instant runoff method, including costs associated with the equipment; and

(d) Any recommendations from any city legislative body or county auditor participating in this pilot project.

NEW SECTION. Sec. 3. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Candidates who remain" means all candidates who have not been eliminated at a previous stage.

(2) "Choice" means an indication on a ballot of a voter's ranking of candidates for any single office according to the voter's preference.

(3) "Continuing ballot" means a ballot that is not exhausted.

(4) "Exhausted ballot" means a ballot on which all indicated choices have become votes for the candidates so designated or when the ballot contains only choices for eliminated candidates.

(5) "Instant runoff voting" means a system of voting in which voters may designate as many as three candidates for the same office in order of preference by indicating a first choice, a second choice, and a third choice.

(6) "Last place candidate" means a candidate who has received the fewest votes among the candidates who remain at any stage. Two or more candidates simultaneously become last place candidates when their combined votes are equal to or fewer than all votes for the candidate with the third highest vote total.

(7) "Next choice" means the highest ranked choice for a remaining candidate that has not become a vote at a previous stage.

(8) "Remaining candidate" means a candidate who has not been eliminated.

(9) "Stage" or "stage in the counting" means a step in the counting process during which votes for all remaining candidates are tabulated for the purpose of determining whether a candidate has achieved a majority of the votes cast for a particular office, and, absent a majority, which candidate or candidates must be eliminated.

(10) "Vote" means a ballot choice that is counted toward election of a candidate. Except as provided by sections 5 and 6 of this act, all first choices are votes. Lower ranked choices are potential votes that may, in accordance with the requirements of this chapter, be credited to and become votes for a candidate.

NEW SECTION. Sec. 4. INSTANT RUNOFF VOTING—APPLICABLE PROVISIONS. To the extent they are not inconsistent with this chapter, the laws governing elections apply to the pilot project on instant runoff voting authorized by this chapter. The authority of a city meeting the criteria of sections 2 and 7 of this act to participate in an election conducted under the instant runoff voting method expires on July 1, 2013.

NEW SECTION. Sec. 5. TABULATION OF BALLOTS—COUNTING STAGES. The following provisions, subject to the conditions of section 6 of this act, govern how votes for candidates for each office shall be tabulated under the instant runoff voting method:

(1) All first choice votes cast for the office shall be tabulated in the first counting stage. If, following this first counting stage, a candidate receives a majority of the votes cast for the office, that candidate is deemed elected to the office and counting ends;

(2) If no candidate receives a majority of the votes cast for the office during the first counting stage, the second counting stage begins by eliminating the last place candidate for that office. On ballots that indicate a first choice preference for the eliminated candidate, the second choice preferences are counted as votes for the candidates so designated. If, following this second counting stage, a candidate receives a majority of the votes cast for the office, that candidate is deemed elected to the office and counting ends;

(3) If, following the second counting stage, no candidate receives a majority of the votes cast for the office, the third counting stage begins by eliminating the last place candidate for that office. On ballots that indicate a first choice preference for the eliminated candidate, the next choice preferences are counted as votes for the candidates so designated. If, following this third counting stage, a candidate receives a majority of votes cast for the office, that candidate is deemed elected to the office and counting ends;

(4) If, following the third counting stage, no candidate receives a majority of the votes cast for the office, the counting process provided by subsection (3) of this section continues in succession until either a candidate receives a majority of the votes cast for the office or all but one candidate has been eliminated. In accordance with the provisions of this subsection, a candidate who receives either a majority of the votes cast for the office or who is the sole remaining candidate shall be deemed elected to the office; and

(5) If at any stage in the counting process there are two or more last place candidates for the office, these candidates must be eliminated simultaneously. On ballots that indicate a first choice preference for the eliminated candidates,

the next choice preferences shall be counted as votes for the candidates so designated.

NEW SECTION. Sec. 6. VOTING CONDITIONS AND LIMITATIONS.

(1)(a) Once a ballot is exhausted, it is disregarded and not subject to additional tabulation procedures.

(b) A ballot assigning the same ranking to more than one candidate for an office is exhausted when the duplicate ranking is reached. No vote may be recorded for any candidates designated with the same ranking on the same ballot.

(2) The county auditor may not count more than three choices for any one office from a ballot.

(3) If the total number of votes for all write-in candidates in each race during any counting stage is fewer than the last place candidate among the candidates appearing on the ballot, all write-in candidates must be eliminated for that counting stage and subsequent counting stages.

(4) If, following the conclusion of the counting stages, the tabulated ballots do not contain a sufficient number of effective second and lower choices for a candidate to receive a majority of the votes cast for any office, the candidate who either has the highest number of votes credited to him or her for that office, or who is the sole remaining candidate shall be deemed elected to the office.

(5) No votes may be counted for a candidate who has been eliminated.

NEW SECTION. Sec. 7. LOCAL OPTION AUTHORIZED. (1) In accordance with the provisions of section 2 of this act, the legislative body of a qualifying city may, for a specific election or elections, adopt instant runoff voting as the method for electing candidates for all nonpartisan city offices.

(2)(a) After adoption of instant runoff voting by the legislative body of a qualifying city for a specific election or elections as provided for by subsection (1) of this section, the city shall, before conducting an election using the instant runoff voting method, notify the county auditor and the secretary of state of its intent to hold such an election.

(b) If the county auditor notifies the city that existing election equipment of the county is insufficient for conducting an election under the instant runoff voting method, the city and the auditor shall negotiate an agreement for the purchase of any new equipment specifically required for this election method. Nothing in this subsection precludes the auditor from canvassing the returns of an instant runoff voting election by hand.

(3) The date of any election conducted under the instant runoff voting method must be consistent with the timeline required by section 2 of this act.

NEW SECTION. Sec. 8. BALLOT SPECIFICATIONS AND DIRECTIONS TO VOTERS. Ballots for elections conducted under the instant runoff voting method should be clear and easily understood. Sample ballots illustrating voting procedures must be posted in or near voting booths and included within instruction packets for absentee ballots. Directions provided to voters must conform substantially to the following specifications:

"You may choose a maximum of three candidates for each office in order of preference. Indicate your first choice designation by marking the number "1" beside a candidate's name (or by marking in the column labeled "First Choice"). Indicate your second choice designation by

marking the number "2" beside a candidate's name (or by marking in the column labeled "Second Choice"). Indicate your third choice designation by marking the number "3" beside a candidate's name (or by marking in the column labeled "Third Choice"). You are not required to choose more than one candidate for each office. Designating two or more candidates in order of preference will not affect your first choice designation. Do not mark the same designation number beside more than one candidate or put more than one mark in each column for the office on which you are voting. Do not skip designation numbers."

NEW SECTION. Sec. 9. CHANGES IN VOTING DEVICES AND COUNTING METHODS. Participating state and local election officials may provide for voting directions and the design, processing, and tabulation of instant runoff voting ballots used in the pilot project authorized by section 2 of this act. State and local actions must be consistent with the provisions of this chapter.

Election officials should provide voters with a ballot that has a distinctive design, format, or layout for offices to which instant runoff voting applies. Ballot sections for contests that have fewer than three candidates for the same office, however, may differ from ballot sections for which the instant runoff voting method applies.

Sec. 10. RCW 29A.52.220 and 2003 c 111 s 1306 are each amended to read as follows:

(1) No primary may be held for any single position in any city, town, district, or district court, as required by RCW 29A.52.210, if, after the last day allowed for candidates to withdraw, there are no more than two candidates filed for the position. The county auditor shall, as soon as possible, notify all the candidates so affected that the office for which they filed will not appear on the primary ballot.

(2) No primary may be held for nonpartisan offices in any first class city if the city:

(a) Is a qualifying city that has been certified to participate in the pilot project authorized by section 2 of this act; and

(b) Is conducting an election using the instant runoff voting method for the pilot project authorized by section 2 of this act.

(c) This subsection (2) expires July 1, 2013.

(3) No primary may be held for the office of commissioner of a park and recreation district or for the office of cemetery district commissioner.

~~((3))~~ (4) Names of candidates for offices that do not appear on the primary ballot shall be printed upon the general election ballot in the manner specified by RCW ~~((29A.36.130))~~ 29A.36.131.

Sec. 11. RCW 29A.60.160 and 2003 c 111 s 1516 are each amended to read as follows:

Except for an election conducted under the instant runoff voting method for the pilot project authorized by section 2 of this act, at least every third day after a primary or election and before certification of the election results, except Sundays and legal holidays, the county auditor, as delegated by the county canvassing board, shall process absentee ballots and canvass the votes cast at

that primary or election, if the county auditor is in possession of more than twenty-five ballots that have yet to be canvassed. The county auditor, as delegated by the county canvassing board, may use his or her discretion in determining when to process the remaining absentee ballots and canvass the votes during the final four days before the certification of election results in order to protect the secrecy of any ballot. In counties where this process has not been delegated to the county auditor, the county auditor shall convene the county canvassing board to process absentee ballots and canvass the votes cast at the primary or election as set forth in this section.

Except for an election conducted under the instant runoff voting method for the pilot project authorized by section 2 of this act, each absentee ballot previously not canvassed that was received by the county auditor two days or more before processing absentee ballots and canvassing the votes as delegated by or processed by the county canvassing board, that either was received by the county auditor before the closing of the polls on the day of the primary or election for which it was issued, or that bears a postmark on or before the primary or election for which it was issued, must be processed at that time. The tabulation of votes that results from that day's canvass must be made available to the general public immediately upon completion of the canvass.

Sec. 12. RCW 29A.60.190 and 2004 c 266 s 18 are each amended to read as follows:

(1) Except as provided by subsection (3) of this section, on the tenth day after a special election or primary and on the fifteenth day after a general election, the county canvassing board shall complete the canvass and certify the results. Each absentee ballot that was returned before the closing of the polls on the date of the primary or election for which it was issued, and each absentee ballot with a postmark on or before the date of the primary or election for which it was issued and received on or before the date on which the primary or election is certified, must be included in the canvass report.

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

(3) On or before the thirtieth day after an election conducted under the instant runoff voting method for the pilot project authorized by section 2 of this act, the canvassing board shall complete the canvass and certify the results.

NEW SECTION. **Sec. 13.** This chapter expires July 1, 2013.

NEW SECTION. **Sec. 14.** Sections 11 and 12 of this act expire July 1, 2013.

NEW SECTION. **Sec. 15.** Sections 1 through 9 and 13 of this act constitute a new chapter in Title 29A RCW.

NEW SECTION. **Sec. 16.** Captions used in this act are not part of the law.

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

Passed by the House March 8, 2005.

Passed by the Senate April 12, 2005.

Approved by the Governor April 22, 2005.
Filed in Office of Secretary of State April 22, 2005.

CHAPTER 154

[House Bill 1487]

PAYMENT AGREEMENTS—PUBLIC FACILITIES DISTRICTS

AN ACT Relating to payment agreements; and amending RCW 39.96.020.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 39.96.020 and 2004 c 108 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) "Financial advisor" means a financial services or financial advisory firm:

(a) With recognized knowledge and experience in connection with the negotiation and execution of payment agreements;

(b) That is acting solely as financial advisor to the governmental entity in connection with the execution of the payment agreement and the issuance or incurring of any related obligations, and not as a principal, placement agent, purchaser, underwriter, or other similar party, and that does not control, nor is it controlled by or under common control with, any such party;

(c) That is compensated for its services in connection with the execution of payment agreements, either directly or indirectly, solely by the governmental entity; and

(d) Whose compensation is not based on a percentage of the notional amount of the payment agreement or of the principal amount of any related obligations.

(2) "Governmental entity" means state government or local government.

(3) "Local government" means any city, county, city transportation authority, regional transit authority established under chapter 81.112 RCW, port district, public hospital district, public facilities district, or public utility district, or any joint operating agency formed under RCW 43.52.360, that has or will have outstanding obligations in an aggregate principal amount of at least one hundred million dollars as of the date a payment agreement is executed or is scheduled by its terms to commence or had at least one hundred million dollars in gross revenues during the preceding calendar year.

(4) "Obligations" means bonds, notes, bond anticipation notes, commercial paper, or other obligations for borrowed money, or lease, installment purchase, or other similar financing agreements or certificates of participation in such agreements.

(5) "Payment agreement" means a written agreement which provides for an exchange of payments based on interest rates, or for ceilings or floors on these payments, or an option on these payments, or any combination, entered into on either a current or forward basis.

(6) "State government" means (a) the state of Washington, acting by and through its state finance committee, (b) the Washington health care facilities authority, (c) the Washington higher education facilities authority, (d) the

Washington state housing finance commission, or (e) the state finance committee upon adoption of a resolution approving a payment agreement on behalf of any state institution of higher education as defined under RCW 28B.10.016: PROVIDED, That such approval shall not constitute the pledge of the full faith and credit of the state, but a pledge of only those funds specified in the approved agreement.

Passed by the House March 11, 2005.

Passed by the Senate April 11, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 155

[Substitute House Bill 1491]

AQUATIC LANDS STATUTES—RECODIFICATION

AN ACT Relating to recodification of aquatic lands statutes; amending RCW 79.90.080, 79.90.090, 79.90.100, 79.90.105, 79.90.110, 79.90.120, 79.90.130, 79.90.150, 79.90.160, 79.90.170, 79.90.180, 79.90.190, 79.90.200, 79.90.210, 79.90.215, 79.90.220, 79.90.230, 79.90.240, 79.90.245, 79.90.250, 79.90.260, 79.90.270, 79.90.280, 79.90.290, 79.90.300, 79.90.310, 79.90.320, 79.90.325, 79.90.330, 79.90.340, 79.90.350, 79.90.360, 79.90.370, 79.90.390, 79.90.400, 79.90.410, 79.90.450, 79.90.455, 79.90.456, 79.90.457, 79.90.460, 79.90.470, 79.90.475, 79.90.480, 79.90.485, 79.90.490, 79.90.500, 79.90.505, 79.90.515, 79.90.520, 79.90.535, 79.90.540, 79.90.545, 79.90.550, 79.90.555, 79.90.560, 79.90.565, 79.90.575, 79.90.580, 79.91.010, 79.91.020, 79.91.030, 79.91.040, 79.91.050, 79.91.060, 79.91.070, 79.91.080, 79.91.090, 79.91.100, 79.91.110, 79.91.120, 79.91.130, 79.91.140, 79.91.150, 79.91.160, 79.91.170, 79.91.180, 79.91.190, 79.91.200, 79.91.210, 79.92.010, 79.92.020, 79.92.030, 79.92.035, 79.92.060, 79.92.070, 79.92.080, 79.92.090, 79.92.100, 79.92.110, 79.93.010, 79.93.020, 79.93.030, 79.93.040, 79.93.050, 79.93.060, 79.94.020, 79.94.030, 79.94.040, 79.94.050, 79.94.060, 79.94.070, 79.94.080, 79.94.090, 79.94.100, 79.94.110, 79.94.120, 79.94.130, 79.94.140, 79.94.150, 79.94.160, 79.94.170, 79.94.175, 79.94.181, 79.94.185, 79.94.220, 79.94.230, 79.94.240, 79.94.250, 79.94.260, 79.94.270, 79.94.280, 79.94.290, 79.94.300, 79.94.310, 79.94.320, 79.94.330, 79.94.390, 79.94.400, 79.94.410, 79.94.420, 79.94.430, 79.94.440, 79.95.010, 79.95.020, 79.95.030, 79.95.040, 79.95.050, 79.95.060, 79.96.010, 79.96.020, 79.96.030, 79.96.040, 79.96.050, 79.96.060, 79.96.070, 79.96.080, 79.96.085, 79.96.090, 79.96.100, 79.96.110, 79.96.120, 79.96.130, 79.96.210, 79.96.230, 79.96.906, 79.97.010, 79.97.020, 79.97.030, 79.97.050, and 79.97.060; reenacting and amending RCW 79.94.210 and 79.96.220; adding a new section to chapter 43.30 RCW; adding new chapters to Title 79 RCW; creating new sections; recodifying RCW 79.90.450, 79.90.455, 79.90.545, 79.90.546 [79.90.456], 79.90.090, 79.90.100, 79.90.120, 79.90.410, 79.90.370, 79.90.245, 79.90.400, 79.94.170, 79.90.460, 79.90.470, 79.90.480, 79.90.485, 79.90.490, 79.90.500, 79.90.505, 79.90.510, 79.90.515, 79.90.520, 79.90.525, 79.90.530, 79.90.535, 79.90.540, 79.90.457, 79.90.580, 79.90.475, 79.90.105, 79.90.550, 79.90.555, 79.90.560, 79.90.565, 79.90.900, 79.90.901, 79.90.902, 79.90.080, 79.91.010, 79.91.020, 79.91.030, 79.91.040, 79.91.050, 79.91.060, 79.91.070, 79.91.080, 79.91.090, 79.91.100, 79.91.110, 79.91.120, 79.91.130, 79.91.140, 79.91.150, 79.90.575, 79.91.160, 79.91.170, 79.91.180, 79.91.190, 79.91.200, 79.91.210, 79.91.900, 79.92.010, 79.92.020, 79.92.030, 79.92.035, 79.90.390, 79.92.060, 79.92.070, 79.92.080, 79.92.090, 79.92.100, 79.92.110, 79.92.900, 79.93.010, 79.93.020, 79.93.030, 79.93.040, 79.93.050, 79.93.060, 79.93.900, 79.94.330, 79.94.020, 79.94.030, 79.94.040, 79.90.110, 79.94.050, 79.94.060, 79.94.100, 79.94.110, 79.94.130, 79.94.140, 79.94.150, 79.94.090, 79.94.290, 79.94.270, 79.90.250, 79.90.260, 79.90.270, 79.90.280, 79.90.350, 79.94.080, 79.94.320, 79.90.360, 79.94.070, 79.94.280, 79.94.120, 79.94.300, 79.94.310, 79.94.210, 79.94.260, 79.94.220, 79.94.230, 79.94.240, 79.94.250, 79.90.170, 79.90.180, 79.90.190, 79.90.200, 79.90.210, 79.90.215, 79.90.220, 79.90.230, 79.90.240, 79.94.160, 79.94.175, 79.94.181, 79.94.185, 79.94.390, 79.94.400, 79.94.410, 79.94.420, 79.94.430, 79.94.440, 79.94.450, 79.94.900, 79.95.010, 79.95.020, 79.95.030, 79.95.040, 79.95.050, 79.95.060, 79.90.458, 79.95.900, 79.90.570, 79.96.120, 79.96.130, 79.90.495, 79.96.010, 79.96.020, 79.96.030, 79.96.040, 79.96.050, 79.96.060, 79.96.070, 79.96.140, 79.96.080, 79.96.085, 79.96.906, 79.96.090, 79.96.100, 79.96.110, 79.96.200, 79.96.210, 79.96.220, 79.96.230, 79.96.901, 79.96.902, 79.96.903, 79.96.904, 79.96.905, 79.90.130, 79.90.150, 79.90.160, 79.90.290, 79.90.300, 79.90.310, 79.90.320, 79.90.325, 79.90.330, 79.90.340, 79.90.370, 79.97.010, 79.97.020, 79.97.030, 79.97.040, 79.97.050, 79.97.060, and 79.97.900; and repealing RCW

79.90.010, 79.90.015, 79.90.020, 79.90.025, 79.90.030, 79.90.035, 79.90.040, 79.90.045, 79.90.050, 79.90.055, 79.90.060, 79.90.065, 79.90.070, 79.90.380, 79.90.465, 79.93.070, and 79.94.010.

Be it enacted by the Legislature of the State of Washington:

PART 1
AQUATIC LANDS—GENERAL PROVISIONS

NEW SECTION. Sec. 101. The purpose of sections 102, 144, and 151 of this act and RCW 79.90.450 through 79.90.545 (as recodified by this act) is to articulate a management philosophy to guide the exercise of the state's ownership interest and the exercise of the department's management authority, and to establish standards for determining equitable and predictable lease rates for users of state-owned aquatic lands.

NEW SECTION. Sec. 102. The definitions in this section apply throughout chapters 79.90 through 79.97 RCW (as recodified by this act) unless the context clearly requires otherwise.

(1) "Aquatic lands" means all tidelands, shorelands, harbor areas, and the beds of navigable waters.

(2) "Beds of navigable waters" means those lands lying waterward of and below the line of navigability on rivers and lakes not subject to tidal flow, or extreme low tide mark in navigable tidal waters, or the outer harbor line where harbor area has been created.

(3) "First-class shorelands" means the shores of a navigable lake or river belonging to the state, not subject to tidal flow, lying between the line of ordinary high water and the line of navigability, or inner harbor line where established and within or in front of the corporate limits of any city or within two miles of either side.

(4) "First-class tidelands" means the shores of navigable tidal waters belonging to the state, lying within or in front of the corporate limits of any city, or within one mile of either side and between the line of ordinary high tide and the inner harbor line; and within two miles of the corporate limits on either side and between the line of ordinary high tide and the line of extreme low tide.

(5) "Harbor area" means the area of navigable waters determined as provided in Article XV, section 1 of the state Constitution, which shall be forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce.

(6) "Improvements" when referring to state-owned aquatic lands means anything considered a fixture in law placed within, upon, or attached to aquatic lands that has changed the value of those lands, or any changes in the previous condition of the fixtures that changes the value of the land.

(7) "Inflation rate" means for a given year the percentage rate of change in the previous calendar year's all commodity producer price index of the bureau of labor statistics of the United States department of commerce. If the index ceases to be published, the department shall designate by rule a comparable substitute index.

(8) "Inner harbor line" means a line located and established in navigable waters between the line of ordinary high tide or ordinary high water and the outer harbor line, constituting the inner boundary of the harbor area.

(9) "Log booming" means placing logs into and taking them out of the water, assembling and disassembling log rafts before or after their movement in water-borne commerce, related handling and sorting activities taking place in the water, and the temporary holding of logs to be taken directly into a processing facility. "Log booming" does not include the temporary holding of logs to be taken directly into a vessel.

(10) "Log storage" means the water storage of logs in rafts or otherwise prepared for shipment in water-borne commerce, but does not include the temporary holding of logs to be taken directly into a vessel or processing facility.

(11) "Nonwater-dependent use" means a use that can operate in a location other than on the waterfront. Examples include, but are not limited to, hotels, condominiums, apartments, restaurants, retail stores, and warehouses not part of a marine terminal or transfer facility.

(12) "Outer harbor line" means a line located and established in navigable waters as provided in Article XV, section 1 of the state Constitution, beyond which the state shall never sell or lease any rights whatever to private persons.

(13) "Person" means any private individual, partnership, association, organization, cooperative, firm, corporation, the state or any agency or political subdivision thereof, any public or municipal corporation, or any unit of government, however designated.

(14) "Port district" means a port district created under Title 53 RCW.

(15) "Public utility lines" means pipes, conduits, and similar facilities for distribution of water, electricity, natural gas, telephone, other electronic communication, and sewers, including sewer outfall lines.

(16) "Real rate of return" means the average for the most recent ten calendar years of the average rate of return on conventional real property mortgages as reported by the federal home loan bank board or any successor agency, minus the average inflation rate for the most recent ten calendar years.

(17) "Second-class shorelands" means the shores of a navigable lake or river belonging to the state, not subject to tidal flow, lying between the line of ordinary high water and the line of navigability, and more than two miles from the corporate limits of any city.

(18) "Second-class tidelands" means the shores of navigable tidal waters belonging to the state, lying outside of and more than two miles from the corporate limits of any city, and between the line of ordinary high tide and the line of extreme low tide.

(19) "Shorelands," where not preceded by "first-class" or "second-class," means both first-class shorelands and second-class shorelands.

(20) "State-owned aquatic lands" means all tidelands, shorelands, harbor areas, the beds of navigable waters, and waterways owned by the state and administered by the department or managed under RCW 79.90.475 (as recodified by this act) by a port district. "State-owned aquatic lands" does not include aquatic lands owned in fee by, or withdrawn for the use of, state agencies other than the department.

(21) "Terminal" means a point of interchange between land and water carriers, such as a pier, wharf, or group of such, equipped with facilities for care and handling of either cargo or passengers, or both.

(22) "Tidelands," where not preceded by "first-class" or "second-class," means both first-class tidelands and second-class tidelands.

(23) "Valuable materials" when referring to state-owned aquatic lands means any product or material within or upon lands, such as forest products, forage, stone, gravel, sand, peat, agricultural crops, and all other materials of value except mineral, coal, petroleum, and gas as provided for under chapter 79.14 RCW. However, RCW 79.90.330 and 79.90.340 (as recodified by this act) also apply to materials provided for under chapter 79.14 RCW.

(24) "Water-dependent use" means a use that cannot logically exist in any location but on the water. Examples include, but are not limited to: Water-borne commerce; terminal and transfer facilities; ferry terminals; watercraft sales in conjunction with other water-dependent uses; watercraft construction, repair, and maintenance; moorage and launching facilities; aquaculture; log booming; and public fishing piers and parks.

(25) "Water-oriented use" means a use that historically has been dependent on a waterfront location, but with existing technology could be located away from the waterfront. Examples include, but are not limited to, wood products manufacturing, watercraft sales, fish processing, petroleum refining, sand and gravel processing, log storage, and house boats. For the purposes of determining rent under this chapter, water-oriented uses shall be classified as water-dependent uses if the activity either is conducted on state-owned aquatic lands leased on October 1, 1984, or was actually conducted on the state-owned aquatic lands for at least three years before October 1, 1984. If, after October 1, 1984, the activity is changed to a use other than a water-dependent use, the activity shall be classified as a nonwater-dependent use. If continuation of the existing use requires leasing additional state-owned aquatic lands and is permitted under the shoreline management act of 1971, chapter 90.58 RCW, the department may allow reasonable expansion of the water-oriented use.

Sec. 103. RCW 79.90.080 and 1982 1st ex.s. c 21 s 14 are each amended to read as follows:

The board (~~(of natural resources)~~) acting as the harbor line commission shall keep a full and complete record of its proceedings relating to the establishment of harbor lines and the determination of harbor areas. The board shall have the power from time to time to make and enforce rules (~~(and regulations)~~) for the carrying out of the provisions of chapters 79.90 through 79.96 RCW (as recodified by this act) relating to its duties not inconsistent with law.

Sec. 104. RCW 79.90.090 and 1982 1st ex.s. c 21 s 15 are each amended to read as follows:

The department (~~(of natural resources)~~) shall prepare, and furnish to applicants, blank forms of applications for the purchase of state-owned tidelands or shorelands (~~(belonging to the state)~~), otherwise permitted by RCW 79.94.150 (as recodified by this act) to be sold, and the purchase of valuable material situated thereon, and the lease of state-owned tidelands, shorelands, and harbor areas (~~(belonging to the state)~~), which forms shall contain such instructions as will inform and aid the applicants.

Sec. 105. RCW 79.90.100 and 1982 1st ex.s. c 21 s 16 are each amended to read as follows:

Any person desiring to purchase any (~~(tide or shore lands belonging to the)~~) state-owned tidelands or shorelands, otherwise permitted under RCW 79.94.150 (as recodified by this act) to be sold, or to purchase any valuable material

situated thereon, or to lease any state-owned aquatic lands, shall file with the department (~~((of natural resources))~~) an application, on the proper form which shall be accompanied by reasonable fees to be prescribed by the board (~~((of natural resources))~~) in its rules (~~((and regulations))~~), in an amount sufficient to defray the cost of performing or otherwise providing for the processing, review, or inspection of the applications or activities permitted pursuant to the applications for each category of services performed. These fees shall be credited to the resource management cost account (~~((RMCA))~~) fund in the general fund.

Sec. 106. RCW 79.90.105 and 2002 c 304 s 1 are each amended to read as follows:

(1) The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain without charge a dock on (~~((such))~~) the areas if used exclusively for private recreational purposes and the area is not subject to prior rights, including any rights of upland, tideland, or shoreland owners as provided in RCW 79.94.070, 79.94.260, 79.94.280, and 79.95.010 (as recodified by this act). The dock cannot be sold or leased separately from the upland residence. The dock cannot be used to moor boats for commercial or residential use. This permission is subject to applicable local, state, and federal rules and regulations governing location, design, construction, size, and length of the dock. Nothing in this subsection (1) prevents the abutting owner from obtaining a lease if otherwise provided by law.

(2) The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain a mooring buoy without charge if the boat that is moored to the buoy is used for private recreational purposes, the area is not subject to prior rights, including any rights of upland, tideland, or shoreland owners as provided in RCW 79.94.070, 79.94.260, 79.94.280, and 79.95.010 (as recodified by this act), and the buoy will not obstruct the use of mooring buoys previously authorized by the department.

(a) The buoy must be located as near to the upland residence as practical, consistent with applicable rules and regulations and the provisions of this section. The buoy must be located, or relocated if necessary, to accommodate the use of lawfully installed and maintained buoys.

(b) If two or more residential owners, who otherwise qualify for free use under the provisions of this section, are in dispute over assertion of rights to install and maintain a mooring buoy in the same location, they may seek formal settlement through adjudication in superior court for the county in which the buoy site is located. In the adjudication, preference must be given to the residential owner that first installed and continually maintained and used a buoy on that site, if it meets all applicable rules, regulations, and provisions of this section, and then to the owner of the residential property nearest the site. Nothing in this section requires the department to mediate or otherwise resolve disputes between residential owners over the use of the same site for a mooring buoy.

(c) The buoy cannot be sold or leased separately from the abutting residential property. The buoy cannot be used to moor boats for commercial or residential use, nor to moor boats over sixty feet in length.

(d) If the department determines that it is necessary for secure moorage, the abutting residential owner may install and maintain a second mooring buoy, under the same provisions as the first, the use of which is limited to a second mooring line to the boat moored at the first buoy.

(e) The permission granted in this subsection (2) is subject to applicable local, state, and federal rules and regulations governing location, design, installation, maintenance, and operation of the mooring buoy, anchoring system, and moored boat. Nothing in this subsection (2) prevents a boat owner from obtaining a lease if otherwise provided by law. This subsection (2) also applies to areas that have been designated by the commissioner (~~(of public lands)~~) or the fish and wildlife commission as aquatic reserves.

(3) This permission to install and maintain a recreational dock or mooring buoy may be revoked by the department, or the department may direct the owner of a recreational dock or mooring buoy to relocate their dock or buoy, if the department makes a finding of public necessity to protect waterward access, ingress rights of other landowners, public health or safety, or public resources. Circumstances prompting a finding of public necessity may include, but are not limited to, the dock, buoy, anchoring system, or boat posing a hazard or obstruction to navigation or fishing, contributing to degradation of aquatic habitat, or contributing to decertification of shellfish beds otherwise suitable for commercial or recreational harvest. The revocation may be appealed as provided for under RCW 79.90.400 (as recodified by this act).

(4) Nothing in this section authorizes a boat owner to abandon a vessel at a recreational dock, mooring buoy, or elsewhere.

Sec. 107. RCW 79.90.110 and 1982 1st ex.s. c 21 s 17 are each amended to read as follows:

In no case shall any state-owned tidelands or shorelands (~~(belonging to the state)~~), otherwise permitted under RCW 79.94.150 (as recodified by this act) to be sold, (~~(or any valuable materials situated within or upon any tidelands, shorelands or beds of navigable waters belonging to the state,)~~) be offered for sale unless the (~~(same shall)~~) lands have been appraised by the department (~~(of natural resources)~~) within ninety days prior to the date fixed for the sale.

Sec. 108. RCW 79.90.120 and 1982 1st ex.s. c 21 s 18 are each amended to read as follows:

The department (~~(of natural resources)~~) may cause any state-owned aquatic lands to be surveyed for the purpose of ascertaining and determining the area subject to sale or lease.

Sec. 109. RCW 79.90.130 and 1991 c 322 s 24 are each amended to read as follows:

The department is authorized and empowered to confer with and enter into any agreements with the public authorities of the state of Oregon, which in the judgment of the department will assist the state of Washington and the state of Oregon in securing the maximum revenues for sand, gravel, or other valuable materials taken from the bed of the Columbia river where (~~(said)~~) the river forms the boundary line between (~~(said)~~) the states.

Sec. 110. RCW 79.90.150 and 2003 c 39 s 41 are each amended to read as follows:

When gravel, rock, sand, silt, or other material from any state-owned aquatic lands is removed by any public agency or under public contract for channel or harbor improvement, or flood control, use of ~~((such))~~ the material may be authorized by the department ~~((of natural resources))~~ for a public purpose on land owned or leased by the state or any municipality, county, or public corporation ~~((= PROVIDED, That))~~. However, when no public land site is available for deposit of ~~((such))~~ the material, its deposit on private land with the landowner's permission is authorized and may be designated by the department ~~((of natural resources))~~ to be for a public purpose. Prior to removal and use, the state agency, municipality, county, or public corporation contemplating or arranging ~~((such))~~ the use shall first obtain written permission from the department ~~((of natural resources))~~. No payment of royalty shall be required for ~~((such))~~ the gravel, rock, sand, silt, or other material used for ~~((such))~~ the public purpose, but a charge will be made if ~~((such))~~ the material is subsequently sold or used for some other purpose ~~((= PROVIDED, That))~~. Further, the department may authorize ~~((such))~~ the public agency or private landowner to dispose of ~~((such))~~ the material without charge when necessary to implement disposal of material. No charge shall be required for any use of the material obtained under the provisions of this chapter when used solely on an authorized site. No charge shall be required for any use of the material obtained under the provisions of this chapter if the material is used for public purposes by local governments. Public purposes include, but are not limited to, construction and maintenance of roads, dikes, and levies. Nothing in this section shall repeal or modify the provisions of RCW 77.55.100 or eliminate the necessity of obtaining a permit for ~~((such))~~ the removal from other state or federal agencies as otherwise required by law.

Sec. 111. RCW 79.90.160 and 2000 c 13 s 2 are each amended to read as follows:

(1) The legislature finds and declares that, due to the extraordinary volume of material washed down onto ~~((state-owned))~~ beds of of navigable waters and shorelands in the Toutle river, Coweeman river, and portions of the Cowlitz river, the dredge spoils placed upon adjacent publicly and privately owned property in ~~((such))~~ the areas, if further disposed, will be of nominal value to the state and that it is in the best interests of the state to allow further disposal without charge.

(2) All dredge spoil or materials removed from the state-owned beds and shores of the Toutle river, Coweeman river, and that portion of the Cowlitz river from two miles above the confluence of the Toutle river to its mouth deposited on adjacent public and private lands during the years 1980 through December 31, 1995, as a result of dredging of these rivers for navigation and flood control purposes may be sold, transferred, or otherwise disposed of by owners of ~~((such))~~ the lands without the necessity of any charge by the department ~~((of natural resources))~~ and free and clear of any interest of the department ~~((of natural resources))~~ of the state of Washington.

Sec. 112. RCW 79.90.170 and 1982 1st ex.s. c 21 s 23 are each amended to read as follows:

(1) When the department ~~((of natural resources shall have decided))~~ decides to sell any state-owned tidelands or shorelands ~~((belonging to the state))~~, otherwise permitted by RCW 79.94.150 (as recodified by this act) to be sold,

~~((or any valuable materials situated within or upon any aquatic lands,))~~ it shall be the duty of the department to ~~((forthwith))~~ fix the date, place, and the time of sale, and no sale shall be had on any day which is a legal holiday.

(2) The department shall give notice of the sale by advertisement published once a week for four consecutive weeks immediately preceding the date fixed for sale in ~~((said))~~ the notice, in at least one newspaper published and of general circulation in the county in which the whole or any part of any lot, block, or tract of land to be sold ~~((or the valuable materials thereon is to be sold))~~ is situated, and by causing a copy of ~~((said))~~ the notice to be posted in a conspicuous place in the department's Olympia office and the ~~((area))~~ region headquarters administering ~~((such))~~ the sale ~~((, and in the office of the county auditor of such county; which))~~.

(3) ~~The~~ notice shall: (a) Specify the place and time of sale((:)); (b) specify the appraised value ((thereof, and)); (c) describe with particularity each parcel of land to be sold((, or from which valuable materials are to be sold, and in the case of material sales the estimated volume thereof.)); and (d) specify that the terms of sale will be posted in the ((area)) region headquarters and the department's Olympia office((:—PROVIDED, That any sale of valuable material of an appraised value of one thousand dollars or less may be sold directly to the applicant for cash at the appraised value without notice or advertising)).

Sec. 113. RCW 79.90.180 and 1982 1st ex.s. c 21 s 24 are each amended to read as follows:

The department ~~((of natural resources))~~ shall ~~((cause to be printed))~~ print a list of all state-owned tidelands and shorelands ~~((belonging to the state,))~~ otherwise permitted by RCW 79.94.150 (as recodified by this act) to be sold, ~~((or valuable materials contained within or upon aquatic lands, and the appraised value thereof, that are to be sold in the several counties of the state, said))~~ giving appraised value, character of the land, and other information as may be of interest to prospective buyers. The lists ((tø)) must be issued at least four weeks prior to the date of any sale ((of the lands and materials enumerated thereon, such materials to be listed under the name of the county wherein located, in alphabetical order giving the appraised values, the character of the same and such other information as may be of interest to prospective buyers. Said department shall cause to be distributed to the auditor of each county in the state a sufficient number of such lists to supply the demands made upon them respectively as reported by such auditors. And said county auditors shall keep the list so furnished in a conspicuous place or receptacle on the counter of the public office of their respective departments, and, when requested so to do, shall mail copies of such lists to residents of their counties)). The department shall retain for free distribution in its office in Olympia and the ~~((area))~~ regional offices sufficient copies of ~~((said))~~ the lists, to be kept in a conspicuous place or receptacle on the counter of the general and regional office of the department ~~((of natural resources, and the areas)),~~ and, when requested ~~((so do))~~ to do so, shall mail copies of ~~((said))~~ the list as issued to any applicant ~~((therefor. Proof of publication of the notice of sale shall be made by affidavit of the publisher, or person in charge, of the newspaper publishing the same and proof of posting the notice of sale and the receipt of the lists shall be made by certificate of the county auditor which shall forthwith be sent to and filed with the department of natural resources)).~~

Sec. 114. RCW 79.90.190 and 1982 1st ex.s. c 21 s 25 are each amended to read as follows:

The department (~~(of natural resources)~~) is authorized to expend any sum in additional advertising of (~~(such)~~) the sale as shall be determined to be in the best interests of the state.

Sec. 115. RCW 79.90.200 and 1982 1st ex.s. c 21 s 26 are each amended to read as follows:

~~((When sales are made by the county auditor, they shall take place at such place on county property as the county legislative authority may direct in the county in which the whole, or the greater part, of each lot, block, or tract of land, or the material thereon, to be sold, is situated. All other sales shall be held at the departmental area offices having jurisdiction over the respective sales. All sales shall be conducted between the hours of ten o'clock a.m. and four o'clock p.m.))~~

Any sale (~~(which)~~) that has been offered, and for which there are no bids received shall not be reoffered until it has been readvertised as specified in RCW 79.90.170, 79.90.180, and 79.90.190 (as recodified by this act). If all sales cannot be offered within the specified time on the advertised date, the sale shall continue on the following day between the hours of ten o'clock a.m. and four o'clock p.m.

Sec. 116. RCW 79.90.210 and 1990 c 163 s 1 are each amended to read as follows:

All sales of state-owned tidelands and shorelands (~~(belonging to the state,)~~) otherwise permitted by RCW 79.94.150 (as recodified by this act) to be sold, shall be sold at public auction (~~(and all sales of valuable materials shall be at public auction or by sealed bid)~~) to the highest responsible bidder, on the terms prescribed by law and as specified in the notice provided, and no land (~~(or materials)~~) shall be sold for less than (~~(their)~~) the appraised value(~~(= PROVIDED, That when valuable material has been appraised at an amount not exceeding one hundred thousand dollars, the department of natural resources, when authorized by the board of natural resources, may arrange for the sale at public auction of said valuable material and for its removal under such terms and conditions as the department may prescribe, after the department shall have caused to be published not less than ten days prior to sale a notice of such sale in a newspaper of general circulation located nearest to the property to be sold. However, any sale of valuable material on aquatic lands of an appraised value of ten thousand dollars or less may be sold directly to the applicant for cash without notice or advertising))~~).

Sec. 117. RCW 79.90.215 and 2003 c 28 s 1 are each amended to read as follows:

(1) To determine the "highest responsible bidder" under RCW 79.90.210 (as recodified by this act), the department (~~(of natural resources)~~) shall be entitled to consider, in addition to price, the following:

- (a) The financial and technical ability of the bidder to perform the contract;
- (b) Whether the bid contains material defects;
- (c) Whether the bidder has previously or is currently complying with terms and conditions of any other contracts with the state or relevant contracts with entities other than the state;

(d) Whether the bidder was the "highest responsible bidder" for a sale within the previous five years but failed to complete the sale, such as by not entering into a resulting contract or by not paying the difference between the deposit and the total amount due. However, sales that were bid prior to January 1, 2003, may not be considered for the purposes of this subsection (1)(d);

(e) Whether the bidder has been convicted of a crime relating to the public lands or natural resources of the state of Washington, the United States, or any other state, tribe, or country, where "conviction" shall include a guilty plea, or unvacated forfeiture of bail;

(f) Whether the bidder is owned, controlled, or managed by any person, partnership, or corporation that is not responsible under this statute; and

(g) Whether the subcontractors of the bidder, if any, are responsible under this statute.

(2) Whenever the department has reason to believe that the apparent high bidder is not a responsible bidder, the department may award the sale to the next responsible bidder or the department may reject all bids pursuant to RCW 79.90.240 (as recodified by this act).

Sec. 118. RCW 79.90.220 and 1982 1st ex.s. c 21 s 28 are each amended to read as follows:

(1) Sales by public auction under this chapter shall be conducted under the direction of the department ~~((of natural resources,))~~ or by its authorized representative ~~((or by the county auditor of the county in which the sale is held))~~. The department's representatives ~~((and the county auditor))~~ are ~~((hereinafter))~~ referred to as auctioneers.

(2) On or before the time specified in the notice of sale each bidder shall deposit with the auctioneer, in cash or by certified check, cashier's check, or postal money order payable to the order of the department ~~((of natural resources))~~, or by bid guarantee in the form of bid bond acceptable to the department, an amount equal to the deposit specified in the notice of sale. The deposit shall include a specified amount of the appraised price for the valuable materials offered for sale, together with any fee required by law for the issuance of contracts or bills of sale. ~~((Said))~~ The deposit may, when prescribed in the notice of sale, be considered an opening bid of an amount not less than the minimum appraised price established in the notice of sale. The successful bidder's deposit will be retained by the auctioneer and the difference, if any, between the deposit and the total amount due shall on the day of the sale be paid in cash, certified check, cashier's check, draft, postal money order, or by personal check made payable to the department. If a bid bond is used, the share of the total deposit due guaranteed by the bid bond shall, within ten days of the day of sale, be paid in cash, certified check, cashier's check, draft, or postal money order payable to the department. Other deposits, if any, shall be returned to the respective bidders at the conclusion of each sale.

(3) The auctioneer shall deliver to the purchaser a memorandum of ~~((his))~~ the purchase containing a description of the land or materials purchased, the price bid, and the terms of the sale.

(4) The auctioneer shall at once send to the department the cash, certified check, cashier's check, draft, postal money order, or bid guarantee received from the purchaser, and a copy of the memorandum delivered to the purchaser,

together with such additional report of ~~((his))~~ the auctioneer's proceedings with reference to ~~((such))~~ the sales as may be required by the department.

Sec. 119. RCW 79.90.230 and 1982 1st ex.s. c 21 s 29 are each amended to read as follows:

If any tideland or shoreland, when otherwise permitted under RCW 79.94.150 ~~((to be sold))~~ (as recodified by this act), ~~((so))~~ offered for sale ~~((be))~~ is not sold, ~~((the same))~~ it may again be advertised for sale, as provided in this chapter, whenever in the opinion of the department ~~((of natural resources))~~ it ~~((shall be))~~ is expedient ~~((so))~~ to do ~~((, and such land shall be again advertised and offered for sale as herein provided,))~~ so. Whenever any person ~~((shall apply))~~ applies to the ~~((commissioner))~~ department in writing to have ~~((such))~~ the land offered for sale and ~~((shall))~~ agrees to pay ~~((;))~~ at least the appraised value ~~((thereof))~~ of the land and ~~((shall))~~ deposits with the department at the time of making ~~((such))~~ the application a sufficient sum of money to pay the cost of advertising ~~((such))~~ the sale, the land may be advertised again and offered for sale as provided in this chapter.

Sec. 120. RCW 79.90.240 and 1990 c 163 s 3 are each amended to read as follows:

(1) A sale of ~~((valuable materials or))~~ tidelands or shorelands otherwise permitted by RCW 79.94.150 (as recodified by this act) to be sold shall be confirmed if:

(a) No affidavit showing that the interest of the state in such sale was injuriously affected by fraud or collusion, is filed with the ~~((commissioner of public lands))~~ department's Olympia office within ten days from the receipt of the report of the auctioneer conducting the sale;

(b) It ~~((shall))~~ appears from ~~((such))~~ the report that the sale was fairly conducted, that the purchaser was the highest responsible bidder at ~~((such))~~ the sale, and that the sale price is not less than the appraised value of the property sold;

(c) The ~~((commissioner))~~ department is satisfied that the lands ~~((or material))~~ sold would not, upon being readvertised and offered for sale, sell for a substantially higher price; and

(d) The payment required by law to be made at the time of making the sale has been made, and that the best interests of the state ~~((may be subserved thereby))~~ are being served.

(2) Upon confirming a sale, the ~~((commissioner))~~ department shall enter upon ~~((his))~~ its records the confirmation of sale and ~~((thereupon))~~ issue to the purchaser a contract of sale or bill of sale as the case may be, as is provided for in this chapter.

Sec. 121. RCW 79.90.245 and 2004 c 276 s 914 are each amended to read as follows:

(1) After deduction for management costs as provided in RCW 79.64.040 and payments to towns under RCW 79.92.110(2) (as recodified by this act), all moneys received by the state from the sale or lease of state-owned aquatic lands and from the sale of valuable material from state-owned aquatic lands shall be deposited in the aquatic lands enhancement account which is hereby created in the state treasury. After appropriation, these funds shall be used solely for aquatic lands enhancement projects; for the purchase, improvement, or

protection of aquatic lands for public purposes; for providing and improving access to ~~((such))~~ the lands; and for volunteer cooperative fish and game projects.

(2) In providing grants for aquatic lands enhancement projects, the department shall require grant recipients to incorporate the environmental benefits of the project into their grant applications, and the department shall utilize the statement of environmental benefits in its prioritization and selection process. The department shall also develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grants. To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270. The department shall consult with affected interest groups in implementing this section.

(3) During the fiscal biennium ending June 30, 2005, the funds may be appropriated for boating safety, settlement costs for aquatic lands cleanup, and shellfish management, enforcement, and enhancement.

Sec. 122. RCW 79.90.250 and 1982 1st ex.s. c 21 s 31 are each amended to read as follows:

All state-owned tidelands and shorelands ~~((belonging to the state))~~, otherwise permitted under RCW 79.94.150 ~~(as recodified by this act)~~ to be sold, shall be sold on the following terms: One-tenth to be paid on the date of sale; one-tenth to be paid one year from the date of the issuance of the contract of sale; and one-tenth annually thereafter until the full purchase price has been made; but any purchaser may make full payment at any time. All deferred payments shall draw interest at ~~((such))~~ the rate as may be fixed ~~((, from time to time,))~~ by rule adopted by the board ~~((of natural resources))~~, and the rate of interest, as so fixed at the date of each sale, shall be stated in all advertising for and notice of ~~((said))~~ the sale and in the contract of sale. The first installment of interest shall become due and payable one year after the date of the contract of sale and ~~((thereafter))~~ all interest shall become due and payable annually on ~~((said))~~ that date, and all remittances for payment of either principal or interest shall be forwarded to the department ~~((of natural resources))~~.

Sec. 123. RCW 79.90.260 and 1982 1st ex.s. c 21 s 32 are each amended to read as follows:

When the entire purchase price of any state-owned tidelands or shorelands ~~((belonging to the state))~~, otherwise permitted under RCW 79.94.150 ~~(as recodified by this act)~~ to be sold, shall have been fully paid, the department ~~((of natural resources))~~ shall certify ~~((such))~~ the fact to the governor, and shall cause a deed signed by the governor and attested by the secretary of state, with the seal of the state attached ~~((thereto))~~, to be issued to the purchaser and to be recorded in the ~~((office of the commissioner of public lands))~~ department, and no fee shall be required for any deed issued by the governor other than the fee provided for in this chapter.

Sec. 124. RCW 79.90.270 and 2003 c 334 s 601 are each amended to read as follows:

Each and every contract for the sale of ~~((the))~~, and each deed to ~~((the))~~, state-owned tidelands or shorelands ~~((belonging to the state))~~, otherwise permitted

under RCW 79.94.150 (as recodified by this act) to be sold, shall contain the reservation contained in RCW 79.11.210.

Sec. 125. RCW 79.90.280 and 1982 1st ex.s. c 21 s 34 are each amended to read as follows:

The purchaser of state-owned tidelands or shorelands (~~((belonging to the state))~~), otherwise permitted under RCW 79.94.150 (as recodified by this act) to be sold, except in cases where the full purchase price is paid at the time of the purchase, shall enter into and sign a contract with the state to be signed by the commissioner (~~((of public lands))~~) on behalf of the state, with ~~((his))~~ the seal of the commissioner's office attached, and in a form to be prescribed by the attorney general, and under those terms and conditions provided in RCW ~~((79.01.228))~~ 79.11.200.

Sec. 126. RCW 79.90.290 and 1982 1st ex.s. c 21 s 35 are each amended to read as follows:

When valuable materials (~~((shall have been))~~) are sold separate from state-owned aquatic lands and the purchase price is paid in full, the department (~~((of natural resources))~~) shall cause a bill of sale, signed by the commissioner (~~((of public lands))~~) and attested by the seal of ~~((his))~~ the commissioner's office, setting forth the time within which ~~((such))~~ the material shall be removed. The bill of sale shall be issued to the purchaser and shall be recorded in the department's Olympia office (~~((of the commissioner of public lands))~~), upon the payment of the fee provided for in this chapter.

Sec. 127. RCW 79.90.300 and 1991 c 322 s 26 are each amended to read as follows:

The department (~~((of natural resources))~~), upon application by any person or when determined by the department to be in the best interest of the state, may enter into a contract or lease providing for the removal and sale of rock, gravel, sand, and silt, or other valuable materials located within or upon beds of navigable waters, or upon any state-owned tidelands or shorelands (~~((belonging to the state))~~) and providing for payment to be made (~~((therefor))~~) by such royalty as the department may fix, by negotiation, by sealed bid, or at public auction. If application is made for the purchase of any valuable material situated within or upon state-owned aquatic lands the department shall inspect and appraise the value of the material in the application.

Sec. 128. RCW 79.90.310 and 1982 1st ex.s. c 21 s 37 are each amended to read as follows:

Each application made pursuant to RCW 79.90.300 (as recodified by this act) shall set forth the estimated quantity and kind of materials desired to be removed and shall be accompanied by a map or plat showing the area from which the applicant wishes to remove ~~((such))~~ the materials. The department (~~((of natural resources))~~) may in its discretion include in any lease or contract entered into pursuant to RCW 79.90.300 through 79.90.320 (as recodified by this act), ~~((such))~~ terms and conditions deemed necessary by the department to protect the interests of the state. In each ~~((such))~~ lease or contract the department shall provide for a right of forfeiture by the state, upon a failure to operate under the lease or contract or pay royalties or rent for periods therein stipulated, and the department shall require a bond with a surety company authorized to transact a surety business in this state, as surety to secure the

performance of the terms and conditions of ~~((such))~~ the contract or lease including the payment of royalties. The right of forfeiture shall be exercised by entry of a declaration of forfeiture in the records of the department. The amount of rock, gravel, sand, or silt taken under the contract or lease shall be reported monthly by the purchaser to the department and payment ~~((therefor))~~ made on the basis of the royalty provided in the lease or contract.

Sec. 129. RCW 79.90.320 and 1982 1st ex.s. c 21 s 38 are each amended to read as follows:

The department ~~((of natural resources))~~ may inspect and audit books, contracts, and accounts of each person removing rock, gravel, sand, or silt pursuant to any ~~((such))~~ lease or contract under RCW 79.90.300 and 79.90.310 (as recodified by this act) and make such other investigation and secure or receive any other evidence necessary to determine whether or not the state is being paid the full amount payable to it for the removal of ~~((such))~~ the materials.

Sec. 130. RCW 79.90.325 and 2003 c 334 s 602 are each amended to read as follows:

Whenever, pursuant to RCW 79.15.300, the ~~((commissioner))~~ department enters into a contract for the sale and removal of rock, gravel, sand, or silt out of a riverbed, the ~~((commissioner))~~ department shall, when establishing a royalty, take into consideration flood protection value to the public that will arise as a result of ~~((such))~~ the removal.

Sec. 131. RCW 79.90.330 and 2003 c 334 s 603 are each amended to read as follows:

The department may issue permits and leases for prospecting, placer mining contracts, and contracts for the mining of valuable minerals and specific materials, except rock, gravel, sand, silt, coal, or hydrocarbons, upon and from any state-owned aquatic lands ~~((belonging to the state))~~, or which have been sold and the minerals ~~((thereon))~~ reserved by the state in tracts not to exceed six hundred forty acres or an entire government-surveyed section. The procedures contained at RCW 79.14.300 through 79.14.450, inclusive, shall apply ~~((thereto))~~.

Sec. 132. RCW 79.90.340 and 2003 c 334 s 604 are each amended to read as follows:

The department is authorized to execute option contracts for prospecting purposes and leases for the mining and extraction of coal from any state-owned aquatic lands ~~((owned by the state))~~ or from which it may ~~((hereafter))~~ acquire title, or from any aquatic lands sold or leased by the state the minerals of which have been reserved by the state. The procedures contained at RCW 79.14.470 through 79.14.580, inclusive, shall apply ~~((thereto))~~.

Sec. 133. RCW 79.90.350 and 1982 1st ex.s. c 21 s 41 are each amended to read as follows:

Whenever the holder of any contract to purchase any state-owned tidelands or shorelands ~~((belonging to the state))~~, otherwise permitted under RCW 79.94.150 (as recodified by this act) to be sold, or the holder of any lease of any ~~((such))~~ lands, except for mining of valuable minerals, or coal, or extraction of petroleum or gas, shall surrender the ~~((same))~~ contract or lease to the department ~~((of natural resources))~~ with the request to have it divided into two or more contracts or leases, the department may divide the ~~((same))~~ contract or lease and

issue new contracts(;) or leases(~~(:—PROVIDED, That)~~). However, no new contract or lease shall issue while there is due and unpaid any rental, taxes, or assessments on the land held under (~~(such)~~) the contract or lease, nor in any case where the department is of the opinion that the state's security would be impaired or endangered by the proposed division. For all (~~(such)~~) new contracts(;) or leases(;) a fee as determined by the board (~~(of natural resources)~~) for each new contract or lease issued, shall be paid by the applicant and (~~(such)~~) the fee shall be paid into the state treasury to the resource management cost account in the general fund, pursuant to RCW 79.64.020.

Sec. 134. RCW 79.90.360 and 1982 1st ex.s. c 21 s 42 are each amended to read as follows:

Any sale or lease of state-owned tidelands or shorelands (~~(belonging to the state)~~), otherwise permitted under RCW 79.94.150 (as recodified by this act) to be sold, made by mistake, or not in accordance with law, or obtained by fraud or misrepresentation, shall be void, and the contract of purchase(;) or lease, issued (~~(thereon)~~) shall be of no effect, and the holder of (~~(such)~~) the contract(;) or lease, shall be required to surrender the (~~(same)~~) contract or lease to the department (~~(of natural resources)~~), which, except in the case of fraud on the part of the purchaser, or lessee, shall cause the money paid on account of (~~(such)~~) the surrendered contract(;) or lease(;) to be refunded to the holder (~~(thereof)~~), provided the (~~(same)~~) money has not been paid into the state treasury.

Sec. 135. RCW 79.90.370 and 1982 1st ex.s. c 21 s 43 are each amended to read as follows:

All contracts of purchase of state-owned tidelands or shorelands (~~(belonging to the state)~~), otherwise permitted under RCW 79.94.150 (as recodified by this act) to be sold, and all leases of state-owned tidelands, shorelands, or beds of navigable waters (~~(belonging to the state)~~) issued by the department (~~(of natural resources)~~) shall be assignable in writing by the contract holder or lessee. The assignee shall be subject to the provisions of law applicable to the purchaser(;) or lessee(;) of whom (~~(he is)~~) they are the assignee, and shall have the same rights in all respects as the original purchaser(;) or lessee(;) of the lands, but only if the assignment is first approved by the department and entered upon the records in the (~~(office of the commissioner of public lands)~~) department.

Sec. 136. RCW 79.90.390 and 1982 1st ex.s. c 21 s 45 are each amended to read as follows:

Whenever improvements have been made on state-owned tidelands, shorelands, or beds of navigable waters, in front of cities or towns, prior to the location of harbor lines in front of (~~(such)~~) the cities or towns, and the reserved harbor area as located include (~~(such)~~) the improvements, no (~~(distraint)~~) seizure or sale of (~~(such)~~) the improvements for taxes shall be had until six months after (~~(said)~~) the lands have been leased or offered for lease(~~(:—PROVIDED, That)~~). However, this section shall not affect or impair the lien for taxes on (~~(said)~~) the improvements.

Sec. 137. RCW 79.90.400 and 2003 c 334 s 606 are each amended to read as follows:

Any applicant to purchase(;) or lease(;) any state-owned aquatic lands (~~(of the state)~~), or any valuable materials (~~(thereon)~~) on state-owned aquatic lands, and any person whose property rights or interest will be affected by

~~((such))~~ the sale or lease, feeling himself or herself aggrieved by any order or decision of the board, or the commissioner, concerning the ~~((same))~~ order or decision, may appeal ~~((therefrom))~~ in the manner provided in RCW 79.02.030.

Sec. 138. RCW 79.90.410 and 1982 1st ex.s. c 21 s 47 are each amended to read as follows:

The department ~~((of natural resources))~~ may review and reconsider any of its official acts relating to ~~((the))~~ state-owned aquatic lands ~~((of the state))~~ until such time as a lease, contract, or deed ~~((shall have been))~~ is made, executed, and finally issued, and the department may recall any lease, contract, or deed issued for the purpose of correcting mistakes or errors, or supplying omissions.

Sec. 139. RCW 79.90.450 and 1984 c 221 s 1 are each amended to read as follows:

The legislature finds that state-owned aquatic lands are a finite natural resource of great value and an irreplaceable public heritage. The legislature recognizes that the state owns these aquatic lands in fee and has delegated to the department ~~((of natural resources))~~ the responsibility to manage these lands for the benefit of the public. The legislature finds that water-dependent industries and activities have played a major role in the history of the state and will continue to be important in the future. The legislature finds that revenues derived from leases of state-owned aquatic lands should be used to enhance opportunities for public recreation, shoreline access, environmental protection, and other public benefits associated with the aquatic lands of the state. The legislature further finds that aquatic lands are faced with conflicting use demands. ~~((The purpose of RCW 79.90.450 through 79.90.545 is to articulate a management philosophy to guide the exercise of the state's ownership interest and the exercise of the department's management authority, and to establish standards for determining equitable and predictable lease rates for users of state-owned aquatic lands.))~~

Sec. 140. RCW 79.90.455 and 1984 c 221 s 2 are each amended to read as follows:

The management of state-owned aquatic lands shall be in conformance with constitutional and statutory requirements. The manager of state-owned aquatic lands shall strive to provide a balance of public benefits for all citizens of the state. The public benefits provided by state-owned aquatic lands are varied and include:

- (1) Encouraging direct public use and access;
- (2) Fostering water-dependent uses;
- (3) Ensuring environmental protection;
- (4) Utilizing renewable resources.

Generating revenue in a manner consistent with subsections (1) through (4) of this section is a public benefit.

Sec. 141. RCW 79.90.456 and 2003 c 334 s 541 are each amended to read as follows:

The department shall foster the commercial and recreational use of the aquatic environment for production of food, fibre, income, and public enjoyment from state-owned aquatic lands ~~((under its jurisdiction))~~ and from associated waters, and to this end the department may develop and improve production and harvesting of seaweeds and sealife attached to or growing on aquatic land or

contained in aquaculture containers, but nothing in this section (~~(shall)~~) alters the responsibility of other state agencies for their normal management of fish, shellfish, game, and water.

Sec. 142. RCW 79.90.457 and 1995 c 357 s 1 are each amended to read as follows:

The department (~~(of natural resources)~~) may exchange state-owned tidelands and shorelands with private and other public landowners if the exchange is in the public interest and will actively contribute to the public benefits established in RCW 79.90.455 (as recodified by this act). The board (~~(of natural resources)~~) shall adopt rules which establish criteria for determining when a proposed exchange is in the public interest and actively contributes to the public benefits established in RCW 79.90.455 (as recodified by this act). The department may not exchange state-owned harbor areas or waterways.

Sec. 143. RCW 79.90.460 and 1984 c 221 s 3 are each amended to read as follows:

(1) The management of state-owned aquatic lands shall preserve and enhance water-dependent uses. Water-dependent uses shall be favored over other uses in state-owned aquatic land planning and in resolving conflicts between competing lease applications. In cases of conflict between water-dependent uses, priority shall be given to uses which enhance renewable resources, water-borne commerce, and the navigational and biological capacity of the waters, and to statewide interests as distinguished from local interests.

(2) Nonwater-dependent use of state-owned aquatic lands is a low-priority use providing minimal public benefits and shall not be permitted to expand or be established in new areas except in exceptional circumstances where it is compatible with water-dependent uses occurring in or planned for the area.

(3) The department shall consider the natural values of state-owned aquatic lands as wildlife habitat, natural area preserve, representative ecosystem, or spawning area prior to issuing any initial lease or authorizing any change in use. The department may withhold from leasing lands which it finds to have significant natural values, or may provide within any lease for the protection of such values.

(4) The power to lease state-owned aquatic lands is vested in the department (~~(of natural resources)~~), which has the authority to make leases upon terms, conditions, and length of time in conformance with the state Constitution and chapters 79.90 through 79.96 RCW (as recodified by this act).

(5) State-owned aquatic lands shall not be leased to persons or organizations which discriminate on the basis of race, color, creed, religion, sex, age, or physical or mental handicap.

NEW SECTION. Sec. 144. Use for public parks or public recreation purposes shall be granted without charge if the state-owned aquatic lands and improvements are available to the general public on a first-come, first-served basis and are not managed to produce a profit for the operator or a concessionaire.

Sec. 145. RCW 79.90.470 and 2002 c 152 s 2 are each amended to read as follows:

~~((1) The use of state-owned aquatic lands for public utility lines owned by a governmental entity shall be granted by an agreement, permit, or other~~

instrument if the use is consistent with the purposes of RCW 79.90.450 through 79.90.460 and does not obstruct navigation or other public uses. The department may recover only its reasonable direct administrative costs incurred in processing and approving the request or application, and reviewing plans for construction of public utility lines. For purposes of this section, "direct administrative costs" means the cost of hours worked directly on an application or request, based on salaries and benefits, plus travel reimbursement and other actual out-of-pocket costs. Direct administrative costs recovered by the department must be deposited into the resource management cost account. Use for public parks or public recreation purposes shall be granted without charge if the aquatic lands and improvements are available to the general public on a first-come, first-served basis and are not managed to produce a profit for the operator or a concessionaire.) The department may lease state-owned tidelands that are in front of state parks only with the approval of the state parks and recreation commission. The department may lease bedlands in front of state parks only after the department has consulted with the state parks and recreation commission.

~~((2) The use of state-owned aquatic lands for local public utility lines owned by a nongovernmental entity will be granted by easement if the use is consistent with the purpose of RCW 79.90.450 through 79.90.460 and does not obstruct navigation or other public uses. The total charge for the easement will be determined under RCW 79.90.575.~~

~~(3) Nothing in this section limits the ability of the department to obtain payment for commodity costs, such as lost revenue from renewable resources, resulting from the granted use of state-owned aquatic lands for public utility lines.)~~

Sec. 146. RCW 79.90.475 and 1984 c 221 s 6 are each amended to read as follows:

(1) Upon request of a port district, the department and port district may enter into an agreement authorizing the port district to manage state-owned aquatic lands abutting or used in conjunction with and contiguous to uplands owned, leased, or otherwise managed by a port district, for port purposes as provided in Title 53 RCW. ~~((Such))~~ The agreement shall include, but not be limited to, provisions defining the specific area to be managed, the term, conditions of occupancy, reservations, periodic review, and other conditions to ensure consistency with the state Constitution and the policies of this chapter. If a port district acquires operating management, lease, or ownership of real property which abuts state-owned aquatic lands currently under lease from the state to a person other than the port district, the port district shall manage ~~((such))~~ state-owned aquatic lands if: ~~((1))~~ (a) The port district acquires the leasehold interest in accordance with state law, or ~~((2))~~ (b) the current lessee and the department agree to termination of the current lease to accommodate management by the port. The administration of state-owned aquatic lands covered by a management agreement shall be consistent with the aquatic land policies of chapters 79.90 through 79.96 RCW ~~(as recodified by this act)~~ and the implementing ~~((regulations))~~ rules adopted by the department. The administrative procedures for management of the lands shall be those of Title 53 RCW.

(2) No rent (~~(shall be)~~) is due the state for the use of state-owned aquatic lands managed under this section for water-dependent or water-oriented uses. If a port district manages state-owned aquatic lands under this section and either leases or otherwise permits any person to use (~~(such)~~) the lands, the rental fee attributable to (~~(such)~~) the state-owned aquatic land only shall be comparable to the rent charged lessees for the same or similar uses by the department(~~(= PROVIDED, That)~~). However, a port district need not itemize for the lessee any charges for state-owned aquatic lands improved by the port district for use by carriers by water. If a port leases state-owned aquatic lands to any person for nonwater-dependent use, eighty-five percent of the revenue attributable to the rent of the state-owned aquatic land only shall be paid to the state.

(3) Upon application for a management agreement, and so long as the application is pending and being diligently pursued, no rent (~~(shall be)~~) is due the department for the lease by the port district of state-owned aquatic lands included within the application for water-dependent or water-oriented uses.

(4) The department and representatives of the port industry shall develop a proposed model management agreement which shall be used as the basis for negotiating the management agreements required by this section. The model management agreement shall be reviewed and approved by the board (~~(of natural resources)~~).

Sec. 147. RCW 79.90.480 and 2003 c 310 s 1 are each amended to read as follows:

Except as otherwise provided by this chapter, annual rent rates for the lease of state-owned aquatic lands for water-dependent uses shall be determined as follows:

(1)(a) The assessed land value, exclusive of improvements, as determined by the county assessor, of the upland tax parcel used in conjunction with the leased area or, if there are no such uplands, of the nearest upland tax parcel used for water-dependent purposes divided by the parcel area equals the upland value.

(b) The upland value times the area of leased aquatic lands times thirty percent equals the aquatic land value.

(2) As of July 1, 1989, and each July 1st thereafter, the department shall determine the real capitalization rate to be applied to water-dependent aquatic land leases commencing or being adjusted under subsection (3)(a) of this section in that fiscal year. The real capitalization rate shall be the real rate of return, except that until June 30, 1989, the real capitalization rate shall be five percent and thereafter it shall not change by more than one percentage point in any one year or be more than seven percent or less than three percent.

(3) The annual rent shall be:

(a) Determined initially, and redetermined every four years or as otherwise provided in the lease, by multiplying the aquatic land value times the real capitalization rate; and

(b) Adjusted by the inflation rate each year in which the rent is not determined under (~~(subsection (3))~~) (a) of this (~~(section)~~) subsection.

(4) If the upland parcel used in conjunction with the leased area is not assessed or has an assessed value inconsistent with the purposes of the lease, the nearest comparable upland parcel used for similar purposes shall be substituted and the lease payment determined in the same manner as provided in this section.

(5) For the purposes of this section, "upland tax parcel" is a tax parcel, some portion of which has upland characteristics. Filled tidelands or shorelands with upland characteristics which abut state-owned aquatic land shall be considered as uplands in determining aquatic land values.

(6) The annual rent for filled state-owned aquatic lands that have the characteristics of uplands shall be determined in accordance with RCW 79.90.500 (as recodified by this act) in those cases in which the state owns the fill and has a right to charge for the fill.

~~(7)((a) For leases for marina uses only, as of July 1, 2004, lease rates will be a percentage of the annual gross revenues generated by that marina. It is the intent of the legislature that additional legislation be enacted prior to July 1, 2004, to establish the percentage of gross revenues that will serve as the basis for a marina's rent and a definition of gross revenues. Annual rent must be recalculated each year based upon the marina's gross revenues from the previous year, as reported to the department consistent with this subsection (7).~~

~~(b) By December 31, 2003, the department will develop a recommended formula for calculating marina rents consistent with this subsection (7) and report the recommendation to the legislature. The formula recommended by the department must include a percentage or a range of percentages of gross revenues, a system for implementing such percentages, and the designation of revenue sources to be considered for rent calculation purposes. The department must also ensure, given the available information, that the rent formula recommended by the department is initially calculated to maintain state proceeds from marina rents as of July 1, 2003, and that if the department does not receive income reporting forms representing at least ninety percent of the projected annual marina revenue and at least seventy-five percent of all marinas, the current model for calculating marina rents, as described in subsections (1) through (6) of this section, will continue to be the method used to calculate marina rents, and the income method, as described in (a) of this subsection, will not be applied. In addition to the percent of marina income, the department shall determine its direct administrative costs (cost of hours worked directly on applications and leases, based on salaries and benefits, plus travel reimbursement and other actual out-of-pocket costs) to calculate, audit, execute, and monitor marina leases, and shall recover these costs from lessees. All administrative costs recovered by the department must be deposited into the resource management cost account created in RCW 79.64.020. Prior to making recommendations to the legislature, a work session consisting of the department, marina owners, and stakeholders must be convened to discuss the rate-setting criteria. The legislature directs the department to deliver recommendations to the legislature by December 2003, including any minority reports by the participating parties.~~

~~(c) When developing its recommendation for a marina lease formula consistent with this subsection (7), the department shall ensure that the percentage of revenue established is applied to the income of the direct lessee, as well as to the income of any person or entity that subleases, or contracts to operate the marina, with the direct lessee, less the amount paid by the sublease to the direct lessee.~~

~~(d) All marina operators under lease with the department must return to the department an income reporting form, provided by the department, and certified~~

~~by a licensed certified public accountant, before July 1, 2003, and again annually on a date set by the department. On the income reporting form, the department may require a marina to disclose to the department any information about income from all marina-related sources, excluding restaurants and bars. All income reports submitted to the department are subject to either audit or verification, or both, by the department, and the department may inspect all of the lessee's books, records, and documents, including state and federal income tax returns relating to the operation of the marina and leased aquatic lands at all reasonable times. If the lessee fails to submit the required income reporting form once the new method for calculating marina rents is effective, the department may conduct an audit at the lessee's expense or cancel the lease.~~

~~(e) Initially, the marina rent formula developed by the department pursuant to (b) of this subsection will be applied to each marina on its anniversary date, beginning on July 1, 2004, and will be based on that marina's 2003 income information. Thereafter, rents will be recalculated each year, based on the marina's gross revenue from the previous year.~~

~~(f) No marina lease may be for less than five hundred dollars plus direct administrative costs.~~

~~(8)) For all new leases for other water-dependent uses, issued after December 31, 1997, the initial annual water-dependent rent shall be determined by the methods in subsections (1) through (6) of this section.~~

Sec. 148. RCW 79.90.485 and 1984 c 221 s 8 are each amended to read as follows:

(1) Until June 30, 1989, the log storage rents per acre shall be the average rents the log storage leases in effect on July 1, 1984, would have had under the formula for water-dependent leases as set out in RCW 79.90.480 (as recodified by this act), except that the aquatic land values shall be thirty percent of the assessed value of the abutting upland parcels exclusive of improvements, if they are assessed. If the abutting upland parcel is not assessed, the nearest assessed upland parcel shall be used.

(2) On July 1, 1989, and every four years thereafter, the base log storage rents established under subsection (1) of this section shall be adjusted in proportion to the change in average water-dependent lease rates per acre since the date the log storage rates were last established under this section.

(3) The annual rent shall be adjusted by the inflation rate each year in which the rent is not determined under subsection (1) or (2) of this section.

(4) If the lease provides for seasonal use so that portions of the leased area are available for public use without charge part of the year, the annual rent may be discounted to reflect such public use in accordance with rules adopted by the board ~~((of natural resources))~~.

Sec. 149. RCW 79.90.490 and 1984 c 221 s 9 are each amended to read as follows:

(1) For leases in effect on October 1, 1984, the rent shall remain at the annual rate in effect on September 30, 1984, until the next lease anniversary date, at which time rent established under RCW 79.90.480 or 79.90.485 (as recodified by this act) shall become effective. If the first rent amount established is an increase of more than one hundred dollars and is more than thirty-three percent above the rent in effect on September 30, 1984, the annual rent shall not

increase in any year by more than thirty-three percent of the difference between the previous rent and the rent established under RCW 79.90.480 or 79.90.485 (as recodified by this act). If the first rent amount established under RCW 79.90.480 or 79.90.485 (as recodified by this act) is more than thirty-three percent below the rent in effect on September 30, 1984, the annual rent shall not decrease in any year by more than thirty-three percent of the difference between the previous rent and the rent established under RCW 79.90.480 or 79.90.485 (as recodified by this act). Thereafter, notwithstanding any other provision of this title, the annual rental established under RCW 79.90.480 or 79.90.485 (as recodified by this act) shall not increase more than fifty percent in any year.

(2) This section applies only to leases of state-owned aquatic lands subject to RCW 79.90.480 or 79.90.485 (as recodified by this act).

Sec. 150. RCW 79.90.500 and 1984 c 221 s 11 are each amended to read as follows:

Leases for nonwater-dependent uses of state-owned aquatic lands shall be charged the fair market rental value of the leased lands, determined in accordance with appraisal techniques specified by rule. However, rents for nonwater-dependent uses shall always be more than the amount that would be charged as rent for a water-dependent use of the same parcel. (~~(Rents and fees for the mining or other recovery of mineral or geothermal resources shall be established through competitive bidding, negotiations, or as otherwise provided by statute.)~~)

NEW SECTION. **Sec. 151.** Rents and fees for the mining or other recovery of mineral or geothermal resources shall be established through competitive bidding, negotiations, or as otherwise provided by statute.

Sec. 152. RCW 79.90.505 and 1984 c 221 s 12 are each amended to read as follows:

If water-dependent and nonwater-dependent uses occupy separate portions of the same leased parcel of state-owned aquatic land, the rental rate for each use shall be that established for ~~((such))~~ the use by this chapter, prorated in accordance with the proportion of the whole parcel that each use occupies. If water-dependent and nonwater-dependent uses occupy the same portion of a leased parcel of state-owned aquatic land, the rental rate for ~~((such))~~ the parcel shall be subject to negotiation with the department taking into account the proportion of the improvements each use occupies.

Sec. 153. RCW 79.90.515 and 1984 c 221 s 14 are each amended to read as follows:

(1) Except as agreed between the department and the lessee prior to construction of the improvements, rent shall not be charged under any lease of state-owned aquatic lands for improvements, including fills, authorized by the department or installed by the lessee or its predecessor before June 1, 1971, so long as the lands remain under a lease or succession of leases without a period of three years in which no lease is in effect or a bona fide application for a lease is pending.

(2) If improvements were installed under a good faith belief that a state-owned aquatic lands lease was not necessary, rent shall not be charged for the improvements if, within ninety days after specific written notification by the

department that a lease is required, the owner either applies for a lease or files suit to determine if a lease is required.

Sec. 154. RCW 79.90.520 and 1991 c 64 s 1 are each amended to read as follows:

The manager shall, by rule, provide for an administrative review of any state-owned aquatic land rent proposed to be charged. The rules shall require that the lessee or applicant for release file a request for review within thirty days after the manager has notified the lessee or applicant of the rent due. For leases issued by the department, the final authority for the review rests with the board (~~(of natural resources)~~). For leases managed under RCW 79.90.475 (as recodified by this act), the final authority for the review rests with the appropriate port commission. If the request for review is made within thirty days after the manager's final determination as to the rental, the lessee may pay rent at the preceding year's rate pending completion of the review, and shall pay any additional rent or be entitled to a refund, with interest thirty days after announcement of the decision. The interest rate shall be fixed(~~(, from time to time,)~~) by rule adopted by the board (~~(of natural resources)~~) and shall not be less than six percent per annum. Nothing in this section abrogates the right of an aggrieved party to pursue legal remedies. For purposes of this section, "manager" is the department except where state-owned aquatic lands are managed by a port district, in which case "manager" is the port district.

Sec. 155. RCW 79.90.535 and 1991 c 64 s 2 are each amended to read as follows:

The interest rate and all interest rate guidelines shall be fixed(~~(, from time to time,)~~) by rule adopted by the board (~~(of natural resources)~~) and shall not be less than six percent per annum.

Sec. 156. RCW 79.90.540 and 1984 c 221 s 19 are each amended to read as follows:

The department shall adopt such rules as are necessary to carry out the purposes of RCW 79.90.450 through 79.90.535 (as recodified by this act), specifically including criteria for determining under RCW 79.90.480(4) (as recodified by this act) when an abutting upland parcel has been inappropriately assessed and for determining the nearest comparable upland parcel used for water-dependent uses.

Sec. 157. RCW 79.90.545 and 1984 c 221 s 20 are each amended to read as follows:

Nothing in this chapter or RCW 79.93.040 or 79.93.060 (as recodified by this act) shall modify or affect any existing legal rights involving the boundaries of, title to, or vested property rights in aquatic lands or waterways. Nothing in this chapter shall modify, alter, or otherwise affect the applicability of chapter 90.58 RCW.

Sec. 158. RCW 79.90.550 and 1987 c 259 s 1 are each amended to read as follows:

The legislature finds that the department (~~(of natural resources)~~) provides, manages, and monitors aquatic land dredged material disposal sites on state-owned aquatic lands for materials dredged from rivers, harbors, and shipping lanes. These disposal sites are approved through a cooperative planning process by the departments of natural resources and ecology, the United States army

corps of engineers, and the United States environmental protection agency in cooperation with the Puget Sound (~~(water quality authority)~~) action team. These disposal sites are essential to the commerce and well-being of the citizens of the state of Washington. Management and environmental monitoring of these sites are necessary to protect environmental quality and to assure appropriate use of state-owned aquatic lands. The creation of an aquatic land dredged material disposal site account is a reasonable means to enable and facilitate proper management and environmental monitoring of these disposal sites.

Sec. 159. RCW 79.90.555 and 1991 sp.s. c 13 s 63 are each amended to read as follows:

The aquatic land dredged material disposal site account is (~~hereby~~) established in the state treasury. The account shall consist of funds appropriated to the account; funds transferred or paid to the account pursuant to settlements; court or administrative agency orders or judgments; gifts and grants to the account; and all funds received by the department (~~(of natural resources)~~) from users of aquatic land dredged material disposal sites. After appropriation, moneys in the fund may be spent only for the management and environmental monitoring of aquatic land dredged material disposal sites. The account is subject to the allotment procedure provided under chapter 43.88 RCW.

Sec. 160. RCW 79.90.560 and 1987 c 259 s 3 are each amended to read as follows:

The department (~~(of natural resources)~~) shall(~~(, from time to time,)~~) estimate the costs of site management and environmental monitoring at aquatic land dredged material disposal sites and may, by rule, establish fees for use of (~~(such)~~) the sites in amounts no greater than necessary to cover the estimated costs. All such revenues shall be placed in the aquatic land dredged material disposal site account under RCW 79.90.555 (as recodified by this act).

Sec. 161. RCW 79.90.565 and 1995 c 399 s 210 are each amended to read as follows:

After consultation with the director of community, trade, and economic development, the department (~~(of natural resources)~~) may enter into agreements, leases, or other conveyances for archaeological activities on state-owned aquatic lands. (~~(Such)~~) The agreements, leases, or other conveyances may contain (~~(such)~~) those conditions as are required for the department (~~(of natural resources)~~) to comply with its legal rights and duties. All (~~(such)~~) agreements, leases, or other conveyances, shall be issued in accordance with the terms of chapters 79.90 through 79.96 RCW (as recodified by this act).

Sec. 162. RCW 79.90.575 and 2002 c 152 s 3 are each amended to read as follows:

(1) Until July 1, 2008, the charge for the term of an easement granted under RCW 79.90.470(2) (as recodified by this act) will be determined as follows and will be paid in advance upon grant of the easement:

(a) Five thousand dollars for individual easement crossings that are no longer than one mile in length;

(b) Twelve thousand five hundred dollars for individual easement crossings that are more than one mile but less than five miles in length; or

(c) Twenty thousand dollars for individual easement crossings that are five miles or more in length.

(2) The charge for easements under subsection (1) of this section must be adjusted annually by the rate of yearly increase in the most recently published consumer price index, all urban consumers, for the Seattle-Everett SMSA, over the consumer price index for the preceding year, as compiled by the bureau of labor statistics, United States department of labor for the state of Washington rounded up to the nearest fifty dollars.

(3) The term of the easement is thirty years.

(4) In addition to the charge for the easement under subsection (1) of this section, the department may recover its reasonable direct administrative costs incurred in receiving an application for the easement, approving the easement, and reviewing plans for and construction of the public utility lines. For the purposes of this subsection, "direct administrative costs" means the cost of hours worked directly on an application, based on salaries and benefits, plus travel reimbursement and other actual out-of-pocket costs. Direct administrative costs recovered by the department must be deposited into the resource management cost account.

(5) Applicants under RCW 79.90.470(2) (as recodified by this act) providing a residence with an individual service connection for electrical, natural gas, cable television, or telecommunications service are not required to pay the charge for the easement under subsection (1) of this section but shall pay administrative costs under subsection (4) of this section.

(6) A final decision on applications for an easement must be made within one hundred twenty days after the department receives the completed application and after all applicable regulatory permits for the aquatic easement have been acquired. This subsection applies to applications submitted before June 13, 2002, as well as to applications submitted on or after June 13, 2002. Upon request of the applicant, the department may reach a decision on an application within sixty days and charge an additional fee for an expedited processing. The fee for an expedited processing is the greater of: (a) Ten percent of the combined total of the easement charge and direct administrative costs; or (b) the cost of staff overtime, calculated at time and one-half, associated with the expedited processing.

Sec. 163. RCW 79.90.580 and 2003 c 176 s 1 are each amended to read as follows:

(1) The department is authorized to accept gifts of aquatic land within the state, including tidelands, shorelands, harbor areas, and the beds of navigable waters, which shall become part of the state-owned aquatic land base. Consistent with RCW 79.90.455 (as recodified by this act), the department must develop procedures and criteria that state the manner in which gifts of aquatic land, received after July 27, 2003, may occur. No gift of aquatic land may be accepted until: (a) An appraisal of the value of the land has been prepared; (b) an environmental site assessment has been conducted; and (c) the title property report has been examined and approved by the attorney general of the state. The results of the appraisal, the site assessment, and the examination of the title property report must be submitted to the board (~~(of natural resources)~~) before the department may accept a gift of aquatic land.

(2) The authorization to accept gifts of aquatic land within the state extends to aquatic land accepted as gifts prior to July 27, 2003.

PART 2
AQUATIC LANDS—EASEMENTS AND RIGHTS OF WAY

Sec. 201. RCW 79.91.010 and 2003 c 334 s 607 are each amended to read as follows:

All tidelands and shorelands originally belonging to the state, and which were granted, sold, or leased at any time after June 15, 1911, and which contain any valuable materials or are contiguous to or in proximity of state lands or other tidelands or shorelands which contain any valuable materials, shall be subject to the right of the state or any grantee or lessee (~~(thereof)~~) who has acquired (~~(such)~~) the other lands, or any valuable materials thereon, after June 15, 1911, to acquire the right of way over (~~(such)~~) the lands so granted, sold, or leased, for private railroads, skid roads, flumes, canals, watercourses, or other easements for the purpose of, and to be used in, transporting and moving (~~(such)~~) valuable materials from (~~(such)~~) the other lands, over and across the lands so granted or leased in accordance with the provisions of RCW 79.36.370.

Sec. 202. RCW 79.91.020 and 1982 1st ex.s. c 21 s 49 are each amended to read as follows:

Every right of way for a private railroad, skid road, canal, flume, or watercourse, or other easement, over and across any state-owned tidelands or shorelands (~~(belonging to the state)~~), for the purpose of, and to be used in, transporting and moving valuable materials of the land, granted after June 15, 1911, shall be subject to joint and common use in accordance with the provisions of RCW (~~(79.01.316)~~) 79.36.380.

Sec. 203. RCW 79.91.030 and 2003 c 334 s 608 are each amended to read as follows:

Any person having acquired a right of way or easement as provided in RCW 79.91.010 and 79.91.020 (as recodified by this act) over any state-owned tidelands or shorelands (~~(belonging to the state)~~) or over or across beds of any navigable water or stream for the purpose of transporting or moving valuable materials and being engaged in such business, or any grantee or lessee thereof acquiring after June 15, 1911, state lands or tidelands or shorelands containing valuable materials, where (~~(said)~~) the land is contiguous to or in proximity of (~~(such)~~) the right of way or easement, shall accord to the state or any person acquiring after June 15, 1911, valuable materials upon any such lands, proper and reasonable facilities and service for transporting and moving (~~(such)~~) valuable materials under reasonable rules and upon payment of just and reasonable charges (~~(thereof)~~) in accordance with the provisions of RCW 79.36.390.

Sec. 204. RCW 79.91.040 and 2003 c 334 s 609 are each amended to read as follows:

Should the owner or operator of any private railroad, skid road, flume, canal, watercourse, or other right of way or easement provided for in RCW 79.91.020 and 79.91.030 (as recodified by this act) fail to agree with the state or any grantee or lessee (~~(thereof)~~), as to the reasonable and proper rules and charges, concerning the transportation and movement of valuable materials from those lands contiguous to or in proximity to the lands over which (~~(such)~~) the private right of way or easement is operated, the state or any grantee or lessee (~~(thereof)~~), owning and desiring to have (~~(such)~~) the valuable materials

transported or moved, may apply to the Washington state utilities and transportation commission for an inquiry into the reasonableness of the rules, investigate the ~~((same))~~ rules, and make ~~((such))~~ binding reasonable, proper, and just rates and regulations in accordance with the provisions of RCW 79.36.400.

Sec. 205. RCW 79.91.050 and 2003 c 334 s 610 are each amended to read as follows:

Any person owning or operating any right of way or easement subject to the provisions of RCW 79.91.020 through 79.91.040 ~~(as recodified by this act)~~, over and across any state-owned tidelands or shorelands ~~((belonging to the state))~~ or across any beds of navigable waters, and violating or failing to comply with any rule or order made by the utilities and transportation commission, after inquiry, investigation, and a hearing as provided in RCW 79.91.040 ~~(as recodified by this act)~~, shall be subject to the same penalties provided in RCW 79.36.410.

Sec. 206. RCW 79.91.060 and 2003 c 334 s 611 are each amended to read as follows:

Any person engaged in the business of logging or lumbering, quarrying, mining, or removing sand, gravel, or other valuable materials from land, and desirous of obtaining a right of way or easement provided for in RCW 79.91.010 through 79.91.030 ~~(as recodified by this act)~~ over and across any state-owned tidelands or shorelands ~~((belonging to the state))~~, or beds of navigable waters or any ~~((such))~~ lands sold or leased by the state since June 15, 1911, shall file with the department upon a form to be furnished for that purpose, a written application for ~~((such))~~ the right of way in accordance with the provisions of RCW 79.36.350.

Sec. 207. RCW 79.91.070 and 1982 1st ex.s. c 21 s 54 are each amended to read as follows:

Any ~~((such))~~ right of way or easement granted under the provisions of RCW 79.91.010 through 79.91.030 ~~(as recodified by this act)~~ which has never been used, or for a period of two years has ceased to be used for the purpose for which it was granted, shall be deemed forfeited. The forfeiture of any such right of way ~~((heretofore))~~ previously granted or granted under the provisions of RCW 79.91.010 through 79.91.030 ~~(as recodified by this act)~~, shall be rendered effective by the mailing of a notice of ~~((such))~~ the forfeiture to the grantee ~~((thereof))~~ at ~~((his))~~ the grantee's last known post office address and by posting a copy of ~~((such))~~ the certificate, or other record of the grant, in the department's Olympia office ~~((of the commissioner of public lands))~~ with the word "canceled" and the date of ~~((such))~~ the cancellation.

Sec. 208. RCW 79.91.080 and 2003 c 334 s 612 are each amended to read as follows:

Any county or city or the United States of America or any state agency desiring to locate, establish, and construct a road or street over and across any aquatic lands, or wharf over any state-owned tidelands or shorelands, ~~((belonging to the state;))~~ shall by resolution of the legislative body of ~~((such))~~ the county, or city council or other governing body of ~~((such))~~ the city, or proper agency of the United States of America or state agency, ~~((cause to be filed))~~ file a petition with the department ~~((a petition))~~ for a right of way for ~~((such))~~ the road or street or wharf in accordance with the provisions of RCW 79.36.440.

The department may grant the petition if it deems it in the best interest of the state and upon payment for ~~((such))~~ the right of way and any damages to the affected aquatic lands.

Sec. 209. RCW 79.91.090 and 1982 1st ex.s. c 21 s 56 are each amended to read as follows:

Any railroad company (~~(heretofore or hereafter)~~) organized under the laws of the territory or state of Washington, or under any other state or territory of the United States, or under any act of the congress of the United States, and authorized to do business in the state and to construct and operate railroads (~~(therein)~~), shall have the right to construct bridges across the navigable streams within this state over which the line or lines of its railway shall run for the purpose of being made a part of ~~((said))~~ the railway line, or for the more convenient use thereof, if ~~((said))~~ the bridges are ~~((so))~~ constructed so as not to interfere with, impede, or obstruct navigation on ~~((such))~~ the streams(~~(= PROVIDED, That)~~). However, payment for any ~~((such))~~ right of way and any damages to those aquatic lands affected must be paid first (~~(paid)~~).

**Sec. 210. RCW 79.91.100 and 1982 1st ex.s. c 21 s 57 are each amended to read as follows:*

Counties, cities, towns, and other municipalities shall have the right to construct bridges and trestles across waterways (~~(heretofore or hereafter)~~) laid out under the authority of the state of Washington, and over and across any tidelands or shorelands and harbor areas of the state adjacent thereto over which the projected line or lines of highway will run, if ~~((such))~~ the bridges or trestles are constructed in good faith for the purpose of being made a part of the constructed line of such a highway, upon payment for any ~~((such))~~ right of way and upon payment for any damages to those aquatic lands affected.

**Sec. 210 was vetoed. See message at end of chapter.*

Sec. 211. RCW 79.91.110 and 1982 1st ex.s. c 21 s 58 are each amended to read as follows:

Any person authorized by any state or municipal law or ordinance to construct and operate railroads, interurban railroads, or street railroads as common carriers within this state, shall have the right to construct bridges or trestles across waterways laid out under the authority of the state of Washington, over which the projected line or lines of railroad will run. The bridges or trestles shall be constructed in good faith for the purpose of being made a part of the constructed line of ~~((such))~~ the railroad, and may also include a roadway for the accommodation of vehicles and foot passengers. Full payment for any ~~((such))~~ right of way and any damages to those aquatic lands affected by the right of way shall first be made.

Sec. 212. RCW 79.91.120 and 1982 1st ex.s. c 21 s 59 are each amended to read as follows:

The location and plans of any bridge, draw bridge, or trestle proposed to be constructed under RCW 79.91.090 through 79.91.110 (as recodified by this act) shall be submitted to and approved by the department ~~((of natural resources))~~ before construction is commenced(~~(= PROVIDED, That)~~). However, in case the portion of ~~((such))~~ the waterway, river, stream, or watercourse, at the place to be ~~((so))~~ crossed is navigable water of the United States, or otherwise within the jurisdiction of the United States, ~~((such))~~ the location and plans shall also be

submitted to and approved by the United States army corps of engineers before construction is commenced. When plans for any bridge or trestle have been approved by the department (~~((of natural resources))~~) and the United States army corps of engineers, it (~~((shall be))~~) is unlawful to deviate from (~~((such))~~) the plans either before or after the completion of (~~((such))~~) the structure, unless the modification of (~~((such))~~) the plans has previously been submitted to, and received the approval of the department (~~((of natural resources))~~) and the United States army corps of engineers, as the case may be. Any structure (~~((hereby))~~) authorized and approved as indicated in this section shall remain within the jurisdiction of the respective officer or officers approving the (~~((same))~~) structure, and shall be altered or changed from time to time at the expense of the municipality owning the highway, or at the expense of the common carriers, at the time owning the railway or road using (~~((such))~~) the structure, to meet the necessities of navigation and commerce in such a manner as may be from time to time ordered by the respective officer or officers at (~~((such))~~) the time having jurisdiction of the (~~((same))~~) structure, and (~~((such))~~) the orders may be enforced by appropriate action at law or in equity at the suit of the state.

Sec. 213. RCW 79.91.130 and 1982 1st ex.s. c 21 s 60 are each amended to read as follows:

A right of way through, over, and across any tidelands, shorelands, beds of navigable waters, oyster reserves belonging to the state, or the reversionary interest of the state in oyster lands may be granted to any person or the United States of America, constructing or proposing to construct, or which has (~~((heretofore))~~) constructed, any telephone line, ditch, flume, or pipeline for the domestic water supply of any municipal corporation or transmission line for the purpose of generating or transmitting electricity for light, heat, or power.

Sec. 214. RCW 79.91.140 and 1982 1st ex.s. c 21 s 61 are each amended to read as follows:

In order to obtain the benefits of the grant made in RCW 79.91.130 (as recodified by this act), the person or the United States of America constructing or proposing to construct, or which has (~~((heretofore))~~) constructed, (~~((such))~~) a telephone line, ditch, flume, pipeline, or transmission line, shall file, with the department (~~((of natural resources))~~), a map accompanied by the field notes of the survey and location of (~~((such))~~) the telephone line, ditch, flume, pipeline, or transmission line, and shall make payment (~~((therefor))~~) as provided in RCW 79.91.150 (as recodified by this act). The land within the right of way shall be limited to an amount necessary for the construction of (~~((said))~~) the telephone line, ditch, flume, pipeline, or transmission line sufficient for the purposes required, together with sufficient land on either side thereof for ingress and egress to maintain and repair the (~~((same))~~) telephone line, ditch, flume, pipeline, or transmission line. The grant shall also include the right to cut all standing timber outside the right of way marked as danger trees located on public lands upon full payment of the appraised value (~~((thereof))~~).

Sec. 215. RCW 79.91.150 and 1982 1st ex.s. c 21 s 62 are each amended to read as follows:

On the filing of the plat and field notes, as provided in RCW 79.91.140 (as recodified by this act), the land applied for and any improvements included in the right of way applied for, if any, shall be appraised as in the case of an

application to purchase state lands. Upon full payment of the appraised value of the state-owned aquatic land applied for, or upon payment of an annual rental when the department (~~(of natural resources)~~) deems a rental to be in the best interests of the state, and upon full payment of the appraised value of any danger trees and improvements, if any, the department shall issue to the applicant a certificate of the grant of (~~(such)~~) right of way stating the terms and conditions (~~(thereof)~~) and shall enter the (~~(same)~~) certificate in the abstracts and records in the department's Olympia office (~~(of the commissioner of public lands)~~), and thereafter any sale or lease of the lands affected by (~~(such)~~) the right of way shall be subject to the easement of (~~(such)~~) the right of way (~~(= PROVIDED, That)~~). However, should the person or the United States of America securing (~~(such)~~) the right of way ever abandon the use of the (~~(same)~~) right of way for the purposes for which it was granted, the right of way shall revert to the state, or the state's grantee.

NEW SECTION. Sec. 216. (1) The use of state-owned aquatic lands for public utility lines owned by a governmental entity shall be granted by an agreement, permit, or other instrument if the use is consistent with the purposes of RCW 79.90.450 through 79.90.460 (as recodified by this act) and does not obstruct navigation or other public uses. The department may recover only its reasonable direct administrative costs incurred in processing and approving the request or application, and reviewing plans for construction of public utility lines. For purposes of this section, "direct administrative costs" means the cost of hours worked directly on an application or request, based on salaries and benefits, plus travel reimbursement and other actual out-of-pocket costs. Direct administrative costs recovered by the department must be deposited into the resource management cost account.

(2) The use of state-owned aquatic lands for local public utility lines owned by a nongovernmental entity will be granted by easement if the use is consistent with the purpose of RCW 79.90.450 through 79.90.460 (as recodified by this act) and does not obstruct navigation or other public uses. The total charge for the easement will be determined under RCW 79.90.575 (as recodified by this act).

(3) Nothing in this section limits the ability of the department to obtain payment for commodity costs, such as lost revenue from renewable resources, resulting from the granted use of state-owned aquatic lands for public utility lines.

Sec. 217. RCW 79.91.160 and 1982 1st ex.s. c 21 s 63 are each amended to read as follows:

A right of way through, over, and across any state-owned tidelands or shorelands (~~(belonging to the state)~~) is (~~(hereby)~~) granted to any irrigation district, or irrigation company duly organized under the laws of this state, and to any person, or the United States of America, constructing or proposing to construct an irrigation ditch or pipeline for irrigation, or to any diking and drainage district or any diking and drainage improvement district proposing to construct a dike or drainage ditch.

Sec. 218. RCW 79.91.170 and 1982 1st ex.s. c 21 s 64 are each amended to read as follows:

In order to obtain the benefits of the grant provided for in RCW 79.91.160 (as recodified by this act), the irrigation district, irrigation company, person, or the United States of America, constructing or proposing to construct ~~((such))~~ an irrigation ditch or pipeline for irrigation, or the diking and drainage district or diking and drainage improvement district constructing or proposing to construct any dike or drainage ditch, shall file with the department ~~((of natural resources))~~ a map accompanied by the field notes of the survey and location of the proposed irrigation ditch, pipeline, dike, or drainage ditch, and shall pay to the state as provided in RCW 79.91.180 (as recodified by this act), the amount of the appraised value of the ~~((said))~~ lands used for or included within ~~((such))~~ the right of way. The land within ~~((such))~~ the right of way shall be limited to an amount necessary for the construction of the irrigation ditch, pipeline, dike, or drainage ditch for the purposes required, together with sufficient land on either side ~~((thereof))~~ for ingress and egress to maintain and repair the ~~((same))~~ irrigation ditch, pipeline, dike, or drainage ditch.

Sec. 219. RCW 79.91.180 and 1982 1st ex.s. c 21 s 65 are each amended to read as follows:

Upon the filing of the plat and field notes as in RCW 79.91.170 (as recodified by this act), the lands included within the right of way applied for shall be appraised as in the case of an application to purchase ~~((such))~~ the lands, at full market value ~~((thereof))~~. Upon full payment of the appraised value of the lands the department ~~((of natural resources))~~ shall issue to the applicant a certificate of right of way, and enter the ~~((same))~~ certificate in the department records ~~((in the office of the commissioner of public lands and thereafter))~~. Any subsequent sale or lease by the state of the lands affected by ~~((such))~~ the right of way shall be subject ~~((thereto))~~ to the certificate of right of way.

Sec. 220. RCW 79.91.190 and 2003 c 334 s 613 are each amended to read as follows:

The department ~~((shall have))~~ has the power and authority to grant to any person, the right, privilege, and authority to perpetually back and hold water upon or over any state-owned tidelands or shorelands, and to overflow and inundate the ~~((same))~~ lands, whenever the department ~~((shall))~~ deems it necessary for the purpose of erecting, constructing, maintaining, or operating any water power plant, reservoir, or works for impounding water for power purposes, irrigation, mining, or other public use in accordance with the provisions of RCW 79.36.570.

Sec. 221. RCW 79.91.200 and 1982 1st ex.s. c 21 s 67 are each amended to read as follows:

RCW 79.91.010 through 79.91.190 (as recodified by this act), relating to the acquiring of rights of way and overflow rights through, over, and across state-owned aquatic lands ~~((belonging to the state))~~, shall not be construed as exclusive or as affecting the right of municipal and public service corporations to acquire lands belonging to or under the control of the state, or rights of way or other rights ~~((thereover))~~, by condemnation proceedings.

Sec. 222. RCW 79.91.210 and 2003 c 334 s 614 are each amended to read as follows:

The department may grant to any person ~~((such))~~ easements and rights in tidelands and shorelands and oyster reserves owned by the state as the applicant

may acquire in privately or publicly owned lands through proceedings in eminent domain in accordance with the provisions of RCW 79.36.355.

PART 3 AQUATIC LANDS—HARBOR AREAS

Sec. 301. RCW 79.92.010 and 1982 1st ex.s. c 21 s 69 are each amended to read as follows:

(1) It (~~(shall be)~~) is the duty of the board (~~(of natural resources)~~) acting as the harbor line commission to locate and establish harbor lines and determine harbor areas, as required by (~~(section 1 of)~~) Article XV, section 1 of the state Constitution, where (~~(such)~~) harbor lines and harbor areas have not (~~(heretofore)~~) previously been located and established.

(2) The board shall locate and establish outer harbor lines beyond which the state shall never sell or lease any rights whatever to private persons, and to locate and establish the inner harbor line, thereby defining the width of the harbor area between such harbor lines. The harbor area shall be forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce.

Sec. 302. RCW 79.92.020 and 1982 1st ex.s. c 21 s 70 are each amended to read as follows:

Whenever it appears that the inner harbor line of any harbor area (~~(heretofore determined)~~) has been so established as to overlap or fall inside the government meander line, or for any other good cause, the board (~~(of natural resources)~~) acting as the harbor line commission is empowered to relocate and reestablish said inner harbor line so erroneously established, outside of the meander line. All tidelands or shorelands within (~~(said)~~) the inner harbor line so reestablished and relocated, shall belong to the state and may be sold or leased as other first-class tidelands or shorelands (~~(of the first class)~~) in accordance with the provisions of RCW 79.94.150 (~~(: PROVIDED, That)~~) (as recodified by this act). However, in all other cases, authority to relocate the inner harbor line or outer harbor line, or both, shall first be obtained from the legislature.

Sec. 303. RCW 79.92.030 and 2004 c 219 s 1 are each amended to read as follows:

The commission on harbor lines is (~~(hereby)~~) authorized to change, relocate, or reestablish harbor lines in Guemes Channel and Fidalgo Bay in front of the city of Anacortes, Skagit county; in Grays Harbor in front of the cities of Aberdeen, Hoquiam, and Cosmopolis, Grays Harbor county; Bellingham Bay in front of the city of Bellingham and in Drayton Harbor in front of the city of Blaine, Whatcom county; in Elliott Bay, Puget Sound and Lake Union within, and in front of the city of Seattle, King county, and within one mile of the limits of such city; Port Angeles harbor in front of the city of Port Angeles, Clallam county; in Lake Washington in front of the cities of Renton and Lake Forest Park, King county; Commencement Bay in front of the city of Tacoma, Pierce county; and within one mile of the limits of such city; Budd Inlet in front of the city of Olympia, Thurston county; the Columbia river in front of the city of Kalama, Cowlitz county; Port Washington Narrows and Sinclair Inlet in front of the city of Bremerton, Kitsap county; Sinclair Inlet in front of the city of Port Orchard, Kitsap county; in Liberty Bay in front of the city of Poulsbo, Kitsap county; the Columbia river in front of the city of Vancouver, Clark county; Port

Townsend Bay in front of the city of Port Townsend, Jefferson county; the Swinomish Channel in front of the city of La Conner, Skagit county; and Port Gardner Bay in front of the city of Everett, except no harbor lines shall be established in Port Gardener Bay west of the easterly shoreline of Jetty Island as presently situated or west of a line extending S 37° 09' 38" W from the Snohomish River Light (5), and in front of the city of Edmonds, Snohomish county; in Oakland Bay in front of the city of Shelton, Mason county; and within one mile of the limits of such city; in Gig Harbor in front of the city of Gig Harbor, Pierce county; and within one mile of the limits of such city, at the entrance to the Columbia river in front of the city of Ilwaco, Pacific county; in the Columbia river in front of the city of Pasco, Franklin county; and in the Columbia river in front of the city of Kennewick, Benton county.

Sec. 304. RCW 79.92.035 and 1987 c 271 s 5 are each amended to read as follows:

The harbor line commission shall modify harbor lines in Port Gardner Bay as necessary to facilitate the conveyance through exchange authorized in RCW 79.94.450 (as recodified by this act).

Sec. 305. RCW 79.92.060 and 1982 1st ex.s. c 21 s 74 are each amended to read as follows:

Applications, leases, and bonds of lessees shall be in such a form as the department ((of natural resources)) shall prescribe. Every lease shall provide that the rental shall be payable to the department, and for cancellation by the department upon sixty days' written notice for any breach of the conditions ((thereof)). Every lessee shall furnish a bond, with surety satisfactory to the department, with such penalty as the department may prescribe, but not less than five hundred dollars, conditioned upon the faithful performance of the terms of the lease and the payment of the rent when due. If the department ((shall)) at any time deems any bond insufficient, it may require the lessee to file a new and sufficient bond within thirty days after receiving notice to do so.

Applications for leases of harbor areas upon tidal waters shall be accompanied by ((such)) plans and drawings and other data concerning the proposed wharves, docks, or other structures or improvements ((thereof)) as the department shall require. Every lease of harbor areas shall provide that, wharves, docks, or other conveniences of navigation and commerce adequate for the public needs, to be specified in ((such)) the lease, shall be constructed within ((such)) the time as may be fixed in each case by the department. In no case shall the construction be commenced more than two years from the date of ((such)) the lease and shall be completed within such reasonable time as the department shall fix, any of which times may be extended by the department either before or after their expiration, and the character of the improvements may be changed either before or after completion with the approval of the department((= PROVIDED, That)). However, if in its opinion improvements existing upon such harbor area or the tidelands adjacent thereto are adequate for public needs of commerce and navigation, the department shall require the maintenance of ((such)) existing improvements and need not require further improvements.

Sec. 306. RCW 79.92.070 and 2000 c 11 s 27 are each amended to read as follows:

If the owner of any harbor area lease upon tidal waters (~~shall~~) desires to construct (~~thereon~~) any wharf, dock, or other convenience of navigation or commerce, or to extend, enlarge, or substantially improve any existing structure used in connection with (~~such~~) the harbor area, and (~~shall~~) deems the required expenditure not warranted by (~~his or her~~) the lessee's right to occupy (~~such~~) the harbor area during the remainder of the term of (~~his or her~~) their lease, the lease owner may make application to the department (~~of natural resources~~) for a new lease of (~~such~~) the harbor area for a period not exceeding thirty years. Upon the filing of (~~such~~) an application accompanied by (~~such~~) proper plans, drawings, or other data, the department shall (~~forthwith~~) investigate the (~~same~~) application and if (~~it shall~~) the department determines that the proposed work or improvement is in the public interest and reasonably adequate for the public needs, it shall by order fix the terms and conditions and the rate of rental for (~~such~~) a new lease, (~~such~~) the rate of rental shall be a fixed percentage, during the term of (~~such~~) the lease, on the true and fair value in money of (~~such~~) the harbor area determined (~~from time to time~~) by the department. The department may propose modifications of the proposed wharf, dock, or other convenience or extensions, enlargements, or improvements (~~thereon~~). The department shall, within ninety days from the filing of (~~such~~) an application notify the applicant in writing of the terms and conditions upon which (~~such~~) a new lease will be granted, and of the rental to be paid, and if the applicant shall within ninety days (~~thereafter~~) elect to accept a new lease of (~~such~~) the harbor area upon the terms and conditions, and at the rental prescribed by the department, the department shall make a new lease for (~~such~~) the harbor area for the term applied for and the existing lease shall (~~thereupon~~) be surrendered and canceled.

Sec. 307. RCW 79.92.080 and 2000 c 11 s 28 are each amended to read as follows:

Upon the expiration of any harbor area lease upon tidal waters (~~hereafter expiring~~), the (~~owner thereof~~) lessee may apply for a re-lease of (~~such~~) the harbor area for a period not exceeding thirty years. (~~Such~~) The application shall be accompanied by maps showing the existing improvements upon (~~such~~) the harbor area and the adjacent tidelands (~~adjacent thereto~~) and with proper plans, drawings, and other data showing any proposed extensions or improvements of existing structures. Upon the filing of (~~such~~) an application the department (~~of natural resources~~) shall (~~forthwith~~) investigate the (~~same~~) application and if it (~~shall~~) determines that the character of the wharves, docks, or other conveniences of commerce and navigation are reasonably adequate for the public needs and in the public interest, it shall by order fix and determine the terms and conditions upon which (~~such~~) the re-lease shall be granted and the rate of rental to be paid, which rate shall be a fixed percentage during the term of (~~such~~) the lease on the true and fair value in money of (~~such~~) the harbor area as determined (~~from time to time~~) by the department (~~of natural resources~~).

Sec. 308. RCW 79.92.090 and 1985 c 469 s 61 are each amended to read as follows:

Upon completion of the valuation of any tract of harbor area applied for under RCW 79.92.080 (as recodified by this act), the department (~~of natural~~

~~resources~~) shall notify the applicant of the terms and conditions upon which the re-lease will be granted and of the rental fixed. The applicant or ~~(his)~~ the applicant's successor in interest shall have the option for the period of sixty days from the date of the service of notice in which to accept a lease on the terms and conditions and at the rental so fixed and determined by the department. If the terms and conditions and rental are accepted a new lease shall be granted for the term applied for. If the terms and conditions are not accepted by the applicant within the period of time, or within such further time, not exceeding three months, as the department shall grant, the ~~((same))~~ lease shall be deemed rejected by the applicant, and the department shall give eight weeks' notice by publication once a week in one or more newspapers of general circulation in the county in which the harbor area is located, that a lease of the harbor area will be sold on ~~((such))~~ the terms and conditions and at ~~((such))~~ the rental, at a time and place specified in the notice (which shall not be more than three months from the date of the first publication of the notice) to the person offering at the public sale to pay the highest sum as a cash bonus at the time of sale of ~~((such))~~ the lease. Notice of the sale shall be served upon the applicant at least six weeks prior to the date ~~((thereof))~~ of sale. The person paying the highest sum as a cash bonus shall be entitled to lease the harbor area ~~((= PROVIDED, That))~~. However, if the lease is not sold at the public sale the department may at any time or times again fix the terms, conditions, and rental, and again advertise the lease for sale as ~~((above))~~ provided in this section and upon similar notice ~~((= AND PROVIDED FURTHER, That))~~. Further, upon failure to secure any sale of the lease as ~~((above))~~ prescribed in this section, the department may issue revocable leases without requirement of improvements for one year periods at a minimum rate of two percent.

Sec. 309. RCW 79.92.100 and 1982 1st ex.s. c 21 s 78 are each amended to read as follows:

The state of Washington ~~((shall ever))~~ retains and ~~((does hereby))~~ reserves the right to regulate the rates of wharfage, dockage, and other tolls to be imposed by the lessee or ~~((his))~~ the lessee's assigns upon commerce for any of the purposes for which the leased area may be used and the right to prevent extortion and discrimination in such use ~~((thereof))~~.

Sec. 310. RCW 79.92.110 and 1984 c 221 s 25 are each amended to read as follows:

(1) Where any leased harbor area or tideland is situated within the limits of a town, whether or not the harbor area or tideland lies within a port district, the rents from ~~((such))~~ the leases shall be paid by the state treasurer to the municipal authorities of the town to be expended for water-related improvements.

(2) The state treasurer is ~~((hereby))~~ authorized and directed to make payments to the respective towns on the first days of July and January of each year, of all moneys payable under the terms of this section.

PART 4 AQUATIC LANDS—WATERWAYS AND STREETS

Sec. 401. RCW 79.93.010 and 1982 1st ex.s. c 21 s 80 are each amended to read as follows:

It (~~shall be~~) is the duty of the department (~~of natural resources~~) simultaneously with the establishment of harbor lines and the determination of harbor areas in front of any city or town, or as soon (~~thereafter~~) as practicable, to survey and plat all first-class tidelands and shorelands (~~of the first class~~) not (~~heretofore~~) previously platted, and in platting the (~~same~~) tidelands and shorelands to lay out streets which shall (~~thereby~~) be dedicated to public use, subject to the control of the cities or towns in which they are situated.

The department shall also establish one or more public waterways not less than fifty nor more than one thousand feet wide, beginning at the outer harbor line and extending inland across the tidelands belonging to the state. These waterways shall include within their boundaries, as nearly as practicable, all navigable streams running through (~~such~~) the tidelands, and shall be located at (~~such~~) other places as in the judgment of the department may be necessary for the present and future convenience of commerce and navigation. All waterways shall be reserved from sale or lease and remain as public highways for watercraft until vacated as provided for in this chapter.

The department shall appraise the value of (~~such~~) platted tidelands and shorelands and enter (~~such~~) the appraisals in its records (~~in the office of the commissioner of public lands~~).

Sec. 402. RCW 79.93.020 and 1982 1st ex.s. c 21 s 81 are each amended to read as follows:

All alleys, streets, avenues, boulevards, waterways, and other public places and highways (~~heretofore~~) located and platted on the first-class tidelands and shorelands (~~of the first class~~), or harbor areas, as provided by law, and not (~~heretofore~~) vacated as provided by law, are (~~hereby~~) validated as public highways and dedicated to the use of the public for the purposes for which they were intended, subject (~~however~~) to vacation as provided for in this chapter.

Sec. 403. RCW 79.93.030 and 1982 1st ex.s. c 21 s 82 are each amended to read as follows:

The department (~~of natural resources shall have~~) has the power to approve plans for and authorize the construction of slopes, with rock, riprap, or other protection, upon any state-owned aquatic lands incident to the improvement of any abutting or adjacent street or avenue by any city or town in this state.

Sec. 404. RCW 79.93.040 and 1984 c 221 s 21 are each amended to read as follows:

If the United States government has established pierhead lines within a waterway created under the laws of this state at any distance from the boundaries established by the state, structures may be constructed in that strip of waterway between the waterway boundary and the nearest pierhead line only with the consent of the department (~~of natural resources~~) and upon such plans, terms, and conditions and for such term as determined by the department. However, no permit shall extend for a period longer than thirty years.

The department may cancel any permit upon sixty days' notice for a substantial breach by the permittee of any of the permit conditions.

If a waterway is within the territorial limits of a port district, the duties assigned by this section to the department may be exercised by the port commission of (~~such~~) the port district as provided in RCW 79.90.475 (as recodified by this act).

Nothing in this section shall confer upon, create, or recognize in any abutting owner any right or privilege in or to any strip of waterway abutting any street and between prolongations of the lines of ~~((such))~~ the street, but the control of and the right to use ~~((such))~~ the strip is ~~((hereby))~~ reserved to the state of Washington, except as authorized by RCW 79.90.475 (as recodified by this act).

Sec. 405. RCW 79.93.050 and 1982 1st ex.s. c 21 s 84 are each amended to read as follows:

All waterways excavated through any state-owned tidelands or shorelands ~~((belonging to the state of Washington))~~ by virtue of the provisions of chapter 99, Laws of 1893, so far as they run through ~~((said))~~ the tidelands or shorelands, are ~~((hereby))~~ declared to be public waterways, free to all citizens upon equal terms, and subject to the jurisdiction of the proper authorities, as otherwise provided by law ~~((PROVIDED, That))~~. However, where tide gates or locks are considered by the contracting parties excavating any waterways to be necessary to the efficiency of the ~~((same))~~ waterway, the department ~~((of natural resources))~~ may, in its discretion, authorize ~~((such))~~ tide gates or locks to be constructed and may authorize the parties constructing the ~~((same))~~ waterway to operate them and collect a reasonable toll from vessels passing through ~~((said))~~ the tide gates or locks ~~((PROVIDED FURTHER, That))~~. Further, the state of Washington or the United States of America can, at any time, appropriate ~~((said))~~ the tide gates or locks upon payment to the parties erecting them of the reasonable value of the ~~((same))~~ tide gates or locks at the date of ~~((such))~~ the appropriation, ~~((said))~~ reasonable value to be ascertained and determined as in other cases of condemnation of private property for public use.

Sec. 406. RCW 79.93.060 and 1984 c 221 s 22 are each amended to read as follows:

If a waterway established under the laws of this state, or any portion of the waterway, has not been excavated, or is not used for navigation, or is not required in the public interest to exist as a waterway, ~~((such))~~ the waterway or a portion ~~((thereof))~~ of the waterway may be vacated by written order of the commissioner ~~((of public lands))~~ upon request by ordinance or resolution of the city council of the city in which such waterway is located or by resolution of the port commission of the port district in which the waterway is located. If the waterway or a portion ~~((thereof))~~ of the waterway which is vacated is navigable water of the United States, or otherwise within the jurisdiction of the United States, a copy of ~~((such))~~ the resolution or ordinance, together with a copy of the vacation order of the commissioner ~~((of public lands))~~ shall be submitted to the United States army corps of engineers for their approval, and if they approve, the waterway or a portion ~~((thereof))~~ of the waterway is vacated ~~((PROVIDED, That))~~. However, if a port district owns property abutting the waterway and the provisions of this section are otherwise satisfied, the waterway, or the portion ~~((thereof))~~ of the waterway that abuts the port district property, shall be vacated.

Upon ~~((such))~~ vacation of a waterway, the commissioner ~~((of public lands))~~ shall notify the city in which the waterway is located, and the city has the right, if otherwise permitted by RCW 79.94.150 (as recodified by this act), to extend across the portions so vacated any existing streets, or to select ~~((such))~~ portions of the waterway as the city may desire for street purposes, in no case to exceed

one hundred fifty feet in width for any one street. ~~((Such))~~ The selection shall be made within sixty days subsequent to the receipt of notice of the vacation of the portion of the waterway.

If the city fails to make a selection within ~~((such))~~ the time, or selects only a portion of the waterway, the title of the remaining portions of the vacated waterway shall vest in the state, unless the waterway is located within the territorial limits of a port district, in which event, if otherwise permitted by RCW 79.94.150 (as recodified by this act), the title shall vest in the port district. The title is subject to any railroad or street railway crossings existing at the time of ~~((such))~~ the vacation.

PART 5 AQUATIC LANDS—TIDELANDS AND SHORELANDS

Sec. 501. RCW 79.94.020 and 1982 1st ex.s. c 21 s 87 are each amended to read as follows:

It ~~((shall be))~~ is the duty of the department ~~((of natural resources))~~ simultaneously with the establishment of harbor lines and the determination of harbor areas in front of any city or town or as soon ~~((thereafter))~~ as practicable to survey and plat all first-class tidelands and shorelands ~~((of the first class))~~ not ~~((heretofore))~~ previously plated as provided in RCW 79.93.010 (as recodified by this act).

Sec. 502. RCW 79.94.030 and 1982 1st ex.s. c 21 s 88 are each amended to read as follows:

The department ~~((of natural resources))~~ may survey and plat any second-class tidelands and shorelands ~~((of the second class))~~ not ~~((heretofore))~~ previously plated.

Sec. 503. RCW 79.94.040 and 1982 1st ex.s. c 21 s 89 are each amended to read as follows:

The department ~~((of natural resources))~~ shall prepare plats showing all tidelands and shorelands ~~((of the first class and second class))~~, surveyed, plated, and appraised by it in the respective counties, on which shall be marked the location of all ~~((such aquatic))~~ tidelands and shorelands, with reference to the lines of the United States survey of the abutting upland, and shall prepare ~~((in well-bound books))~~ a record of its proceedings, including a list of ~~((said))~~ the tidelands and shorelands surveyed, plated, or replated, and appraised by it and its appraisal of the ~~((same))~~ tidelands and shorelands, which plats and books shall be in triplicate and the department shall file one copy of ~~((such))~~ the plats and records in the department's Olympia office ~~((of the commissioner of public lands))~~, and file one copy in the office of the county auditor of the county where the lands plated, or replated, and appraised are situated, and file one copy in the office of the city engineer of the city in which, or within two miles of which, the lands plated, or replated, are situated.

Sec. 504. RCW 79.94.050 and 1982 1st ex.s. c 21 s 90 are each amended to read as follows:

In appraising tidelands or shorelands ~~((of the first class or second class plated or replated after March 26, 1895))~~, the department ~~((of natural resources))~~ shall appraise each lot, tract, or piece of land separately, and shall

~~((enter in a well bound book to be kept in the office of the commissioner of public lands))~~ maintain a description of each lot, tract, or piece of first or second-class tidelands or shorelands ~~((of the first or second class))~~, its full appraised value, the area and rate per acre at which it was appraised, and if any lot is covered in whole or in part by improvements in actual use for commerce, trade, residence, or business, on or prior to, the date of the plat or replat, the department shall enter the name of the owner, or reputed owner, the nature of the improvements, the area covered by the improvements, the portion of each lot, tract, or piece of land covered, and the appraised value of the land covered, with and exclusive of, the improvements.

Sec. 505. RCW 79.94.060 and 1982 1st ex.s. c 21 s 91 are each amended to read as follows:

(1) The department ~~((of natural resources))~~ shall, before filing in the department's Olympia office ~~((of the commissioner of public lands))~~ the plat and record of appraisal of any tidelands or shorelands ~~((of the first or second class))~~ platted and appraised by it, ~~((cause a notice to be published))~~ publish a notice once each week for four consecutive weeks in a newspaper published and of general circulation in the county ~~((wherein))~~ where the lands covered by ~~((such))~~ the plat and record are situated, stating that ~~((such))~~ the plat and record, describing it, is complete and subject to inspection at the department's Olympia office ~~((of the commissioner of public lands))~~, and will be filed on a certain day to be named in the notice.

(2) Any person entitled to purchase under RCW 79.94.150 (as recodified by this act) and claiming a preference right of purchase of any of the tidelands or shorelands platted and appraised by the department, and who feels aggrieved at the appraisement fixed by the department upon ~~((such))~~ the lands, or any part thereof, may within sixty days after the filing of ~~((such))~~ the plat and record in the department's Olympia office ~~((of the commissioner))~~ (which shall be done on the day fixed in ~~((said))~~ the notice), appeal from ~~((such))~~ the appraisement to the superior court of the county in which the tidelands or shorelands are situated, in the manner provided for taking appeals from orders or decisions under RCW 79.90.400 (as recodified by this act).

(3) The prosecuting attorney of any county, or city attorney of any city, in which ~~((such))~~ the aquatic lands are located, shall at the request of the governor, ~~((or of ten freeholders of the county or city, in which such lands are situated,))~~ appeal on behalf of the state, or the county, or city, from any ~~((such))~~ appraisal in the manner provided in this section. Notice of ~~((such))~~ the appeal shall be served upon the ~~((department of natural resources through the administrator))~~ commissioner, and ~~((it shall be his duty to))~~ the department must immediately notify all persons entitled to purchase under RCW 79.94.150 (as recodified by this act) and claiming a preference right to purchase the lands subject to the appraisement.

(4) Any party, other than the state or the county or city appealing, shall execute a bond to the state with sufficient surety, to be approved by the department ~~((of natural resources))~~, in the sum of two hundred dollars conditioned for the payment of costs on appeal.

(5) The superior court to which an appeal is taken shall hear evidence as to the value of the lands appraised and enter an order confirming, or raising, or lowering the appraisal appealed from, and the clerk of the court shall file a

certified copy (~~thereof~~) in the department's Olympia office (~~of the commissioner of public lands~~). The appraisal fixed by the court shall be final.

Sec. 506. RCW 79.94.070 and 2000 c 11 s 29 are each amended to read as follows:

(1) Upon platting and appraisal of first-class tidelands or shorelands (~~of the first class~~) as provided in this chapter (~~provided~~), if the department (~~of natural resources shall~~) deems it for the best public interest to offer (~~said~~) the first-class tidelands or shorelands (~~of the first class~~) for lease, the department shall (~~cause a notice to be served upon~~) notify the owner of record of uplands fronting upon the tidelands or shorelands to be offered for lease if (~~he or she be~~) the upland owner is a resident of the state, or (if he or she be) the upland owner is a nonresident of the state, shall mail to (his or her) the upland owner's last known post office address, as reflected in the county records, a copy of the notice notifying (~~him or her~~) the owner that the state is offering (~~such~~) the tidelands or shorelands for lease, giving a description of those lands and the department's appraised fair market value of (~~such~~) the tidelands or shorelands for lease, and notifying (~~such~~) the owner that (~~he or she~~) the upland owner has a preference right to apply to lease (~~said~~) the tidelands or shorelands at the appraised value for the lease (~~thereof~~) for a period of sixty days from the date of service of mailing of (~~said~~) the notice.

(2) If at the expiration of sixty days from the service or mailing of the notice, as (~~above~~) provided in subsection (1) of this section, there being no conflicting applications filed, and the owner of the uplands fronting upon the tidelands or shorelands offered for lease, has failed to avail (~~himself or herself of his or her~~) themselves of their preference right to apply to lease or to pay to the department the appraised value for lease of the tidelands or shorelands described in (~~said~~) the notice, (~~then in that event, said~~) the tidelands or shorelands may be offered for lease to any person and may be leased in the manner provided for in the case of lease of state lands.

(3) If at the expiration of sixty days two or more claimants asserting a preference right to lease (~~shall~~) have filed applications to lease any tract, conflicting with each other, the conflict between the claimants shall be equitably resolved by the department (~~of natural resources~~) as the best interests of the state require in accord with the procedures prescribed by chapter 34.05 RCW (~~PROVIDED, That~~). However, any contract purchaser of lands or rights therein, which upland qualifies the owner for a preference right under this section, shall have first priority for (~~such~~) the preference right.

Sec. 507. RCW 79.94.080 and 1982 1st ex.s. c 21 s 93 are each amended to read as follows:

Any first-class tidelands or shorelands (~~of the first class~~) remaining unsold, and where there is no pending application for (~~the~~) purchase (~~of the same~~) under claim of any preference right, when otherwise permitted under RCW 79.94.150 (as recodified by this act) to be sold, shall be sold on the same terms and in the same manner as provided for the sale of state lands for not less than the appraised value fixed at the time of the application to purchase, and the department (~~of natural resources~~) whenever it (~~shall~~) deems it advisable and for the best interest of the state may reappraise (~~such~~) the lands in the same manner as provided for the appraisal of state lands.

Sec. 508. RCW 79.94.090 and 1982 1st ex.s. c 21 s 94 are each amended to read as follows:

All second-class tidelands (~~(, other than first class,)~~) shall be offered for sale, when otherwise permitted under RCW 79.94.150 (as recodified by this act) to be sold, and sold in the same manner as state lands, other than capitol building lands, but for not less than five dollars per lineal chain, measured on the United States meander line bounding the inner shore limit of ((such)) the tidelands, ~~((and each applicant shall furnish a copy of the United States field notes, certified to by the officer in charge thereof, of said meander line with his application,))~~ and shall pay one-tenth of the purchase price on the date of sale.

Sec. 509. RCW 79.94.100 and 1982 1st ex.s. c 21 s 95 are each amended to read as follows:

Whenever all of the owners and other persons having a vested interest in those tidelands or shorelands embraced within any plat of tidelands or shorelands ~~((of the first or second class, heretofore or hereafter platted or replatted,))~~ or within any portion of any ((such)) plat in which there are unsold state-owned tidelands or shorelands ~~((belonging to the state)),~~ shall file a petition with the department ~~((of natural resources))~~ accompanied by proof of service of ((such)) the petition upon the city council, or other governing body, of the city or town in which the tidelands or shorelands described in the petition are situated, or upon the legislative body of the county in which ((such)) the tidelands or shorelands outside of any incorporated city or town are situated, asking for a replat of ((such)) the tidelands or shorelands, the department is authorized and empowered to replat ~~((said)) the~~ tidelands or shorelands described in ((such)) the petition, and all unsold tidelands or shorelands situated within ((such)) the replat shall be reappraised as provided for the original appraisal of tidelands or shorelands ~~((: PROVIDED, That)).~~ However, any streets or alleys embraced within ((such)) the plat or portion of plat, vacated by the replat ~~((hereby authorized))~~ shall vest in the owner or owners of the ~~((lands))~~ abutting ~~((thereon))~~ lands.

Sec. 510. RCW 79.94.110 and 1982 1st ex.s. c 21 s 96 are each amended to read as follows:

If in the preparation of a replat provided for in RCW 79.94.100 (as recodified by this act) by the department ~~((of natural resources)),~~ it becomes desirable to appropriate any tidelands or shorelands ~~((heretofore))~~ previously sold for use as streets, alleys, waterways, or other public places, all persons interested in the title to ((such)) the tidelands or shorelands desired for public places shall join in the dedication of ((such)) the replat before it shall become effective.

Sec. 511. RCW 79.94.120 and 1982 1st ex.s. c 21 s 97 are each amended to read as follows:

If any platted street, alley, waterway, or other public place ~~((heretofore platted,))~~ is vacated by a replat as provided for in RCW 79.94.100 and 79.94.110 (as recodified by this act), or any new street, alley, waterway, or other public place is so laid out as to leave unsold tidelands or shorelands between ((such)) a new street, alley, waterway, or other public place, and tidelands or shorelands ~~((heretofore))~~ previously sold, the owner of the adjacent tidelands or shorelands ~~((heretofore sold))~~ shall have the preference right for sixty days after the final

approval of ~~((such))~~ the plat to purchase the unsold tidelands or shorelands so intervening at the appraised value ~~((thereof))~~, if otherwise permitted under RCW 79.94.150 (as recodified by this act) to be sold.

Sec. 512. RCW 79.94.130 and 1982 1st ex.s. c 21 s 98 are each amended to read as follows:

RCW 79.94.100 through 79.94.120 (as recodified by this act) are intended to afford a method of procedure, in addition to other methods provided in this ~~((chapter))~~ title for the vacation of streets, alleys, waterways, and other public places platted on tidelands or shorelands ~~((of the first or second class))~~.

Sec. 513. RCW 79.94.140 and 1982 1st ex.s. c 21 s 99 are each amended to read as follows:

A replat of tidelands or shorelands ~~((of the first or second class heretofore, or hereafter,))~~ platted shall be in full force and effect and shall constitute a vacation of streets, alleys, waterways, and other dedicated public places ~~((heretofore dedicated))~~, when otherwise permitted by RCW 79.94.150 (as recodified by this act), and the dedication of new streets, alleys, waterways, and other public places appearing upon ~~((such))~~ the replat, when the ~~((same))~~ replat is recorded and filed as in the case of original plats.

Sec. 514. RCW 79.94.150 and 1982 1st ex.s. c 21 s 100 are each amended to read as follows:

(1) This section ~~((shall apply))~~ applies to:

(a) First-class tidelands as defined in ~~((RCW 79.90.030))~~ section 102 of this act;

(b) Second-class tidelands as defined in ~~((RCW 79.90.035))~~ section 102 of this act;

(c) First-class shorelands as defined in ~~((RCW 79.90.040))~~ section 102 of this act;

(d) Second-class shorelands as defined in ~~((RCW 79.90.045))~~ section 102 of this act, except as included within RCW 79.94.210 (as recodified by this act);

(e) Waterways as described in RCW 79.93.010 (as recodified by this act).

(2) Notwithstanding any other provision of law, from and after August 9, 1971, all state-owned tidelands and shorelands enumerated in subsection (1) of this section ~~((owned by the state of Washington))~~ shall not be sold except to public entities as may be authorized by law and they shall not be given away.

(3) Tidelands and shorelands enumerated in subsection (1) of this section may be leased for a period not to exceed fifty-five years ~~((: PROVIDED, That))~~, However, nothing in this section shall be construed as modifying or canceling any outstanding lease during its present term.

(4) Nothing in this section shall:

(a) Be construed to cancel an existing sale contract;

(b) Prohibit sale or exchange of beds and shorelands where the water course has changed and the area now has the characteristics of uplands;

(c) Prevent exchange involving state-owned tidelands and shorelands;

(d) Be construed to prevent the assertion of public ownership rights in any publicly owned aquatic lands, or the leasing of such aquatic lands when such leasing is not contrary to the statewide public interest.

Sec. 515. RCW 79.94.160 and 1982 1st ex.s. c 21 s 101 are each amended to read as follows:

The department (~~(of natural resources)~~) may with the advice and approval of the board (~~(of natural resources)~~) sell state-owned tidelands or shorelands at the appraised market value to any municipal corporation or agency of the state of Washington when (~~said~~) the land is to be used solely for municipal or state purposes (~~(- PROVIDED, That)~~). However, the department shall with the advice and approval of the attorney general, execute (~~such~~) agreements, writings, or relinquishments and certify to the governor such deeds as are necessary or proper to affect (~~such~~) the sale or exchange.

Sec. 516. RCW 79.94.170 and 1982 1st ex.s. c 21 s 102 are each amended to read as follows:

(1) The department may require the payment of a use and occupancy fee in lieu of a lease where improvements have been placed without authorization on state-owned aquatic lands.

~~(2) Nothing in ((RCW 79.94.150 and 79.94.170)) this section shall be construed to prevent the assertion of public ownership rights in any publicly owned aquatic lands, or the leasing of ((such)) the aquatic lands when ((such)) the leasing is not contrary to the statewide public interest.~~

~~((The department of natural resources may require the payment of a use and occupancy fee in lieu of a lease where improvements have been placed without authorization on publicly owned aquatic lands.))~~

Sec. 517. RCW 79.94.175 and 2003 c 334 s 447 are each amended to read as follows:

Whenever application is made to the department by any incorporated city or town or metropolitan park district for the use of any state-owned tidelands or shorelands within the corporate limits of (~~said~~) the city or town or metropolitan park district for municipal park and/or playground purposes, the department shall cause (~~such~~) the application to be entered in the records of its office, and shall then forward the (~~same~~) application to the governor, who shall appoint a committee of five representative citizens of the city or town, in addition to the commissioner and the director of ecology, both of whom shall be ex officio members of the committee, to investigate the lands and determine whether they are suitable and needed for (~~such~~) park or playground purposes; and, if they so find, the commissioner shall certify to the governor that the property shall be deeded, when in accordance with RCW 79.94.150 and 79.94.160 (as recodified by this act), to the city or town or metropolitan park district and the governor shall then execute a deed in the name of the state of Washington, attested by the secretary of state, conveying the use of (~~such~~) the lands to the city or town or metropolitan park district for (~~said~~) park or playground purposes for so long as it shall continue to hold, use, and maintain the lands for (~~such~~) park or playground purposes.

Sec. 518. RCW 79.94.181 and 2003 c 334 s 448 are each amended to read as follows:

In the event there are no state-owned tidelands or shorelands in any (~~such~~) city or town or metropolitan park district suitable for the purposes of RCW 79.94.175 (as recodified by this act) and the committee finds other lands (~~therein~~) which are suitable and needed (~~therefor~~) for parks or playgrounds, the department is (~~hereby~~) authorized to secure the (~~same~~) lands by exchanging state-owned tidelands or shorelands of equal value in the same

county (~~(of equal value therefor)~~), and the use of the lands so secured shall be conveyed to any (~~(such)~~) city or town or metropolitan park district as provided for in RCW 79.94.175 (as recodified by this act). In all (~~(such)~~) exchanges the department is (~~(hereby)~~) authorized and directed, with the assistance of the attorney general, to execute (~~(such)~~) agreements, writings, relinquishments, and deeds as are necessary or proper for the purpose of carrying (~~(such)~~) the exchanges into effect. Upland owners shall be notified of (~~(such)~~) the state-owned tidelands or shorelands to be exchanged.

Sec. 519. RCW 79.94.185 and 1988 c 127 s 34 are each amended to read as follows:

The director of ecology, in addition to serving as an ex officio member of (~~(any such)~~) the committee, is (~~(hereby)~~) authorized and directed to assist (~~(any such)~~) the city or town or metropolitan park district in the development and decoration of any lands so conveyed and to furnish trees, grass, flowers, and shrubs therefor.

Sec. 520. RCW 79.94.210 and 1989 c 378 s 3 and 1989 c 175 s 171 are each reenacted and amended to read as follows:

(1) The legislature finds that maintaining public lands in public ownership is often in the public interest. However, when second-class shorelands on navigable lakes have minimal public value, the sale of those shorelands to the abutting upland owner may not be contrary to the public interest(~~(- PROVIDED, That)~~). However, the purpose of this section is to remove the prohibition contained in RCW 79.94.150 (as recodified by this act) regarding the sale of second-class shorelands to abutting owners, whose uplands front on the shorelands. Nothing contained in this section shall be construed to otherwise affect the rights of interested parties relating to public or private ownership of shorelands within the state.

(2) Notwithstanding the provisions of RCW 79.94.150 (as recodified by this act), the department (~~(of natural resources)~~) may sell second-class shorelands on navigable lakes to abutting owners whose uplands front upon the shorelands in cases where the board (~~(of natural resources)~~) has determined that these sales would not be contrary to the public interest. These shorelands shall be sold at fair market value, but not less than five percent of the fair market value of the abutting upland, less improvements, to a maximum (~~(depth)~~) distance of one hundred and fifty feet landward from the line of ordinary high water.

(3) Review of the decision of the department regarding the sale price established for a shoreland to be sold pursuant to this section may be obtained by the upland owner by filing a petition with the board of tax appeals created in accordance with chapter 82.03 RCW within thirty days after the mailing of notification by the department to the owner regarding the price. The board of tax appeals shall review (~~(such)~~) the cases in an adjudicative proceeding as described in chapter 34.05 RCW, the administrative procedure act, and the board's review shall be de novo. Decisions of the board of tax appeals regarding fair market values determined pursuant to this section shall be final unless appealed to the superior court pursuant to RCW 34.05.510 through 34.05.598.

Sec. 521. RCW 79.94.220 and 1982 1st ex.s. c 21 s 107 are each amended to read as follows:

In every case where the state of Washington had prior to June 13, 1913, sold to any purchaser from the state any second-class shorelands bordering upon navigable waters of this state by description (~~(wherein)~~) where the water boundary of the purchased shorelands (~~(so purchased)~~) is not defined, (~~(such)~~) the water boundary shall be the line of ordinary navigation in (~~(such)~~) the water; and whenever (~~(such)~~) the waters have been or shall (~~(hereafter)~~) be lowered by any action done or authorized either by the state of Washington or the United States, (~~(such)~~) the water boundary shall (~~(thereafter)~~) be the line of ordinary navigation as the (~~(same)~~) water boundary shall be found in (~~(such)~~) the waters after (~~(such)~~) the lowering, and there is (~~(hereby)~~) granted and confirmed to every (~~(such)~~) purchaser, (~~(his)~~) the purchaser's heirs and assigns, all (~~(such)~~) the lands (~~(— PROVIDED HOWEVER, That)~~). However, RCW 79.94.220 and 79.94.230 (as recodified by this act) shall not apply to (~~(such)~~) the portions of (~~(such)~~) the second-class shorelands which shall, as provided by RCW 79.94.230 (as recodified by this act), be selected by the department (~~(of natural resources)~~) for harbor areas, slips, docks, wharves, warehouses, streets, avenues, parkways and boulevards, alleys, or other public purposes (~~(— PROVIDED FURTHER, That)~~). Further, all shorelands and the bed of Lake Washington from the southerly margin of the plat of Lake Washington shorelands southerly along the westerly shore of (~~(said)~~) the lake to a line three hundred feet south of and parallel with the east and west center line of section 35, township 24 north, range 4 east, W.M., are (~~(hereby)~~) reserved for public uses and are (~~(hereby)~~) granted and donated to the city of Seattle for public park, parkway, and boulevard purposes, and as a part of its public park, parkway, and boulevard system and any diversion or attempted diversion of (~~(such)~~) the lands so donated from such purposes shall cause the title to (~~(said)~~) the lands to revert to the state.

Sec. 522. RCW 79.94.230 and 1982 1st ex.s. c 21 s 108 are each amended to read as follows:

It (~~(shall be)~~) is the duty of the department (~~(of natural resources)~~) to survey (~~(such)~~) the second-class shorelands and in platting (~~(such)~~) the survey to designate (~~(thereon as selected)~~) for public use all of (~~(such)~~) the shorelands as in the opinion of the department is available, convenient, or necessary to be selected for the use of the public as harbor areas, sites for slips, docks, wharves, warehouses, streets, avenues, parkways and boulevards, alleys, and other public purposes.

Upon the filing of (~~(such)~~) the plat in the department's Olympia office (~~(of the commissioner of public lands)~~), the title to all harbor areas so selected shall remain in the state, the title to all selections for streets, avenues, and alleys shall vest in any city or town within the corporate limits of which they (~~(may be then situate)~~) are situated, otherwise in the county in which (~~(situate)~~) they are situated, the title to and control of any lands so selected and designated upon (~~(such)~~) the plat for parkways and boulevard purposes shall, if the (~~(same)~~) lands lie outside of the corporate limits of any city or town and if the (~~(same)~~) lands form a part of the general parkway and boulevard system of a first-class city (~~(of the first class, be)~~) lie in (~~(such)~~) the city, and the title to all selections for slips, docks, wharves, warehouses, and other public purposes shall vest in the port district if they (~~(be situate)~~) are situated in a port district, otherwise in the county in which (~~(situate)~~) they are situated.

Sec. 523. RCW 79.94.240 and 1982 1st ex.s. c 21 s 109 are each amended to read as follows:

It ~~((shall be))~~ is the duty of the department ~~((of natural resources))~~ to plat for the public use harbor area in front of ~~((such))~~ the portions of the shorelands of Lake Washington ~~((heretofore))~~ sold as second-class shorelands by the state of Washington as in the opinion of the department are necessary for the use of the public as harbor area ~~((: PROVIDED HOWEVER, That))~~. However, RCW 79.94.240 and 79.94.250 (as recodified by this act) shall not be construed to authorize the department to change the location of any inner or outer harbor line or the boundaries or location of, or to replat any harbor area ~~((heretofore))~~ platted under and by virtue of sections 1 and 2, chapter 183, Laws of 1913, and the title to all shorelands ~~((heretofore))~~ purchased from the state as second-class shorelands is ~~((hereby))~~ confirmed to ~~((such))~~ the purchaser, ~~((his))~~ the purchaser's heirs and assigns, out to the inner harbor line ~~((heretofore))~~ established and platted under sections 1 and 2, chapter 183, Laws of 1913, or which shall be established and platted under RCW 79.94.230 and 79.94.250 (as recodified by this act), and all reservations shown upon the plat made and filed pursuant to sections 1 and 2, chapter 183, Laws of 1913, are declared null and void, except reservations shown ~~((thereon))~~ for harbor area, and reservations in ~~((such))~~ the harbor area, and reservations across shorelands for traversed streets which were extensions of streets existing across shorelands at the time of filing of such plat. ~~((Said))~~ The department shall in platting ~~((said))~~ the harbor area make a new plat showing all the harbor area on Lake Washington already platted under ~~((said))~~ sections 1 and 2, chapter 183, Laws of 1913, and under sections 1 and 2, chapter 150, Laws of 1917, and upon the adoption of any new plat by the board ~~((of natural resources))~~ acting as the harbor line commission, and the filing of ~~((said))~~ the plat in the department's Olympia office ~~((of the commissioner of public lands))~~, the title to all ~~((such))~~ the harbor areas so selected shall remain in the state of Washington, and ~~((such))~~ the harbor areas shall not be sold, but may be leased as provided for by law relating to the leasing of ~~((such))~~ the harbor area.

Sec. 524. RCW 79.94.250 and 1982 1st ex.s. c 21 s 110 are each amended to read as follows:

Immediately after establishing the harbor area provided for in RCW 79.94.240 (as recodified by this act), it ~~((shall be))~~ is the duty of the department ~~((of natural resources))~~ to make a plat designating ~~((thereon))~~ all first and second-class shorelands, ~~((of the first and second class,))~~ not ~~((heretofore))~~ sold by the state of Washington, and to select for the use of the public out of ~~((such))~~ the shorelands, or out of harbor areas ~~((in front thereof))~~, sites for slips, docks, wharves, warehouses, streets, avenues, parkways, boulevards, alleys, commercial waterways, and other public purposes, insofar as ~~((such))~~ the shorelands may be available for any or all ~~((such))~~ public purposes.

Upon the filing of ~~((such))~~ the plat of shorelands with ~~((such))~~ the reservations and selections ~~((thereon))~~ in the department's Olympia office ~~((of the commissioner of public lands))~~, the title to all selections for streets, avenues, and alleys shall vest in any city or town within the corporate limits of which they ~~((may be then situate))~~ are situated, otherwise in the county in which they ~~((situate))~~ situated. The title to and control of any land so selected and designated upon ~~((such))~~ the plat for parkway and boulevard purposes shall, if

the ~~((same))~~ lands lie outside the corporate limits of any city or town, and if the ~~((same))~~ lands form a part of the general parkway and boulevard system of the first-class city ~~((of the first class)),~~ be in ~~((such))~~ the city. The title to all selections for commercial waterway purposes shall vest in the commercial waterway district in which ~~((situate))~~ they are situated, or for which selected, and the title to all selections for slips, docks, wharves, warehouses, and other purposes shall vest in the port district if they ~~((be situate))~~ are situated in a port district, otherwise in the county in which they are situated, and any sales of ~~((such))~~ the shorelands when otherwise permitted by law shall be made subject to ~~((such))~~ the selection and reservation for public use.

Sec. 525. RCW 79.94.260 and 1982 1st ex.s. c 21 s 111 are each amended to read as follows:

(1) If application is made to purchase or lease any second-class shorelands ~~((of the second class))~~ and the department ~~((of natural resources shall))~~ deems it for the best public interest to offer ~~((said))~~ second-class shorelands ~~((of the second class))~~ for sale or lease, the department shall cause a notice to be served upon the abutting upland owner if ~~((he be))~~ the owner is a resident of the state, or if the upland owner ~~((be))~~ is a nonresident of the state, shall mail to ~~((his))~~ the owner's last known post office address, as reflected in the county records a copy of a notice notifying ~~((him))~~ the owner that the state is offering ~~((such))~~ the shorelands for sale or lease, giving a description of the department's appraised fair market value of ~~((such))~~ the shorelands for sale or lease, and notifying ~~((such))~~ the upland owner that he or she has a preference right to purchase, if ~~((such))~~ the purchase is otherwise permitted under RCW 79.94.150 (as recodified by this act), or lease ~~((said))~~ the shorelands at the appraised value ~~((thereof))~~ for a period of thirty days from the date of the service or mailing of ~~((said))~~ the notice. If at the expiration of the thirty days from the service or mailing of the notice, as provided in this section, the abutting upland owner has failed to ~~((avail himself of his))~~ exercise the preference right to purchase, as otherwise permitted under RCW 79.94.150 (as recodified by this act), or lease, or to pay to the department the appraised value for sale or lease of the shorelands described in ~~((said))~~ the notice, then in that event, except as otherwise provided in this section, ~~((said))~~ the shorelands may be offered for sale, when otherwise permitted under RCW 79.94.150 (as recodified by this act), or offered for lease, and sold or leased in the manner provided for the sale or lease of state lands, as otherwise permitted under this chapter.

(2) The department ~~((of natural resources))~~ shall authorize the sale or lease, whether to abutting upland owners or others, only if ~~((such))~~ the sale or lease would be in the best public interest and is otherwise permitted under RCW 79.94.150 (as recodified by this act). It is the intent of the legislature that whenever it is in the best public interest, the second-class shorelands ~~((of the second class))~~ managed by the department ~~((of natural resources))~~ shall not be sold but shall be maintained in public ownership for the use and benefit of the people of the state.

(3) In all cases where application is made for the lease of any second-class shorelands adjacent to upland, under the provisions of this section, the ~~((same))~~ shorelands shall be leased per lineal chain frontage ~~((and the United States field notes of the meander line shall accompany each application as required for the sale of such lands, and when application is made for the lease of second class~~

shorelands separated from the upland by navigable waters, the application shall be accompanied by the plat and field notes of a survey of the lands applied for, as required with applications for the purchase of such lands).

(4) If, following an application by the abutting upland owner to either purchase as otherwise permitted under RCW 79.94.150 (as recodified by this act) or to obtain an exclusive lease at appraised full market value or rental, the department deems that ~~((such))~~ the sale or lease is not in the best public interest, or if property rights in state-owned second-class shorelands are at any time withdrawn, sold, or assigned in any manner authorized by law to a public agency for a use by the general public, the department shall within one hundred and eighty days from receipt of ~~((such))~~ the application to purchase or lease, or on reaching a decision to withdraw, sell, or assign such shorelands to a public agency, and: ~~((4))~~ (a) Make a formal finding that the body of water adjacent to ~~((such))~~ the shorelands is navigable; ~~((2))~~ (b) find that the state or the public has an overriding interest inconsistent with a sale or exclusive lease to a private person, and specifically identify ~~((such))~~ the interest and the factor or factors amounting to ~~((such))~~ the inconsistency; and ~~((3))~~ (c) provide for the review of ~~((said))~~ the decision in accordance with the procedures prescribed by chapter 34.05 RCW.

(5) Notwithstanding ~~((the above provisions))~~ subsections (1) through (4) of this section, the department may cause any of ~~((such))~~ the shorelands to be platted as is provided for the platting of first-class shorelands ~~((of the first class))~~, and when so platted ~~((such))~~ the lands shall be sold, when otherwise permitted under RCW 79.94.150 (as recodified by this act) to be sold, or leased in the manner provided for the sale or lease of first-class shorelands ~~((of the first class))~~.

Sec. 526. RCW 79.94.270 and 1982 1st ex.s. c 21 s 112 are each amended to read as follows:

~~((Tide or shore lands of the))~~ Second-class ~~((which))~~ tidelands and shorelands that are separated from the upland by navigable waters shall be sold, when otherwise permitted under RCW 79.94.150 (as recodified by this act) to be sold, but in no case at less than five dollars per acre. An applicant to purchase ~~((such))~~ the tidelands or shorelands shall, at ~~((his))~~ the applicant's own expense, survey and file with ~~((his))~~ the application a plat of the surveys of the land applied for, which survey shall be connected with, and the plat shall show, two or more connections with the United States survey of the uplands, and the applicant shall file the field notes of the survey of ~~((said))~~ the land with ~~((his))~~ the application. The department ~~((of natural resources))~~ shall examine and test ~~((said))~~ the plat and field notes of the survey, and if found incorrect or indefinite, it shall cause the ~~((same))~~ survey to be corrected or may reject the ~~((same))~~ survey and cause a new survey to be made.

Sec. 527. RCW 79.94.280 and 1982 1st ex.s. c 21 s 113 are each amended to read as follows:

(1) The department ~~((of natural resources))~~ is authorized to lease to the abutting upland owner any unplatted first-class tidelands or shorelands.

(2) The department shall, prior to the issuance of any lease under the provisions of this section, fix the annual rental for ~~((said))~~ the tidelands or shorelands and prescribe the terms and conditions of the lease. No lease issued

under the provisions of this section shall be for a longer term than ten years (~~(from the date thereof)~~), and every (~~(such)~~) lease shall be subject to termination upon ninety days' notice to the lessee in the event that the department shall decide that it is in the best interest of the state that (~~(such)~~) the tidelands or shorelands be surveyed and platted. At the expiration of any lease issued under the provisions of this section, the lessee or (~~(his)~~) the lessee's successors or assigns shall have a preference right to re-lease the lands covered by the original lease or any portion (~~(thereof)~~) of the lease, if the department (~~(shall)~~) deems it to be in the best interests of the state to re-lease the (~~(same)~~) lands, for succeeding periods not exceeding five years each at (~~(such)~~) the rental and upon (~~(such)~~) the terms and conditions as may be prescribed by (~~(said)~~) the department.

(3) In case the abutting uplands are not improved and occupied for residential purposes and the abutting upland owner has not filed an application for the lease of (~~(such)~~) the lands, the department may lease the (~~(same)~~) lands to any person for booming purposes under the terms and conditions of this section(~~(: PROVIDED, That)~~). However, failure to use for booming purposes any lands leased under this section for such purposes for a period of one year shall work a forfeiture of (~~(such)~~) the lease and (~~(such)~~) the land shall revert to the state without any notice to the lessee upon the entry of a declaration of forfeiture in the records of the department (~~(of natural resources)~~).

Sec. 528. RCW 79.94.290 and 1982 1st ex.s. c 21 s 114 are each amended to read as follows:

(1) The department (~~(of natural resources)~~) is authorized to lease any second-class tidelands or shorelands, whether reserved from sale, or from lease for other purposes, by or under authority of law, or not, except any oyster reserve containing oysters in merchantable quantities, to any person, for booming purposes, for any term not exceeding ten years from the date of (~~(such)~~) the lease, for (~~(such)~~) annual rental and upon (~~(such)~~) terms and conditions as the department may fix and determine, and may also provide for forfeiture and termination of any (~~(such)~~) lease at any time for failure to pay the fixed rental or for any violation of the terms or conditions (~~(thereof)~~).

(2) The lessee of any (~~(such)~~) lands for booming purposes shall receive, hold, and sort the logs and other timber products of all persons requesting (~~(such)~~) the service and upon the same terms and without discrimination, and may charge and collect tolls for (~~(such)~~) the service not to exceed seventy-five cents per thousand feet scale measure on all logs, spars, or other large timber and reasonable rates on all other timber products, and shall be subject to the same duties and liabilities, so far as the (~~(same)~~) duties and liabilities are applicable, as are imposed upon boom companies organized under the laws of the state(~~(: PROVIDED, That)~~). However, failure to use any lands leased under the provisions of this section for booming purposes for a period of one year shall work a forfeiture of (~~(such)~~) the lease, and (~~(such)~~) the lands shall revert to the state without any notice to the lessee upon the entry of a declaration of forfeiture in the records of the department.

(3) At the expiration of any lease issued under the provisions of this section, the lessee shall have the preference right to re-lease the lands covered by (~~(his)~~) the lessee's original lease for a further term, not exceeding ten years, at (~~(such)~~)

the rental and upon ((such)) the terms and conditions as may be prescribed by the department ((of natural resources)).

Sec. 529. RCW 79.94.300 and 1982 1st ex.s. c 21 s 115 are each amended to read as follows:

All preference rights to purchase tidelands or shorelands ((of the first or second class)), when otherwise permitted by RCW 79.94.150 (as recodified by this act) to be purchased, awarded by the department ((of natural resources)), or by the superior court in case of appeal from the award of the department, shall be exercised by the parties to whom the award is made within thirty days from the date of the service of notice of the award by registered mail, by the payment to the department of the sums required by law to be paid for a contract, or deed, as in the case of the sale of state lands, other than capitol building lands, and upon failure to make ((such)) the payment ((such)) the preference rights shall expire.

Sec. 530. RCW 79.94.310 and 1982 1st ex.s. c 21 s 116 are each amended to read as follows:

Any accretions that may be added to any tract or tracts of tidelands or shorelands ((of the first or second class heretofore)) previously sold, or that may ((hereafter)) be sold, by the state, shall belong to the state and shall not be sold, or offered for sale, unless otherwise permitted by this chapter to be sold, and unless the accretions ((shall have been first)) are surveyed under the direction of the department ((of natural resources: PROVIDED, That)). However, the owner of the adjacent tidelands or shorelands shall have the preference right to purchase ((said)) the lands produced by accretion, when otherwise permitted by RCW 79.94.150 (as recodified by this act) to be sold, for thirty days after ((said)) the owner of the adjacent tidelands or shorelands shall have been notified by registered mail of ((his)) the owner's preference right to purchase ((such)) the accreted lands.

Sec. 531. RCW 79.94.320 and 1982 1st ex.s. c 21 s 117 are each amended to read as follows:

(1) In case any lessee of tidelands or shorelands, for any purpose except mining of valuable minerals or coal, or extraction of petroleum or gas, or ((his)) the lessee's successor in interest, shall after the expiration of any lease, fail to purchase, when otherwise permitted under RCW 79.94.150 (as recodified by this act) to be purchased, or re-lease from the state the tidelands or shorelands formerly covered by ((his)) the lease, when the ((same)) lands are offered for sale or re-lease, then and in that event the department ((of natural resources)) shall appraise and determine the value of all improvements existing upon ((such)) the tidelands or shorelands at the expiration of the lease which are not capable of removal without damage to the land, including the cost of filling and raising ((said)) the property above high tide, or high water, whether filled or raised by the lessee or ((his)) the lessee's successors in interest, or by virtue of any contract made with the state, and also including the then value to the land of all existing local improvements paid for by ((such)) the lessee or ((his)) the lessee's successors in interest. In case the lessee or ((his)) the lessee's successor in interest is dissatisfied with the appraised value of ((such)) the improvements as determined by the department, ((he)) the lessee shall have the right of appeal to the superior court of the county ((wherein said)) where the tidelands or shorelands are situated, within the time and according to the method prescribed

in RCW 79.90.400 (as recodified by this act) for taking appeals from decisions of the department.

(2) In case (~~such~~) the tidelands or shorelands are leased, or sold, to any person other than such lessee or (~~his~~) the lessee's successor in interest, within three years from the expiration of the former lease, the bid of (~~such~~) the subsequent lessee or purchaser shall not be accepted until payment is made by (~~such~~) the subsequent lessee or purchaser of the appraised value of the improvements as determined by the department, or as may be determined on appeal, to (~~such~~) the former lessee or (~~his~~) the former lessee's successor in interest.

(3) In case (~~such~~) the tidelands or shorelands are not leased, or sold, within three years after the expiration of (~~such~~) the former lease, then in that event, (~~such~~) the improvements existing on the lands at the time of any subsequent lease, shall belong to the state and be considered a part of the land, and shall be taken into consideration in appraising the value, or rental value, of the land and sold or leased with the land.

Sec. 532. RCW 79.94.330 and 1982 1st ex.s. c 21 s 118 are each amended to read as follows:

The department (~~of natural resources~~) is (~~hereby~~) authorized to locate in all navigable rivers in this state which are subject to tidal flow, the line dividing the tidelands in (~~such~~) the river from the shorelands in (~~such~~) the river, and (~~such~~) the classification or the location of (~~such~~) the dividing line shall be final and not subject to review, and the department shall enter the location of (~~said~~) the line upon the plat of the tidelands and shorelands affected.

Sec. 533. RCW 79.94.390 and 2003 c 39 s 42 are each amended to read as follows:

The following described tidelands, being public lands of the state, are withdrawn from sale or lease and reserved as public areas for recreational use and for the taking of fish and shellfish for personal use as defined in RCW 77.08.010:

Parcel No. 1. (Point Whitney) The second-class tidelands (~~of the second class~~), owned by the state of Washington, situate in front of, adjacent to or abutting upon lots 3, 4, and 5, section 7, township 26 north, range 1 west, W.M., with a frontage of 72.45 lineal chains, more or less.

Excepting, however, those portions of the above-described second-class tidelands (~~of the second class~~) conveyed to the state of Washington, department of fish and wildlife through deed issued May 14, 1925, under application No. 8136, records of department of public lands.

Parcel No. 2. (Point Whitney) The second-class tidelands (~~of the second class~~) lying below the line of mean low tide, owned by the state of Washington, situate in front of lot 1, section 6, township 26 north, range 1 west, W.M., with a frontage of 21.00 lineal chains, more or less; also

The second-class tidelands (~~of the second class~~), owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 6 and 7, and that portion of lot 5, section 1, township 26 north, range 1 west, W.M., lying south of a line running due west from a point on the government meander line which is S 22° E 1.69 chains from an angle point in said meander line which is S 15° W 1.20 chains, more or less, from the point of intersection of the north line

of said lot 5 and (~~said~~) the meander line, with a frontage of 40.31 lineal chains, more or less.

Parcel No. 3. (Toandos Peninsula) The second-class tidelands (~~(of the second class)~~), owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 2, and 3, section 5, lots 1, 2, and 3, section 4, and lot 1, section 3, all in township 25 north, range 1 west, W.M., with a frontage of 158.41 lineal chains, more or less.

Parcel No. 4. (Shine) The second-class tidelands (~~(of the second class)~~), owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 2, 3 and that portion of lot 4 lying north of the south 8.35 chains (~~thereof~~) as measured along the government meander line, all in section 35, township 28 north, range 1 east, W.M., with a frontage of 76.70 lineal chains, more or less.

Subject to an easement for right of way for county road granted to Jefferson county December 8, 1941, under application No. 1731, records of department of public lands.

Parcel No. 5. (Lilliwaup) The second-class tidelands (~~(of the second class)~~), owned by the state of Washington, lying easterly of the east line of vacated state oyster reserve plat No. 133 produced southerly and situate in front of, adjacent to, or abutting upon lot 9, section 30, lot 8, section 19 and lot 5 and the south 20 acres of lot 4, section 20, all in township 23 north, range 3 west, W.M., with a frontage of 62.46 lineal chains, more or less.

Subject to easements for rights of way for state road granted through the filing of state road plats No. 374 December 15, 1930, No. 661, March 29, 1949, and No. 666 August 25, 1949, records of department of public lands.

Parcel No. 6. (Nemah) Those portions of the second-class tidelands (~~(of the second class)~~), owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 5, 6, and 7, section 3 and lots 1, 2, and 3, section 4, township 12 north, range 10 west, W.M., lots 1, 2, 3, and 4, section 34, section 27 and lots 1, 2, 3 and 4, section 28, township 13 north, range 10 west, W.M., lying easterly of the easterly line of the Nemah Oyster reserve and easterly of the easterly line of a tract of second-class tidelands (~~(of the second class)~~) conveyed through deed issued July 28, 1938, pursuant to the provisions of chapter 24, Laws of 1895, under application No. 9731, with a frontage of 326.22 lineal chains, more or less.

Parcels No. 7 and 8. (Penn Cove) The unplatted first and second-class tidelands (~~(of the first class, and tidelands of the second class)~~), owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1 and 2, section 33, lots 1, 2, 3, and 4, section 32, lots 2 and 3 and the B.P. Barstow D.L.C. No. 49, sections 30 and 31 and that portion of the R.H. Lansdale D.L.C. No. 54 in section 30, lying west of the east 3.00 chains thereof as measured along the government meander line, all in township 32 north, range 1 east, W.M., with a frontage of 260.34 lineal chains, more or less.

Excepting, however, the tidelands above the line of mean low tide in front of said lot 1, section 32 which were conveyed as second-class tidelands (~~(of the second class)~~) through deed issued December 29, 1908, application No. 4957, records of department of public lands.

Subject to an easement for right of way for transmission cable line granted to the United States of America Army Engineers June 7, 1943, under application No. 17511, records of department of public lands.

Parcel No. 9. (South of Penn Cove) The second-class tidelands (~~(of the second class)~~), owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 2, 3 and 4, section 17 and lots 1, 2 and 3, section 20, township 31 north, range 2 east, W.M., with a frontage of 129.97 lineal chains, more or less.

Parcel No. 10. (Mud Bay—Lopez Island) The second-class tidelands (~~(of the second class)~~), owned by the state of Washington situate in front of, adjacent to, or abutting upon lots 5, 6 and 7, section 18, lot 5, section 7 and lots 3, 4, and 5, section 8, all in township 34 north, range 1 west, W.M., with a frontage of 172.11 lineal chains, more or less.

Excepting, however, any second-class tideland (~~(of the second class)~~) in front of said lot 3, section 8 conveyed through deeds issued April 14, 1909, pursuant to the provisions of chapter 24, Laws of 1895, under application No. 4985, records of department of public lands.

Parcel No. 11. (Cattle Point) The second-class tidelands (~~(of the second class)~~), owned by the state of Washington, situate in front of, adjacent to, or abutting upon lot 1, section 6, lots 1, 3, 4, 5, 6, 7, 8, 9, and 10, section 7, lots 1, 2, 3, 4, 5, 6 and 7, section 8 and lot 1, section 5, all in township 34 north, range 2 west, W.M., with a frontage of 463.88 lineal chains, more or less.

Excepting, however, any second-class tidelands (~~(of the second class)~~) in front of said lot 10, section 7 conveyed through deed issued June 1, 1912, under application No. 6906, records of department of public lands.

Parcel No. 12. (Spencer Spit) The second-class tidelands (~~(of the second class)~~), owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 3, and 4, section 7, and lot 5, section 18 all in township 35 north, range 1 west, W.M., with a frontage of 118.80 lineal chains, more or less.

Sec. 534. RCW 79.94.400 and 1994 c 264 s 67 are each amended to read as follows:

The director of fish and wildlife may take appropriate action to provide public and private access, including roads and docks, to and from the tidelands described in RCW 79.94.390 (as recodified by this act).

Sec. 535. RCW 79.94.410 and 1982 1st ex.s. c 21 s 126 are each amended to read as follows:

The use of any (~~tidelands and shorelands~~) tidelands, shorelands, and abutting bedlands covered with less than four fathoms of water at ordinary low tide belonging to the state, and adjoining and bordering on any tract, piece, or parcel of land, which may have been reserved or acquired, or which may (~~(hereafter)~~) be reserved or acquired, by the government of the United States, for the purposes of erecting and maintaining (~~(thereon)~~) forts, magazines, arsenals, dockyards, navy yards, prisons, penitentiaries, lighthouses, fog signal stations, aviation fields, or other aids to navigation, may be (~~(and the same is hereby)~~) granted to the United States, upon payment for (~~(such)~~) the rights, so long as the upland adjoining (~~(such)~~) the tidelands or shorelands shall continue to be held by the government of the United States for any of the public purposes above mentioned(~~(= PROVIDED, That)~~). However, this grant shall not extend to or

include any aquatic lands covered by more than four fathoms of water at ordinary low tide; and shall not be construed to prevent any citizen of the state from using ~~((said))~~ the lands for the taking of food fishes so long as ~~((such))~~ the fishing does not interfere with the public use of them by the United States.

Sec. 536. RCW 79.94.420 and 1982 1st ex.s. c 21 s 127 are each amended to read as follows:

Whenever application is made to the department ~~((of natural resources))~~ by any department of the United States government for the use of any state-owned tidelands or shorelands ~~((belonging to the state))~~ and adjoining and bordering on any upland held by the United States for any of the purposes mentioned in RCW 79.94.410 (as recodified by this act), upon proof being made to ~~((said))~~ the department ~~((of natural resources))~~, that ~~((such))~~ the uplands are so held by the United States for such purposes, and upon payment for ~~((such))~~ the land, it shall cause ~~((such))~~ the fact to be entered in the records of the ~~((office of the commissioner of public lands))~~ department and the department shall certify ~~((such))~~ the fact to the governor who will execute a deed in the name of the state, attested by the secretary of state, conveying the use of ~~((such))~~ the lands, for such purposes, to the United States, so long as it shall continue to hold for ~~((said))~~ the public purposes the uplands adjoining ~~((said))~~ the tidelands and shorelands.

Sec. 537. RCW 79.94.430 and 1982 1st ex.s. c 21 s 128 are each amended to read as follows:

Whenever application is made to the department ~~((of natural resources))~~, by any department of the United States government, for the use of any state-owned tidelands or shorelands ~~((belonging to the state))~~, for any public purpose, and ~~((said))~~ the department shall be satisfied that the United States requires or may require the use of ~~((such))~~ the tidelands or shorelands for ~~((such))~~ the public purposes, ~~((said))~~ the department may reserve ~~((such))~~ the tidelands or shorelands from public sale and grant the use of them to the United States, upon payment for ~~((such))~~ the land, so long as it may require the use of them for ~~((such))~~ the public purposes. In such a case, the department shall execute an easement to the United States, which grants the use of ~~((said))~~ the tidelands or shorelands to the United States, so long as it shall require the use of them for ~~((said))~~ the public purpose.

Sec. 538. RCW 79.94.440 and 1982 1st ex.s. c 21 s 129 are each amended to read as follows:

Whenever the United States shall cease to hold and use any uplands for the use and purposes mentioned in RCW 79.94.410 (as recodified by this act), or shall cease to use any tidelands or shorelands for the purpose mentioned in RCW 79.94.430 (as recodified by this act), the grant or easement of ~~((such))~~ the tidelands or shorelands shall be terminated ~~((thereby))~~, and ~~((said))~~ the tidelands or shorelands shall revert to the state without resort to any court or tribunal.

PART 6 AQUATIC LANDS—BEDS OF NAVIGABLE WATERS

Sec. 601. RCW 79.95.010 and 1987 c 271 s 2 are each amended to read as follows:

(1) Except as provided in RCW 79.95.060 (as recodified by this act), the department (~~(of natural resources)~~) may lease to the abutting tidelands or shorelands owner or lessee, the beds of navigable waters lying below the line of extreme low tide in waters where the tide ebbs and flows, and below the line of navigability in lakes and rivers claimed by the state and defined in (~~(section 1,)~~) Article XVII, section 1 of the state Constitution (~~(of the state)~~).

(2) In case the abutting tidelands or shorelands or the abutting uplands are not improved or occupied for residential or commercial purposes, the department may lease (~~(such)~~) the beds to any person for a period not exceeding ten years for booming purposes.

(3) Nothing in this chapter shall change or modify any of the provisions of the state Constitution or laws of the state which provide for the leasing of harbor areas and the reservation of lands lying in front (~~(thereof)~~) of harbor areas.

Sec. 602. RCW 79.95.020 and 1982 1st ex.s. c 21 s 131 are each amended to read as follows:

(1) The department (~~(of natural resources)~~) shall, prior to the issuance of any lease under the provisions of this chapter, fix the annual rental and prescribe the terms and conditions of the lease (~~(= PROVIDED, That)~~). However, in fixing (~~(such)~~) the rental, the department shall not take into account the value of any improvements (~~(heretofore or hereafter)~~) placed upon the lands by the lessee.

(2) No lease issued under the provisions of this chapter shall be for a term longer than thirty years from the date thereof if in front of second-class tidelands or shorelands; or a term longer than ten years if in front of unplatted first-class tidelands or shorelands leased under the provisions of RCW 79.94.280 (as recodified by this act), in which case (~~(said)~~) the lease shall be subject to the same terms and conditions as provided for in the lease of (~~(such)~~) the unplatted first-class tidelands or shorelands. Failure to use those beds leased under the provisions of this chapter for booming purposes, for a period of two years shall work a forfeiture of (~~(said)~~) the lease and the land shall revert to the state without notice to the lessee upon the entry of a declaration of forfeiture in the records of the (~~(commissioner of public lands)~~) department.

Sec. 603. RCW 79.95.030 and 1982 1st ex.s. c 21 s 132 are each amended to read as follows:

The applicant for a lease under the provisions of this chapter shall first obtain from the United States army corps of engineers or other federal regulatory agency, a permit to place structures or improvements in (~~(said)~~) the navigable waters and file with the department (~~(of natural resources)~~) a copy of (~~(said)~~) the permit. No structures or improvements shall be constructed beyond a point authorized by the army corps of engineers or the department (~~(of natural resources)~~) and any construction beyond authorized limits will work a forfeiture of all rights granted by the terms of any lease issued under the provisions of this chapter. The applicant shall also file plans and specifications of any proposed improvements to be placed upon (~~(such)~~) the areas with the department (~~(of natural resources)~~), (~~(said)~~) the plans and specifications to be the same as provided for in the case of the lease of harbor areas.

Sec. 604. RCW 79.95.040 and 1982 1st ex.s. c 21 s 133 are each amended to read as follows:

At the expiration of any lease issued under the provisions of this chapter, the lessee or ~~((his))~~ the lessee's successors or assigns, shall have a preference right to re-lease all or part of the area covered by the original lease ~~((or any portion thereof))~~ if the department ~~((of natural resources))~~ deems it to be in the best interest of the state to re-lease the ~~((same))~~ area. Such re-lease shall be for ~~((such))~~ the term as specified by the provisions of this chapter, and at ~~((such))~~ the rental and upon ~~((such))~~ the conditions as may be prescribed by the department ~~((: PROVIDED, That))~~. However, if ~~((such))~~ the preference right is not exercised, the rights and obligations of the lessee, the department ~~((of natural resources))~~, and any subsequent lessee shall be the same as provided in RCW 79.94.320 (as recodified by this act) relating to failure to re-lease tidelands or shorelands. Any person who prior to June 11, 1953, had occupied and improved an area subject to lease under this chapter and has secured a permit for ~~((such))~~ the improvements from the United States army corps of engineers, or other federal regulatory agency, shall have the rights and obligations of a lessee under this section upon the filing of a copy of ~~((such))~~ the permit together with plans and specifications of ~~((such))~~ the improvements with the department ~~((of natural resources))~~.

Sec. 605. RCW 79.95.050 and 1987 c 271 s 1 are each amended to read as follows:

The legislature recognizes the importance of economic development in the state of Washington, and finds that the location of a United States Navy base in Everett, Washington will enhance economic development. The legislature finds that the state should not assume liability or risks resulting from any action taken by the United States Navy, now or in the future associated with the dredge disposal program for that project known as confined aquatic disposal (CAD). The legislature also recognizes the importance of improving water quality and cleaning up pollution in Puget Sound. The legislature ~~((hereby))~~ declares these actions to be a public purpose necessary to protect the health, safety, and welfare of its citizens, and to promote economic growth and improve environmental quality in the state of Washington. The United States Navy proposes to commence the Everett home port project immediately.

Sec. 606. RCW 79.95.060 and 1987 c 271 s 3 are each amended to read as follows:

(1) Upon application by the United States Navy, and upon verification of the legal description and compliance with the intent of this chapter, the commissioner ~~((of public lands))~~ is authorized to lease bedlands in Port Gardner Bay for a term of thirty years so the United States Navy can utilize a dredge spoil site solely for purposes related to construction of the United States Navy base at Everett.

(2) The lease shall reserve for the state uses of the property and associated waters which are not inconsistent with the use of the bed by the Navy as a disposal site. The lease shall include conditions under which the Navy:

(a) Will agree to hold the state of Washington harmless for any damage and liability relating to, or resulting from, the use of the property by the Navy; and

(b) Will agree to comply with all terms and conditions included in the applicable state of Washington section 401 water quality certification issued under the authority of the Federal Clean Water Act (33 U.S.C. Sec. 1251, et

seq.), all terms and conditions of the army corps of engineers section 404 permit (33 U.S.C. Sec. 1344), and all requirements of statutes, regulations, and permits relating to water quality and aquatic life in Puget Sound and Port Gardner Bay, including all reasonable and appropriate terms and conditions of any permits issued under the authority of the Washington state shoreline management act (chapter 90.58 RCW) and any applicable shoreline master program.

(3) The ability of the state of Washington to enforce the terms and conditions specified in subsection (2)(b) of this section shall include, but not be limited to: (a) The terms and conditions of the lease; (b) the section 401 water quality certification under the Clean Water Act, 33 U.S.C. Sec. 1251, et seq.; (c) the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sec. 9601, et seq.; (d) the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901, et seq.; or (e) any other applicable federal or state law.

PART 7

AQUATIC LANDS—OYSTERS, GEODUCKS, SHELLFISH, OTHER AQUACULTURAL USES, AND MARINE AQUATIC PLANTS

Sec. 701. RCW 79.96.010 and 1993 c 295 s 1 are each amended to read as follows:

(1) The beds of all navigable tidal waters in the state lying below extreme low tide, except as prohibited by ~~((section 1-))~~ Article XV, section 1 of the ~~((Washington))~~ state Constitution shall be subject to lease for the purposes of planting and cultivating oyster beds, or for the purpose of cultivating clams or other edible shellfish, or for other aquaculture use, for periods not to exceed thirty years.

(2) Nothing in this section shall prevent any person from leasing more than one parcel, as offered by the department.

Sec. 702. RCW 79.96.020 and 1982 1st ex.s. c 21 s 135 are each amended to read as follows:

Any person desiring to lease tidelands or beds of navigable waters for the purpose of planting and cultivating oyster beds, or for the purpose of cultivating clams and other edible shellfish, shall file with the department ~~((of natural resources))~~, on a proper form, an application in writing signed by the applicant and accompanied by a map of the lands desired to be leased, describing the lands by metes and bounds tied to at least two United States government corners, and by ~~((such))~~ the reference to local geography as shall suffice to convey a knowledge of the location of the lands with reasonable accuracy to persons acquainted with the vicinity, and accompanied by a deposit of ten dollars ~~((which))~~. The deposit shall be returned to the applicant in case a lease is not granted.

Sec. 703. RCW 79.96.030 and 1994 c 264 s 68 are each amended to read as follows:

(1) The department ~~((of natural resources))~~, upon the receipt of an application for a lease for the purpose of planting and cultivating oyster beds or for the purpose of cultivating clams or other edible shellfish, shall notify the director of fish and wildlife of the filing of the application describing the tidelands or beds of navigable waters applied for. The director of fish and wildlife shall cause an inspection of the lands applied for to be made and shall

make a full report to the department (~~(of natural resources)~~) of (~~(his or her)~~) the director's findings as to whether it is necessary, in order to protect existing natural oyster beds, and to secure adequate seeding (~~(thereof)~~) of the lands, to retain the lands described in the application for lease or any part (~~(thereof)~~) of the lands, and in the event the director deems it advisable to retain the lands or any part (~~(thereof)~~) of the lands for the protection of existing natural oyster beds or to guarantee the continuance of an adequate seed stock for existing natural oyster beds, the (~~(same)~~) lands shall not be subject to lease. However, if the director determines that the lands applied for or any part (~~(thereof)~~) of the lands may be leased, the director shall so notify the department (~~(of natural resources)~~) and the director shall cause an examination of the lands to be made to determine the presence, if any, of natural oysters, clams, or other edible shellfish on (~~(said)~~) the lands, and to fix the rental value of the lands for use for oyster, clam, or other edible shellfish cultivation. In (~~(his or her)~~) the report to the department, the director shall recommend a minimum rental for (~~(said)~~) the lands and an estimation of the value of the oysters, clams, or other edible shellfish, if any, then present on the lands applied for. The lands approved by the director for lease may then be leased to the applicant for a period of not less than five years nor more than ten years at a rental not less than the minimum rental recommended by the director of fish and wildlife. In addition, before entering upon possession of the land, the applicant shall pay the value of the oysters, clams, or other edible shellfish, if any, then present on the land as determined by the director, plus the expense incurred by the director in investigating the quantity of oysters, clams, or other edible shellfish, present on the land applied for.

(2) When issuing new leases or reissuing existing leases the department shall not permit the commercial harvest of subtidal hardshell clams by means of hydraulic escalating when the upland within five hundred feet of any lease tract is zoned for residential development.

Sec. 704. RCW 79.96.040 and 1994 c 264 s 69 are each amended to read as follows:

Before entering into possession of any leased tidelands or beds of navigable waters, the applicant shall (~~(cause the same to be)~~) have the lands surveyed by a registered land surveyor, and (~~(he or she)~~) the applicant shall furnish to the department (~~(of natural resources)~~) and to the director of fish and wildlife, a map of the leased premises signed and certified by the registered land surveyor. The lessee shall also (~~(cause)~~) mark the boundaries of the leased premises (~~(to be marked)~~) by piling monuments or other markers of a permanent nature as the director of fish and wildlife may direct.

Sec. 705. RCW 79.96.050 and 1994 c 264 s 70 are each amended to read as follows:

The department (~~(of natural resources)~~) may, upon the filing of an application for a renewal lease, (~~(cause)~~) inspect the tidelands or beds of navigable waters (~~(to be inspected)~~), and if (~~(he or she)~~) the department deems it in the best interests of the state to re-lease (~~(said)~~) the lands, (~~(he or she)~~) the department shall issue to the applicant a renewal lease for (~~(such)~~) a further period not exceeding thirty years and under (~~(such)~~) the terms and conditions as may be determined by the department (~~(- PROVIDED, That)~~). However, in the

case of an application for a renewal lease it shall not be necessary for the lands to be inspected and reported upon by the director of fish and wildlife.

Sec. 706. RCW 79.96.060 and 1982 1st ex.s. c 21 s 139 are each amended to read as follows:

All leases of tidelands and beds of navigable waters for the purpose of planting and cultivating oysters, clams, or other edible shellfish shall expressly provide that if at any time after the granting of ~~((said))~~ the lease, the described lands ~~((described therein))~~ shall cease to be used for the purpose of oyster beds, clam beds, or other edible shellfish beds, they shall ~~((thereupon))~~ revert to and become the property of the state and that the ~~((same))~~ lands are leased only for the purpose of cultivating oysters, clams, or other edible shellfish thereon, and that the state reserves the right to enter upon and take possession of ~~((said))~~ the lands if at any time the ~~((same))~~ lands are used for any other purpose than the cultivation of oysters, clams, or other edible shellfish.

Sec. 707. RCW 79.96.070 and 1982 1st ex.s. c 21 s 140 are each amended to read as follows:

If from any cause any lands leased for the purpose of planting and cultivating oysters, clams, or other edible shellfish ~~((shall))~~ become unfit and valueless for any such purposes, the lessee or ~~((his))~~ the lessee's assigns, upon certifying ~~((such))~~ the fact under oath to the department ~~((of natural resources)),~~ together with the fact that ~~((he))~~ the lessee has abandoned ~~((such))~~ the land, shall be entitled to make application for other lands for such purposes.

Sec. 708. RCW 79.96.080 and 2003 c 39 s 43 are each amended to read as follows:

(1) Geoducks shall be sold as valuable materials under the provisions of chapter 79.90 RCW (as recodified by this act). After confirmation of the sale, the department ~~((of natural resources))~~ may enter into an agreement with the purchaser for the harvesting of geoducks. The department ~~((of natural resources))~~ may place terms and conditions in the harvesting agreements as the department deems necessary. The department ~~((of natural resources))~~ may enforce the provisions of any harvesting agreement by suspending or canceling the harvesting agreement or through any other means contained in the harvesting agreement. Any geoduck harvester may terminate a harvesting agreement entered into pursuant to this subsection if actions of a governmental agency, beyond the control of the harvester, its agents, or its employees, prohibit harvesting, for a period exceeding thirty days during the term of the harvesting agreement, except as provided within the agreement. Upon ~~((such))~~ termination of the agreement by the harvester, the harvester shall be reimbursed by the department ~~((of natural resources))~~ for the cost paid to the department on the agreement, less the value of the harvest already accomplished by the harvester under the agreement.

(2) Harvesting agreements under this title for the purpose of harvesting geoducks shall require the harvester and the harvester's agent or representatives to comply with all applicable commercial diving safety standards and regulations promulgated and implemented by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as ~~((such))~~ the law exists or as ~~((hereafter))~~ amended (84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq.)~~((= PROVIDED, That))~~. However, for

the purposes of this section and RCW 77.60.070 (~~as now or hereafter amended~~), all persons who dive for geoducks are deemed to be employees as defined by the federal occupational safety and health act. All harvesting agreements shall provide that failure to comply with these standards is cause for suspension or cancellation of the harvesting agreement (~~PROVIDED FURTHER, That~~). Further, for the purposes of this subsection if the harvester contracts with another person or entity for the harvesting of geoducks, the harvesting agreement shall not be suspended or canceled if the harvester terminates its business relationship with such an entity until compliance with this subsection is secured.

Sec. 709. RCW 79.96.085 and 1990 c 163 s 5 are each amended to read as follows:

The department (~~of natural resources~~) shall designate the areas of state-owned aquatic lands (~~owned by the state~~) that are available for geoduck harvesting by licensed geoduck harvesters in accordance with chapter 79.90 RCW (as recodified by this act).

Sec. 710. RCW 79.96.090 and 1982 1st ex.s. c 21 s 142 are each amended to read as follows:

The department (~~of natural resources~~) is (~~hereby~~) authorized to lease first or second-class tidelands which have (~~heretofore~~) been or (~~which may hereafter be~~) that are set aside as state oyster reserves in the same manner as provided elsewhere in this chapter for the lease of those lands.

Sec. 711. RCW 79.96.100 and 1994 c 264 s 71 are each amended to read as follows:

The department (~~of natural resources~~), upon the receipt of an application for the lease of any first or second-class state-owned tidelands (~~owned by the state which have heretofore or which may hereafter be~~) that are set aside as state oyster reserves, shall notify the director of fish and wildlife of the filing of the application describing the lands applied for. It (~~shall be~~) is the duty of the director of fish and wildlife to (~~cause an inspection of~~) inspect the reserve (~~to be made~~) for the purpose of determining whether (~~said~~) the reserve or any part (~~thereof~~) of the reserve should be retained as a state oyster reserve or vacated.

Sec. 712. RCW 79.96.110 and 2001 c 273 s 4 are each amended to read as follows:

(1) In the event that the fish and wildlife commission approves the vacation of the whole or any part of a reserve, the department (~~of natural resources~~) may vacate and offer for lease (~~such~~) the parts or all of the reserve as it deems to be for the best interest of the state, and all moneys received for the lease of (~~such~~) the lands shall be paid to the department (~~of natural resources~~).

(2) Notwithstanding RCW 77.60.020, subsection (1) of this section, or any other provision of state law, the state oyster reserves in Eld Inlet, Hammersley Inlet, or Totten Inlet, situated in Mason or Thurston counties shall permanently be designated as state oyster reserve lands.

Sec. 713. RCW 79.96.120 and 1982 1st ex.s. c 21 s 145 are each amended to read as follows:

Upon an application to purchase the reserved and reversionary rights of the state in any tidelands sold under the provisions of chapter 24 (~~of the~~), Laws of 1895, or chapter 25 (~~of the~~), Laws of 1895, or chapter 165 (~~of the~~), Laws of

1919, or either ~~((such))~~ the reserved or reversionary right if only one exists, being filed in the department's Olympia office ~~((of the commissioner of public lands))~~ by the owner of ~~((such))~~ the tidelands, accompanied by an abstractor's certificate, or other evidence of the applicant's title to ~~((such))~~ the lands, the department ~~((of natural resources))~~, if it finds the applicant is the owner of the tidelands, is authorized to inspect, appraise, and sell, if otherwise permitted under RCW 79.94.150 (as recodified by this act), for not less than the appraised value, such reserved or reversionary rights of the state to the applicant, and upon payment of the purchase price to cause a deed to be issued ~~((therefor))~~ as in the case of the sale of state lands, or upon the payment of one-fifth of the purchase price, to issue a contract of sale ~~((therefor))~~, providing that the remainder of the purchase price may be paid in four equal annual installments, with interest on deferred payments at the rate of six percent per annum, or sooner at the election of the contract holder, which contract shall be subject to cancellation by the department ~~((of natural resources))~~ for failure to comply with its provisions, and upon the completion of the payments as provided in ~~((such))~~ the contract to cause a deed to the lands described in the contract to be issued to the holder ~~((thereof))~~ as in the case of the sale of state lands.

Sec. 714. RCW 79.96.130 and 1994 c 264 s 73 are each amended to read as follows:

(1) If a person wrongfully takes shellfish or causes shellfish to be wrongfully taken from the public lands and the wrongful taking is intentional and knowing, ~~((then))~~ the person ~~((shall be))~~ is liable for damages of treble the fair market retail value of the amount of shellfish wrongfully taken. If a person wrongfully takes shellfish from the public lands under other circumstances, ~~((then))~~ the person ~~((shall be))~~ is liable for damages of double the fair market value of the amount of shellfish wrongfully taken.

(2) For purposes of this section, a person "wrongfully takes" shellfish from public lands if the person takes shellfish: (a) Above the limits of any applicable laws that govern the harvest of shellfish from public lands; (b) without reporting the harvest to the department of fish and wildlife or the department ~~((of natural resources))~~ where ~~((such))~~ the reporting is required by law or contract; (c) outside the area or above the limits that an agreement or contract from the department ~~((of natural resources))~~ allows the harvest of shellfish from public lands; or (d) without a lease or purchase of the shellfish where ~~((such))~~ the lease or purchase is required by law prior to harvest of the shellfish.

(3) The remedies in this section are for civil damages and shall be proved by a preponderance of the evidence. The department ~~((of natural resources))~~ may file a civil action in Thurston county superior court or the county where the shellfish were taken against any person liable under this section. Damages recovered under this section shall be applied in the same way as received under geoduck harvesting agreements authorized by RCW 79.96.080 (as recodified by this act).

(4) For purposes of the remedies created by this section, the amount of shellfish wrongfully taken by a person may be established either:

(a) By surveying the aquatic lands to reasonably establish the amount of shellfish taken from the immediate area where a person is shown to have been wrongfully taking shellfish;

(b) By weighing the shellfish on board any vessel or in possession of a person shown to be wrongfully taking shellfish; or

(c) By any other evidence that reasonably establishes the amount of shellfish wrongfully taken.

The amount of shellfish established by (a) or (b) of this subsection shall be presumed to be the amount wrongfully taken unless the defendant shows by a preponderance of evidence that the shellfish were lawfully taken or that the defendant did not take the shellfish presumed to have been wrongfully taken. Whenever there is reason to believe that shellfish in the possession of any person were wrongfully taken, the department ~~((of natural resources))~~ or the department of fish and wildlife may require the person to proceed to a designated off-load point and to weigh all shellfish in possession of the person or on board the person's vessel.

(5) This civil remedy is supplemental to the state's power to prosecute any person for theft of shellfish, for other crimes where shellfish are involved, or for violation of ~~((regulations))~~ rules of the department of fish and wildlife.

Sec. 715. RCW 79.96.210 and 2003 c 334 s 442 are each amended to read as follows:

(1) The maximum daily wet weight harvest or possession of seaweed for personal use from all state-owned aquatic lands ~~((as defined under RCW 79.90.010))~~ and all privately owned tidelands is ten pounds per person. The department in cooperation with the department of fish and wildlife may establish seaweed harvest limits of less than ten pounds for conservation purposes. This section shall in no way affect the ability of any state agency to prevent harvest of any species of marine aquatic plant from lands under its control, ownership, or management.

(2) Except as provided under subsection (3) of this section, commercial harvesting of seaweed from state-owned aquatic lands ~~((as defined under RCW 79.90.010))~~, and all privately owned tidelands is prohibited. This subsection shall in no way affect commercial seaweed aquaculture.

(3) Upon mutual approval by the department and the department of fish and wildlife, seaweed species of the genus *Macrocystis* may be commercially harvested for use in the herring spawn-on-kelp fishery.

(4) Importation of seaweed species of the genus *Macrocystis* into Washington state for the herring spawn-on-kelp fishery is subject to the fish and shellfish disease control policies of the department of fish and wildlife. *Macrocystis* shall not be imported from areas with fish or shellfish diseases associated with organisms that are likely to be transported with *Macrocystis*. The department shall incorporate this policy on *Macrocystis* importation into its overall fish and shellfish disease control policies.

Sec. 716. RCW 79.96.220 and 2003 c 334 s 443 and 2003 c 53 s 380 are each reenacted and amended to read as follows:

(1) It is unlawful to exceed the harvest and possession restrictions imposed under RCW 79.96.210 (as recodified by this act).

(2) A violation of this section is a misdemeanor, and a violation taking place on state-owned aquatic lands is subject to the provisions of RCW 79.02.300.

(3) A person committing a violation of this section on private tidelands which he or she owns is liable to the state for treble the amount of damages to

the seaweed resource, and a person trespassing on (~~(private)~~) privately owned tidelands and committing a violation of this section is liable to the private tideland owner for treble the amount of damages to the seaweed resource. Damages recoverable include, but are not limited to, damages for the market value of the seaweed, for injury to the aquatic ecosystem, and for the costs of restoration. In addition, the person is liable for reimbursing the injured party for the party's reasonable costs, including but not limited to investigative costs and reasonable attorneys' fees and other litigation-related costs.

Sec. 717. RCW 79.96.230 and 2003 c 334 s 444 are each amended to read as follows:

The department of fish and wildlife and law enforcement authorities may enforce the provisions of RCW 79.96.210 and 79.96.220 (as recodified by this act).

Sec. 718. RCW 79.96.906 and 1994 c 264 s 74 are each amended to read as follows:

The department (~~(of natural resources)~~) may enter into agreements with the department of fish and wildlife for the development of an intensive management plan for geoducks including the development and operation of a geoduck hatchery.

~~((The department of natural resources shall evaluate the progress of the intensive geoduck management program and provide a written report to the legislature by December 1, 1990, for delivery to the appropriate standing committees. The evaluation shall determine the benefits and costs of continued operation of the program, and shall discuss alternatives including continuance, modification, and termination of the intensive geoduck management program.))~~

PART 8 VALUABLE MATERIALS

NEW SECTION. **Sec. 801.** (1) When the department decides to sell any valuable materials situated within or upon any state-owned aquatic lands, it is the duty of the department to fix the date, place, and time of sale, and no sale shall be had on any day that is a legal holiday.

(2) The department shall give notice of the sale by advertisement published once a week for four consecutive weeks immediately preceding the date fixed for sale in the notice, in at least one newspaper published and of general circulation in the county in which the whole or any part of any lot, block, or tract of land containing the valuable material to be sold is situated, and by causing a copy of the notice to be posted in a conspicuous place in the department's Olympia office and the region headquarters administering the sale.

(3) The notice shall: (a) Specify the place and time of sale; (b) estimate the volume of valuable materials; (c) state the appraised value; (d) describe with particularity each parcel of land from which valuable materials are to be sold; and (e) specify that the terms of sale will be posted in the area headquarters and the department's Olympia office.

NEW SECTION. **Sec. 802.** The department shall print a list of valuable materials contained within or upon state-owned aquatic lands, giving appraised value, character of the land, and such other information as may be of interest to

prospective buyers. The lists must be issued at least four weeks prior to the date of any sale. The department shall retain for free distribution in its office in Olympia and the regional offices sufficient copies of the lists, to be kept in a conspicuous place or receptacle on the counter of the general and regional office of the department, and, when requested, shall mail copies of the list as issued to any applicant.

NEW SECTION. Sec. 803. The department is authorized to expend any sum in additional advertising of the sale as is determined to be in the best interests of the state.

NEW SECTION. Sec. 804. Any sale that has been offered, and for which there are no bids received, shall not be reoffered until it has been readvertised as specified in sections 801 through 803 of this act. If all sales cannot be offered within the specified time on the advertised date, the sale shall continue on the following day between the hours of ten o'clock a.m. and four o'clock p.m.

NEW SECTION. Sec. 805. All sales of valuable materials shall be at public auction or by sealed bid to the highest responsible bidder, on the terms prescribed by law and as specified in the notice provided, and no land or materials shall be sold for less than their appraised value. However:

(1) When valuable material has been appraised at an amount not exceeding one hundred thousand dollars, the department, when authorized by the board, may arrange for the sale at public auction of said valuable material and for its removal under such terms and conditions as the department may prescribe, after the department shall have caused to be published not less than ten days prior to sale a notice of such sale in a newspaper of general circulation located nearest to the property to be sold;

(2) Any sale of valuable material on state-owned aquatic lands of an appraised value of ten thousand dollars or less may be sold directly to the applicant for cash without notice or advertising.

NEW SECTION. Sec. 806. (1) To determine the "highest responsible bidder" under section 805 of this act, the department shall be entitled to consider, in addition to price, the following:

(a) The financial and technical ability of the bidder to perform the contract;

(b) Whether the bid contains material defects;

(c) Whether the bidder has previously or is currently complying with terms and conditions of any other contracts with the state or relevant contracts with entities other than the state;

(d) Whether the bidder was the "highest responsible bidder" for a sale within the previous five years but failed to complete the sale, such as by not entering into a resulting contract or by not paying the difference between the deposit and the total amount due. However, sales that were bid prior to January 1, 2003, may not be considered for the purposes of this subsection (1)(d);

(e) Whether the bidder has been convicted of a crime relating to the public lands or natural resources of the state of Washington, the United States, or any other state, tribe, or country, where "conviction" includes a guilty plea, or unvacated forfeiture of bail;

(f) Whether the bidder is owned, controlled, or managed by any person, partnership, or corporation that is not responsible under this statute; and

(g) Whether the subcontractors of the bidder, if any, are responsible under this statute.

(2) Whenever the department has reason to believe that the apparent high bidder is not a responsible bidder, the department may award the sale to the next responsible bidder or the department may reject all bids pursuant to section 808 of this act.

NEW SECTION. Sec. 807. (1) Sales by public auction under this chapter shall be conducted under the direction of the department, by its authorized representative. The department's representatives are referred to as auctioneers.

(2) On or before the time specified in the notice of sale each bidder shall deposit with the auctioneer, in cash or by certified check, cashier's check, or postal money order payable to the order of the department, or by bid guarantee in the form of bid bond acceptable to the department, an amount equal to the deposit specified in the notice of sale. The deposit shall include a specified amount of the appraised price for the valuable materials offered for sale, together with any fee required by law for the issuance of contracts or bills of sale. The deposit may, when prescribed in the notice of sale, be considered an opening bid of an amount not less than the minimum appraised price established in the notice of sale. The successful bidder's deposit will be retained by the auctioneer and the difference, if any, between the deposit and the total amount due shall on the day of the sale be paid in cash, certified check, cashier's check, draft, postal money order, or by personal check made payable to the department. If a bid bond is used, the share of the total deposit due guaranteed by the bid bond shall, within ten days of the day of sale, be paid in cash, certified check, cashier's check, draft, or postal money order payable to the department. Other deposits, if any, shall be returned to the respective bidders at the conclusion of each sale.

(3) The auctioneer shall deliver to the purchaser a memorandum of purchase containing a description of the materials purchased, the price bid, and the terms of the sale.

(4) The auctioneer shall at once send to the department the cash, certified check, cashier's check, draft, postal money order, or bid guarantee received from the purchaser, and a copy of the memorandum delivered to the purchaser, together with such additional report of the auctioneer's proceedings with reference to the sales as may be required by the department.

NEW SECTION. Sec. 808. (1) A sale of valuable materials shall be confirmed if:

(a) No affidavit showing that the interest of the state in such a sale was injuriously affected by fraud or collusion, is filed with the department's Olympia office within ten days from the receipt of the report of the auctioneer conducting the sale;

(b) It appears from the report that the sale was fairly conducted, that the purchaser was the highest responsible bidder at the sale, and that the sale price is not less than the appraised value of the property sold;

(c) The department is satisfied that the material sold would not, upon being readvertised and offered for sale, sell for a substantially higher price; and

(d) The payment required by law to be made at the time of making the sale has been made, and that the best interests of the state are being served.

(2) Upon confirming a sale, the department shall enter upon its records the confirmation of sale and issue to the purchaser a contract of sale or bill of sale as the case may be, as is provided for in this chapter.

NEW SECTION. Sec. 809. In no case shall any valuable materials situated within or upon any tidelands, shorelands, or beds of navigable waters belonging to the state, be offered for sale unless the same shall have been appraised by the department of natural resources within ninety days prior to the date fixed for the sale.

PART 9 MARINE PLASTIC DEBRIS

Sec. 901. RCW 79.97.010 and 1989 c 23 s 1 are each amended to read as follows:

The legislature finds that the public health and safety is threatened by an increase in the amount of plastic garbage being deposited in the waters and on the shores of the state. To address this growing problem, the commissioner (~~(of public lands)~~) appointed the marine plastic debris task force which presented a state action plan in October 1988. It is necessary for the state of Washington to implement the action plan in order to:

- (1) Cleanup and prevent further pollution of the state's waters and aquatic lands;
- (2) Increase public awareness;
- (3) Coordinate federal, state, local, and private efforts;
- (4) Foster the stewardship of the aquatic lands of the state.

Sec. 902. RCW 79.97.020 and 1989 c 23 s 2 are each amended to read as follows:

As used in this chapter:

- (1) "Department" means the department of natural resources.
- (2) "Action plan" means the marine plastic debris action plan of October 1988 as presented to the commissioner (~~(of public lands)~~) by the marine plastic debris task force.

Sec. 903. RCW 79.97.030 and 1994 c 264 s 65 are each amended to read as follows:

The department shall have the authority to coordinate implementation of the action plan with appropriate state agencies including the parks and recreation commission and the departments of ecology and fish and wildlife. The department is authorized to (~~(promulgate)~~) adopt, in consultation with affected agencies, the necessary rules to provide for the cleanup and to prevent pollution of the waters of the state and aquatic lands by plastic and other marine debris.

Sec. 904. RCW 79.97.050 and 1989 c 23 s 5 are each amended to read as follows:

The department is the designated agency to coordinate implementation of the action plan and is authorized to hire such employees as are necessary to coordinate the action plan among state and federal agencies, the private sector, and interested public groups and organizations. The department is authorized to contract, through an open bidding process, with interested parties to act as the information clearinghouse for marine plastic debris related issues.

Sec. 905. RCW 79.97.060 and 1989 c 23 s 6 are each amended to read as follows:

The department is authorized to accept, receive, disburse, and administer grants or funds or gifts from any source including private individuals, public entities, and the federal government to supplement the funds (~~hereby~~) appropriated to carry out the purposes of this chapter.

PART 10 MISCELLANEOUS PROVISIONS

NEW SECTION. Sec. 1001. This act is intended to make technical amendments to certain codified statutes that deal with the department of natural resources. Any statutory changes made by this act should be interpreted as technical in nature and not be interpreted to have any substantive policy implications.

NEW SECTION. Sec. 1002. Part headings and subchapter headings used in this act are not any part of the law.

NEW SECTION. Sec. 1003. A new chapter is added to Title 79 RCW and is named "Aquatic Lands—General." The following sections are codified or recodified under the following subchapters:

(1) "General provisions" as follows:

RCW 79.90.450;

Section 101 of this act;

RCW 79.90.455;

RCW 79.90.545;

RCW 79.90.546 [79.90.456]; and

Section 102 of this act.

(2) "General use, sale, and lease provisions" as follows:

RCW 79.90.090;

RCW 79.90.100;

RCW 79.90.120;

RCW 79.90.410;

RCW 79.90.370;

RCW 79.90.245; and

RCW 79.90.400.

(3) "Leasing and rental rates" as follows:

RCW 79.94.170;

RCW 79.90.460;

RCW 79.90.470;

Section 144 of this act;

RCW 79.90.480;

RCW 79.90.485;

RCW 79.90.490;

RCW 79.90.500;

Section 151 of this act;

RCW 79.90.505;

RCW 79.90.510;

RCW 79.90.515;

RCW 79.90.520;

RCW 79.90.525;
RCW 79.90.530;
RCW 79.90.535; and
RCW 79.90.540.

(4) "Other conveyances" as follows:

RCW 79.90.457;
RCW 79.90.580;
RCW 79.90.475; and
RCW 79.90.105.

(5) "Dredged material disposal" as follows:

RCW 79.90.550;
RCW 79.90.555; and
RCW 79.90.560.

(6) "Other management provisions" as follows:

RCW 79.90.565;
RCW 79.90.900;
RCW 79.90.901; and
RCW 79.90.902.

NEW SECTION. Sec. 1004. RCW 79.90.080 is recodified as a section in chapter 43.30 RCW.

NEW SECTION. Sec. 1005. A new chapter is added to Title 79 RCW and is named "Aquatic Lands—Easements and Rights Of Way." The following sections are codified or recodified under the following subchapters:

(1) "Easements for removal of valuable materials" as follows:

RCW 79.91.010;
RCW 79.91.020;
RCW 79.91.030;
RCW 79.91.040;
RCW 79.91.050;
RCW 79.91.060; and
RCW 79.91.070.

(2) "Rights of way for roads, bridges, and trestles" as follows:

RCW 79.91.080;
RCW 79.91.090;
RCW 79.91.100;
RCW 79.91.110; and
RCW 79.91.120.

(3) "Rights of way for utility lines" as follows:

RCW 79.91.130;
RCW 79.91.140;
RCW 79.91.150;
Section 216 of this act; and
RCW 79.90.575.

(4) "Rights of way for irrigation, diking, and drainage/overflow rights" as follows:

RCW 79.91.160;
RCW 79.91.170;
RCW 79.91.180;

RCW 79.91.190;
RCW 79.91.200;
RCW 79.91.210; and
RCW 79.91.900.

NEW SECTION. Sec. 1006. A new chapter is added to Title 79 RCW and is named "Aquatic Lands—Harbor Areas." The following sections are recodified under the following subchapters:

(1) "Harbor line establishment and relocation" as follows:

RCW 79.92.010;
RCW 79.92.020;
RCW 79.92.030;
RCW 79.92.035; and
RCW 79.90.390.

(2) "Harbor area leases" as follows:

RCW 79.92.060;
RCW 79.92.070;
RCW 79.92.080;
RCW 79.92.090;
RCW 79.92.100;
RCW 79.92.110; and
RCW 79.92.900.

NEW SECTION. Sec. 1007. A new chapter is added to Title 79 RCW and is named "Aquatic Lands—Waterways and Streets." The following sections are recodified and added to the chapter created in this section:

RCW 79.93.010;
RCW 79.93.020;
RCW 79.93.030;
RCW 79.93.040;
RCW 79.93.050;
RCW 79.93.060; and
RCW 79.93.900.

NEW SECTION. Sec. 1008. A new chapter is added to Title 79 RCW and is named "Aquatic Lands—Tidelands and Shorelands." The following sections are recodified under the following subchapters:

(1) "Plat/appraisal/replat" as follows:

RCW 79.94.330;
RCW 79.94.020;
RCW 79.94.030;
RCW 79.94.040;
RCW 79.90.110;
RCW 79.94.050;
RCW 79.94.060;
RCW 79.94.100;
RCW 79.94.110;
RCW 79.94.130; and
RCW 79.94.140.

(2) "Exchange, sale, lease limitations/terms" as follows:

RCW 79.94.150;

RCW 79.94.090;
RCW 79.94.290;
RCW 79.94.270;
RCW 79.90.250;
RCW 79.90.260;
RCW 79.90.270;
RCW 79.90.280;
RCW 79.90.350;
RCW 79.94.080;
RCW 79.94.320; and
RCW 79.90.360.

(3) "Sale or leasing preference" as follows:

RCW 79.94.070;
RCW 79.94.280;
RCW 79.94.120;
RCW 79.94.300;
RCW 79.94.310;
RCW 79.94.210; and
RCW 79.94.260.

(4) "Second-class shorelands—Special platting and selection provisions" as follows:

RCW 79.94.220;
RCW 79.94.230;
RCW 79.94.240; and
RCW 79.94.250.

(5) "Sales of tidelands and shorelands" as follows:

RCW 79.90.170;
RCW 79.90.180;
RCW 79.90.190;
RCW 79.90.200;
RCW 79.90.210;
RCW 79.90.215;
RCW 79.90.220;
RCW 79.90.230; and
RCW 79.90.240.

(6) "Conveyance to public entities/public use" as follows:

RCW 79.94.160;
RCW 79.94.175;
RCW 79.94.181;
RCW 79.94.185;
RCW 79.94.390;
RCW 79.94.400;
RCW 79.94.410;
RCW 79.94.420;
RCW 79.94.430;
RCW 79.94.440;
RCW 79.94.450; and
RCW 79.94.900.

NEW SECTION. Sec. 1009. A new chapter is added to Title 79 RCW and is named "Aquatic Lands—Beds of Navigable Waters." The following sections are recodified and added to the chapter created in this section:

RCW 79.95.010;
RCW 79.95.020;
RCW 79.95.030;
RCW 79.95.040;
RCW 79.95.050;
RCW 79.95.060;
RCW 79.90.458; and
RCW 79.95.900.

NEW SECTION. Sec. 1010. A new chapter is added to Title 79 RCW and is named "Aquatic Lands—Oysters, Geoducks, Shellfish, Other Aquacultural Uses, and Marine Aquatic Plants." The following sections are recodified under the following subchapters:

(1) "General provisions" as follows:

RCW 79.90.570;
RCW 79.96.120; and
RCW 79.96.130.

(2) "Leasing for shellfish cultivation/aquaculture use" as follows:

RCW 79.90.495;
RCW 79.96.010;
RCW 79.96.020;
RCW 79.96.030;
RCW 79.96.040;
RCW 79.96.050;
RCW 79.96.060; and
RCW 79.96.070.

(3) "Geoduck harvest/cultivation" as follows:

RCW 79.96.140;
RCW 79.96.080;
RCW 79.96.085; and
RCW 79.96.906.

(4) "Oyster reserves" as follows:

RCW 79.96.090;
RCW 79.96.100; and
RCW 79.96.110.

(5) "Marine aquatic plants" as follows:

RCW 79.96.200;
RCW 79.96.210;
RCW 79.96.220;
RCW 79.96.230;
RCW 79.96.901;
RCW 79.96.902;
RCW 79.96.903;
RCW 79.96.904; and
RCW 79.96.905.

NEW SECTION. Sec. 1011. A new chapter is added to Title 79 RCW and is named "Valuable Materials." The following sections are recodified under the following subchapters:

(1) "Sale procedure" as follows:

Sections 801 through 808 of this act.

(2) "Special provisions and leases" as follows:

RCW 79.90.130;

RCW 79.90.150;

RCW 79.90.160;

Section 809 of this act;

RCW 79.90.290;

RCW 79.90.300;

RCW 79.90.310;

RCW 79.90.320;

RCW 79.90.325;

RCW 79.90.330; and

RCW 79.90.340.

NEW SECTION. Sec. 1012. A new chapter is added to Title 79 RCW and is named "Marine Plastic Debris." The following sections are recodified and added to the chapter created in this section:

RCW 79.97.010;

RCW 79.97.020;

RCW 79.97.030;

RCW 79.97.040;

RCW 79.97.050;

RCW 79.97.060; and

RCW 79.97.900.

NEW SECTION. Sec. 1013. The following acts or parts of acts are each repealed:

(1) RCW 79.90.010 ("Aquatic lands") and 1982 1st ex.s. c 21 s 1;

(2) RCW 79.90.015 ("Outer harbor line") and 1982 1st ex.s. c 21 s 2;

(3) RCW 79.90.020 ("Harbor area") and 1982 1st ex.s. c 21 s 3;

(4) RCW 79.90.025 ("Inner harbor line") and 1982 1st ex.s. c 21 s 4;

(5) RCW 79.90.030 ("First class tidelands") and 1982 1st ex.s. c 21 s 5;

(6) RCW 79.90.035 ("Second class tidelands") and 1982 1st ex.s. c 21 s 6;

(7) RCW 79.90.040 ("First class shorelands") and 1982 1st ex.s. c 21 s 7;

(8) RCW 79.90.045 ("Second class shorelands") and 1982 1st ex.s. c 21 s 8;

(9) RCW 79.90.050 ("Beds of navigable waters") and 1982 1st ex.s. c 21 s 9;

(10) RCW 79.90.055 ("Improvements") and 1982 1st ex.s. c 21 s 10;

(11) RCW 79.90.060 ("Valuable materials") and 1982 1st ex.s. c 21 s 11;

(12) RCW 79.90.065 ("Person") and 1982 1st ex.s. c 21 s 12;

(13) RCW 79.90.070 (Harbor line commission) and 1982 1st ex.s. c 21 s 13;

(14) RCW 79.90.380 (Abstracts of state-owned aquatic lands) and 2003 c 334 s 605 & 1982 1st ex.s. c 21 s 44;

(15) RCW 79.90.465 (Definitions) and 1984 c 221 s 4;

(16) RCW 79.93.070 (Copies of waterway permits or leases existing on October 1, 1984, to be delivered to the department—Exception) and 1984 c 221 s 23; and

(17) RCW 79.94.010 (Survey to determine area subject to sale or lease) and 1982 1st ex.s. c 21 s 86.

NEW SECTION. Sec. 1014. 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.

Passed by the House March 8, 2005.

Passed by the Senate April 6, 2005.

Approved by the Governor April 22, 2005, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 22, 2005.

Note: Governor's explanation of partial veto is as follows:

"I am returning, without my approval as to section 210, Substitute House Bill No. 1491 entitled:

"AN ACT Relating to recodification of aquatic lands statutes."

Substitute House Bill 1491 recodifies the state's aquatic lands management statutes without substantive change. Section 210 of the bill makes non-substantive changes to RCW 79.91.100, a section of state law that was substantively amended by Substitute House Bill 1657, relating to bridges and trestles. I signed Substitute House Bill 1657 into law earlier this session, on April 14, 2005. If Section 210 of Substitute House Bill 1491 is also signed into law, it may conflict with the substantive changes made by Substitute House Bill 1657. For this reason, I have vetoed Section 210 of Substitute House Bill 1491.

With the exception of Section 210, Substitute House Bill 1491 is approved."

CHAPTER 156

[House Bill 1534]

MALPRACTICE INSURANCE—RETIRED HEALTH CARE PROVIDERS

AN ACT Relating to identifying health care providers covered by the retired health care provider liability malpractice insurance program; and amending RCW 43.70.460 and 43.70.470.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 43.70.460 and 2004 c 184 s 1 are each amended to read as follows:

(1) The department may establish a program to purchase and maintain liability malpractice insurance for retired primary and specialty care providers who provide ((primary)) health care services to low-income patients. The following conditions apply to the program:

(a) ((Primary)) Health care services shall be provided at clinics serving low-income patients that are public or private tax-exempt corporations or other established practice settings as defined by the department;

(b) ((Primary)) Health care services provided at the clinics shall be offered to low-income patients based on their ability to pay;

(c) Retired ((primary)) health care providers providing health care services shall not receive compensation for their services; and

(d) The department shall contract only with a liability insurer authorized to offer liability malpractice insurance in the state.

(e) Specialists in this program will be limited to those whose malpractice insurance premiums are comparable to primary care providers.

(2) This section and RCW 43.70.470 shall not be interpreted to require a liability insurer to provide coverage to a ((primary)) health care provider should the insurer determine that coverage should not be offered to a ((primary)) health care provider because of past claims experience or for other appropriate reasons.

(3) The state and its employees who operate the program shall be immune from any civil or criminal action involving claims against clinics or ((primary)) health care providers that provided health care services under this section and RCW 43.70.470. This protection of immunity shall not extend to any clinic or ((primary)) health care provider participating in the program.

(4) The department may monitor the claims experience of retired ((primary)) health care providers covered by liability insurers contracting with the department.

(5) The department may provide liability insurance under chapter 113, Laws of 1992 only to the extent funds are provided for this purpose by the legislature. If there are insufficient funds to support all applications for liability insurance coverage, priority shall be given to those retired ((primary)) health care providers working at clinics operated by public or private tax-exempt corporations rather than clinics operated by for-profit corporations.

Sec. 2. RCW 43.70.470 and 2004 c 184 s 2 are each amended to read as follows:

The department may establish by rule the conditions of participation in the liability insurance program by retired ((primary)) health care providers at clinics utilizing retired ((primary)) health care providers for the purposes of this section and RCW 43.70.460. These conditions shall include, but not be limited to, the following:

(1) The participating ((primary)) health care provider associated with the clinic shall hold a valid license to practice as a physician under chapter 18.71 or 18.57 RCW, a naturopath under chapter 18.36A RCW, a physician assistant under chapter 18.71A or 18.57A RCW, an advanced registered nurse practitioner under chapter ((18.88)) 18.79 RCW, a dentist under chapter 18.32 RCW, or other health professionals as may be deemed in short supply ((in the health personnel resource plan under chapter 28B.125 RCW. A primary care provider may include a specialist who is practicing in a primary care capacity)) by the department. All ((primary)) health care providers must be in conformity with current requirements for licensure ((as a retired primary care provider)), including continuing education requirements;

(2) ((The participating primary care provider shall limit the scope of practice in the clinic to primary care. Primary)) Health care shall be limited to noninvasive procedures and shall not include obstetrical care ((, or any specialized care and treatment)). Noninvasive procedures include injections, suturing of minor lacerations, and incisions of boils or superficial abscesses. Primary dental care shall be limited to diagnosis, oral hygiene, restoration, and extractions and shall not include orthodontia, or other specialized care and treatment;

(3) The provision of liability insurance coverage shall not extend to acts outside the scope of rendering ((medical)) health care services pursuant to this section and RCW 43.70.460;

(4) The participating (~~(primary)~~) health care provider shall limit the provision of health care services to primarily low-income persons provided that clinics may, but are not required to, provide means tests for eligibility as a condition for obtaining health care services;

(5) The participating (~~(primary)~~) health care provider shall not accept compensation for providing health care services from patients served pursuant to this section and RCW 43.70.460, nor from clinics serving these patients. "Compensation" shall mean any remuneration of value to the participating (~~(primary)~~) health care provider for services provided by the (~~(primary)~~) health care provider, but shall not be construed to include any nominal copayments charged by the clinic, nor reimbursement of related expenses of a participating (~~(primary)~~) health care provider authorized by the clinic in advance of being incurred; and

(6) The use of mediation or arbitration for resolving questions of potential liability may be used, however any mediation or arbitration agreement format shall be expressed in terms clear enough for a person with a sixth grade level of education to understand, and on a form no longer than one page in length.

Passed by the House March 8, 2005.

Passed by the Senate April 13, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 157

[Second Substitute House Bill 1542]

PUBLIC DEFENSE SERVICES

AN ACT Relating to indigent defense services; amending RCW 10.101.005 and 10.101.030; adding new sections to chapter 10.101 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 10.101.005 and 1989 c 409 s 1 are each amended to read as follows:

The legislature finds that effective legal representation (~~(should)~~) must be provided for indigent persons and persons who are indigent and able to contribute, consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches.

Sec. 2. RCW 10.101.030 and 1989 c 409 s 4 are each amended to read as follows:

Each county or city under this chapter shall adopt standards for the delivery of public defense services, whether those services are provided by contract, assigned counsel, or a public defender office. Standards shall include the following: Compensation of counsel, duties and responsibilities of counsel, case load limits and types of cases, responsibility for expert witness fees and other costs associated with representation, administrative expenses, support services, reports of attorney activity and vouchers, training, supervision, monitoring and evaluation of attorneys, substitution of attorneys or assignment of contracts, limitations on private practice of contract attorneys, qualifications of attorneys, disposition of client complaints, cause for termination of contract or removal of attorney, and nondiscrimination. The standards endorsed by the Washington

state bar association for the provision of public defense services (~~(may)~~) should serve as guidelines to (~~(contracting)~~) local legislative authorities in adopting standards.

NEW SECTION. Sec. 3. A new section is added to chapter 10.101 RCW to read as follows:

The Washington state office of public defense shall disburse appropriated funds to counties and cities for the purpose of improving the quality of public defense services. Counties may apply for up to their pro rata share as set forth in section 4 of this act provided that counties conform to application procedures established by the office of public defense and improve the quality of services for both juveniles and adults. Cities may apply for moneys pursuant to the grant program set forth in section 6 of this act. In order to receive funds, each applying county or city must require that attorneys providing public defense services attend training approved by the office of public defense at least once per calendar year. Each applying county or city shall report the expenditure for all public defense services in the previous calendar year, as well as case statistics for that year, including per attorney caseloads, and shall provide a copy of each current public defense contract to the office of public defense with its application. Each individual or organization that contracts to perform public defense services for a county or city shall report to the county or city hours billed for nonpublic defense legal services in the previous calendar year, including number and types of private cases.

NEW SECTION. Sec. 4. A new section is added to chapter 10.101 RCW to read as follows:

(1)(a) Subject to the availability of funds appropriated for this purpose, the office of public defense shall disburse to applying counties that meet the requirements of section 3 of this act designated funds under this chapter on a pro rata basis pursuant to the formula set forth in section 5 of this act and shall disburse to eligible cities, funds pursuant to section 6 of this act. Each fiscal year for which it receives state funds under this chapter, a county or city must document to the office of public defense that it is meeting the standards for provision of indigent defense services as endorsed by the Washington state bar association or that the funds received under this chapter have been used to make appreciable demonstrable improvements in the delivery of public defense services, including the following:

(i) Adoption by ordinance of a legal representation plan that addresses the factors in RCW 10.101.030. The plan must apply to any contract or agency providing indigent defense services for the county or city;

(ii) Requiring attorneys who provide public defense services to attend training under section 3 of this act;

(iii) Requiring attorneys who handle the most serious cases to meet specified qualifications as set forth in the Washington state bar association endorsed standards for public defense services or participate in at least one case consultation per case with office of public defense resource attorneys who are so qualified. The most serious cases include all cases of murder in the first or second degree, persistent offender cases, and class A felonies. This subsection (1)(a)(iii) does not apply to cities receiving funds under sections 3 through 6 of this act;

(iv) Requiring contracts to address the subject of compensation for extraordinary cases;

(v) Identifying funding specifically for the purpose of paying experts (A) for which public defense attorneys may file ex parte motions, or (B) which should be specifically designated within a public defender agency budget;

(vi) Identifying funding specifically for the purpose of paying investigators (A) for which public defense attorneys may file ex parte motions, and (B) which should be specifically designated within a public defender agency budget.

(b) The cost of providing counsel in cases where there is a conflict of interest shall not be borne by the attorney or agency who has the conflict.

(2) The office of public defense shall determine eligibility of counties and cities to receive state funds under this chapter. If a determination is made that a county or city receiving state funds under this chapter did not substantially comply with this section, the office of public defense shall notify the county or city of the failure to comply and unless the county or city contacts the office of public defense and substantially corrects the deficiencies within ninety days after the date of notice, or some other mutually agreed period of time, the county's or city's eligibility to continue receiving funds under this chapter is terminated. If an applying county or city disagrees with the determination of the office of public defense as to the county's or city's eligibility, the county or city may file an appeal with the advisory committee of the office of public defense within thirty days of the eligibility determination. The decision of the advisory committee is final.

NEW SECTION. Sec. 5. A new section is added to chapter 10.101 RCW to read as follows:

The moneys shall be distributed to each county determined to be eligible to receive moneys by the office of public defense as determined under this section. Ninety percent of the funding appropriated shall be designated as "county moneys" and shall be distributed as follows:

(1) Six percent of the county moneys appropriated shall be distributed as a base allocation among the eligible counties. A county's base allocation shall be equal to this six percent divided by the total number of eligible counties.

(2) Ninety-four percent of the county moneys appropriated shall be distributed among the eligible counties as follows:

(a) Fifty percent of this amount shall be distributed on a pro rata basis to each eligible county based upon the population of the county as a percentage of the total population of all eligible counties; and

(b) Fifty percent of this amount shall be distributed on a pro rata basis to each eligible county based upon the annual number of criminal cases filed in the county superior court as a percentage of the total annual number of criminal cases filed in the superior courts of all eligible counties.

(3) Under this section:

(a) The population of the county is the most recent number determined by the office of financial management;

(b) The annual number of criminal cases filed in the county superior court is determined by the most recent annual report of the courts of Washington, as published by the office of the administrator for the courts;

(c) Distributions and eligibility for distributions in the 2005-2007 biennium shall be based on 2004 figures for the annual number of criminal cases that are

filed as described under (b) of this subsection. Future distributions shall be based on the most recent figures for the annual number of criminal cases that are filed as described under (b) of this subsection.

NEW SECTION. Sec. 6. A new section is added to chapter 10.101 RCW to read as follows:

The moneys under section 3 of this act shall be distributed to each city determined to be eligible under this section by the office of public defense. Ten percent of the funding appropriated shall be designated as "city moneys" and distributed as follows:

(1) The office of public defense shall administer a grant program to select the cities eligible to receive city moneys. Incorporated cities may apply for grants. Applying cities must conform to the requirements of sections 3 and 4 of this act.

(2) City moneys shall be divided among a maximum of five applying cities and shall be distributed in a timely manner to accomplish the goals of the grants.

(3) Criteria for award of grants shall be established by the office of public defense after soliciting input from the association of Washington cities. Award of the grants shall be determined by the office of public defense.

NEW SECTION. Sec. 7. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2005, in the omnibus appropriations act, this act is null and void.

Passed by the House March 11, 2005.

Passed by the Senate April 7, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 158

[House Bill 1546]

NATUROPATHIC MEDICINE

AN ACT Relating to naturopathic physicians; amending RCW 18.36A.020 and 18.36A.040; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 18.36A.020 and 1991 c 3 s 87 are each amended to read as follows:

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

- (1) "Department" means the department of health.
- (2) "Secretary" means the secretary of health or the secretary's designee.
- (3) "Naturopath" means an individual licensed under this chapter.
- (4) "Committee" means the Washington state naturopathic practice advisory committee.

(5) "Educational program" means ((a)) an accredited program preparing persons for the practice of (~~naturopathy~~) naturopathic medicine.

(6) "Nutrition and food science" means the prevention and treatment of disease or other human conditions through the use of foods, water, herbs, roots, bark, or natural food elements.

(7) "Manual manipulation" or "mechanotherapy" means manipulation of a part or the whole of the body by hand or by mechanical means.

(8) "Physical modalities" means use of physical, chemical, electrical, and other noninvasive modalities, including(;) but not limited to heat, cold, air, light, water in any of its forms, sound, massage, and therapeutic exercise.

(9) "Homeopathy" means a system of medicine based on the use of infinitesimal doses of medicines capable of producing symptoms similar to those of the disease treated, as listed in the homeopathic pharmacopeia of the United States.

(10) (~~"Medicines of mineral, animal, and botanical origin" means medicines derived from animal organs, tissues, and oils, minerals, and plants administered orally and topically, excluding legend drugs with the following exceptions: Vitamins, minerals, whole gland thyroid, and substances as exemplified in traditional botanical and herbal pharmacopoeia, and nondrug contraceptive devices excluding interuterine devices. The use of intermuscular injections are limited to vitamin B-12 preparations and combinations when clinical and/or laboratory evaluation has indicated vitamin B-12 deficiency. The use of controlled substances is prohibited.;~~) "Naturopathic medicines" means vitamins; minerals; botanical medicines; homeopathic medicines; hormones; and those legend drugs and controlled substances consistent with naturopathic medical practice in accordance with rules established by the secretary. Controlled substances are limited to codeine and testosterone products that are contained in Schedules III, IV, and V in chapter 69.50 RCW.

(11) "Hygiene and immunization" means the use of such preventative techniques as personal hygiene, asepsis, public health, and immunizations, to the extent allowed by rule.

(12) "Minor office procedures" means care and procedures incident thereto of superficial lacerations, lesions, and abrasions, and the removal of foreign bodies located in superficial structures, not to include the eye; and the use of antiseptics and topical or local anesthetics in connection therewith. "Minor office procedures" also includes intramuscular, intravenous, subcutaneous, and intradermal injections of substances consistent with the practice of naturopathic medicine and in accordance with rules established by the secretary.

(13) "Common diagnostic procedures" means the use of venipuncture (~~to withdraw blood~~) consistent with the practice of naturopathic medicine, commonly used diagnostic modalities consistent with naturopathic practice, health history taking, physical examination, radiography, examination of body orifices excluding endoscopy, (~~and~~) laboratory medicine (~~(which obtains)~~), and obtaining samples of human tissues (~~(products)~~), (~~(including superficial scrapings)~~) but excluding (~~(procedures which would require surgical)~~) incision or excision beyond that which is authorized as a minor office procedure.

(14) "Suggestion" means techniques including but not limited to counseling, biofeedback, and hypnosis.

(15) "Radiography" means the ordering, but not the interpretation, of radiographic diagnostic and other imaging studies and the taking and interpretation of standard radiographs.

Sec. 2. RCW 18.36A.040 and 1991 c 3 s 89 are each amended to read as follows:

Naturopathic medicine (~~(or naturopathy)~~) is the practice by naturopaths of the art and science of the diagnosis, prevention, and treatment of disorders of the body by stimulation or support, or both, of the natural processes of the human body. A naturopath is responsible and accountable to the consumer for the quality of naturopathic care rendered.

The practice of (~~(naturopathy)~~) naturopathic medicine includes manual manipulation (mechanotherapy), the prescription, administration, dispensing, and use, except for the treatment of malignancies (~~(or neoplastic disease)~~), of nutrition and food science, physical modalities, minor office procedures, homeopathy, (~~(certain)~~) naturopathic medicines (~~(of mineral, animal, and botanical origin)~~), hygiene and immunization, nondrug contraceptive devices, common diagnostic procedures, and suggestion; however, nothing in this chapter shall prohibit consultation and treatment of a patient in concert with a practitioner licensed under chapter 18.57 or 18.71 RCW. No person licensed under this chapter may employ the term "chiropractic" to describe any services provided by a naturopath under this chapter.

NEW SECTION. Sec. 3. The secretary, in consultation with the naturopathic advisory committee and the Washington state board of pharmacy, shall develop education and training requirements for the use of controlled substances authorized under this act. The requirements must be met by the naturopath prior to being authorized to prescribe controlled substances under this act.

Passed by the House March 8, 2005.

Passed by the Senate April 12, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 159

[Substitute House Bill 1560]

APPRENTICESHIP—TUITION WAIVERS

AN ACT Relating to tuition waivers for community college apprenticeship programs; and adding a new section to chapter 28B.50 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 28B.50 RCW to read as follows:

With regard to waivers for courses offered for the purpose of satisfying related or supplemental educational requirements for apprentices registered with the Washington state apprenticeship council or the federal bureau of apprenticeship and training, colleges may at the request of an apprenticeship organization, deduct the tuition owed from training contracts with that apprentice organization.

Passed by the House March 8, 2005.

Passed by the Senate April 14, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 160

[Engrossed Substitute House Bill 1577]

CAPITAL PROJECTS—NONPROFIT ORGANIZATIONS

AN ACT Relating to capital projects for local nonprofit art, cultural, heritage, youth, and social service organizations; amending RCW 43.63A.125, 43.63A.750, 27.34.330, and 43.63A.135; and repealing 1999 c 295 s 4 (uncodified).

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 43.63A.125 and 1999 c 295 s 3 are each amended to read as follows:

(1) The department shall establish a competitive process to solicit proposals for and prioritize projects that assist nonprofit organizations in acquiring, constructing, or rehabilitating facilities used for the delivery of nonresidential social services.

(2) The department shall establish a competitive process to prioritize applications for the assistance as follows:

(a) The department shall conduct a statewide solicitation of project applications from local governments, nonprofit organizations, and other entities, as determined by the department. The department shall evaluate and rank applications in consultation with a citizen advisory committee using objective criteria. At a minimum, applicants must demonstrate that the requested assistance will increase the efficiency or quality of the social services it provides to citizens. The evaluation and ranking process shall also include an examination of existing assets that applicants may apply to projects. Grant assistance under this section shall not exceed twenty-five percent of the total cost of the project. The nonstate portion of the total project cost may include cash, the value of real property when acquired solely for the purpose of the project, and in-kind contributions.

(b) The department shall submit a prioritized list of recommended projects to the governor and the legislature in the department's biennial capital budget request beginning with the 2001-2003 biennium and thereafter. For the 1999-2001 biennium, the department shall conduct a solicitation and ranking process, as described in (a) of this subsection, for projects to be funded by appropriations provided for this program in the 1999-2001 capital budget. The list shall include a description of each project, the amount of recommended state funding, and documentation of nonstate funds to be used for the project. The total amount of recommended state funding for projects on a biennial project list shall not exceed four million dollars. The department may provide an additional prioritized alternate project list which shall not exceed (~~five hundred thousand~~) two million dollars. Except for the 1999-2001 biennium, the department shall not sign contracts or otherwise financially obligate funds under this section until the legislature has approved a specific list of projects.

(c) In contracts for grants authorized under this section the department shall include provisions which require that capital improvements shall be held by the grantee for a specified period of time appropriate to the amount of the grant and that facilities shall be used for the express purpose of the grant. If the grantee is found to be out of compliance with provisions of the contract, the grantee shall repay to the state general fund the principal amount of the grant plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the date of authorization of the grant.

Sec. 2. RCW 43.63A.750 and 1999 c 295 s 1 are each amended to read as follows:

(1) A competitive grant program to assist nonprofit organizations in acquiring, constructing, or rehabilitating performing arts, art museums, and cultural facilities is created.

(2)(a) The department shall submit a list of recommended performing arts, art museum projects, and cultural organization projects eligible for funding to the governor and the legislature in the department's biennial capital budget request beginning with the 2001-2003 biennium and thereafter. The list, in priority order, shall include a description of each project, the amount of recommended state funding, and documentation of nonstate funds to be used for the project. The total amount of recommended state funding for projects on a biennial project list shall not exceed four million dollars. The department may provide an additional prioritized alternate project list which shall not exceed ~~((five hundred thousand))~~ two million dollars.

(b) The department shall establish a competitive process to prioritize applications for state assistance as follows:

(i) The department shall conduct a statewide solicitation of project applications from nonprofit organizations, local governments, and other entities, as determined by the department. The department shall evaluate and rank applications in consultation with a citizen advisory committee, including a representative from the state arts commission, using objective criteria. The evaluation and ranking process shall also consider local community support for projects and an examination of existing assets that applicants may apply to projects.

(ii) The department may establish the amount of state grant assistance for individual project applications but the amount shall not exceed twenty percent of the estimated total capital cost or actual cost of a project, whichever is less. The remaining portions of the project capital cost shall be a match from nonstate sources. The nonstate match may include cash, the value of real property when acquired solely for the purpose of the project, and in-kind contributions. The department is authorized to set matching requirements for individual projects. State assistance may be used to fund separate definable phases of a project if the project demonstrates adequate progress and has secured the necessary match funding.

(iii) The department shall not sign contracts or otherwise financially obligate funds under this section until the legislature has approved a specific list of projects. In contracts for grants authorized under this section, the department shall include provisions requiring that capital improvements be held by the grantee for a specified period of time appropriate to the amount of the grant and that facilities be used for the express purpose of the grant. If the grantee is found to be out of compliance with provisions of the contract, the grantee shall repay to the state general fund the principal amount of the grant plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the date of authorization of the grant.

Sec. 3. RCW 27.34.330 and 1999 c 295 s 2 are each amended to read as follows:

The Washington state historical society shall establish a competitive process to solicit proposals for and prioritize heritage capital projects for potential

funding in the state capital budget. The society shall adopt rules governing project eligibility and evaluation criteria. Application for funding of specific projects may be made to the society by local governments, public development authorities, nonprofit corporations, tribal governments, and other entities, as determined by the society. The society, with the advice of leaders in the heritage field, including but not limited to representatives from the office of the secretary of state, the eastern Washington state historical society, and the state office of archaeology and historic preservation, shall establish and submit a prioritized list of heritage capital projects to the governor and the legislature in the society's biennial capital budget request. The list shall include a description of each project, the amount of recommended state funding, and documentation of nonstate funds to be used for the project. The total amount of recommended state funding for projects on a biennial project list shall not exceed four million dollars. The department may provide an additional prioritized alternate project list which shall not exceed (~~five hundred thousand~~) two million dollars. The prioritized list shall be developed through open and public meetings and the amount of state funding shall not exceed thirty-three percent of the total cost of the project. The nonstate portion of the total project cost may include cash, the value of real property when acquired solely for the purpose of the project, and in-kind contributions. The department shall not sign contracts or otherwise financially obligate funds under this section until the legislature has approved a specific list of projects. In contracts for grants authorized under this section, the society shall include provisions requiring that capital improvements be held by the grantee for a specified period of time appropriate to the amount of the grant and that facilities be used for the express purpose of the grant. If the grantee is found to be out of compliance with provisions of the contract, the grantee shall repay to the state general fund the principal amount of the grant plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the date of authorization of the grant.

Sec. 4. RCW 43.63A.135 and 2003 1st sp.s. c 7 s 2 are each amended to read as follows:

(1) The department of community, trade, and economic development must establish a competitive process to solicit proposals for and prioritize projects whose primary objective is to assist nonprofit youth organizations in acquiring, constructing, or rehabilitating facilities used for the delivery of nonresidential services, excluding outdoor athletic fields.

(2) The department of community, trade, and economic development must establish a competitive process to prioritize applications for the assistance as follows:

(a) The department of community, trade, and economic development must conduct a statewide solicitation of project applications from local governments, nonprofit organizations, and other entities, as determined by the department of community, trade, and economic development. The department of community, trade, and economic development must evaluate and rank applications in consultation with a citizen advisory committee using objective criteria. Projects must have a major recreational component, and must have either an educational or social service component. At a minimum, applicants must demonstrate that the requested assistance will increase the efficiency or quality of the services it provides to youth. The evaluation and ranking process must also include an

examination of existing assets that applicants may apply to projects. Grant assistance under this section may not exceed twenty-five percent of the total cost of the project. The nonstate portion of the total project cost may include cash, the value of real property when acquired solely for the purpose of the project, and in-kind contributions.

(b) The department of community, trade, and economic development must submit a prioritized list of recommended projects to the governor and the legislature in the department of community, trade, and economic development's biennial capital budget request beginning with the 2005-2007 biennium and thereafter. The list must include a description of each project, the amount of recommended state funding, and documentation of nonstate funds to be used for the project. The total amount of recommended state funding for projects on a biennial project list must not exceed two million dollars. The department of community, trade, and economic development may provide an additional prioritized alternate project list that must not exceed (~~five hundred thousand~~) one million dollars. The department of community, trade, and economic development may not sign contracts or otherwise financially obligate funds under this section until the legislature has approved a specific list of projects.

(c) In contracts for grants authorized under this section the department of community, trade, and economic development must include provisions that require that capital improvements be held by the grantee for a specified period of time appropriate to the amount of the grant and that facilities be used for the express purpose of the grant. If the grantee is found to be out of compliance with provisions of the contract, the grantee must repay to the state general fund the principal amount of the grant plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the date of authorization of the grant.

NEW SECTION. Sec. 5. 1999 c 295 s 4 (uncodified) is repealed.

Passed by the House March 8, 2005.

Passed by the Senate April 11, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 161

[House Bill 1599]

COUNTY ENGINEER—DEFINITION

AN ACT Relating to the definition of "county engineer"; and amending RCW 36.75.010.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 36.75.010 and 1984 c 7 s 26 are each amended to read as follows:

As used in this title with relation to roads and bridges, the following terms mean:

(1) "Alley," a highway not designed for general travel and primarily used as a means of access to the rear of residences and business establishments;

(2) "Board," the board of county commissioners or the county legislative authority, however organized;

(3) "Center line," the line, marked or unmarked, parallel to and equidistant from the sides of a two-way traffic roadway of a highway except where otherwise indicated by painted lines or markers;

(4) "City street," every highway or part thereof, located within the limits of incorporated cities and towns, except alleys;

(5) "County engineer" (~~includes~~) means the county road engineer, county engineer, and engineer, and shall refer to the statutorily required position of county engineer appointed under RCW 36.80.010; and may include the county director of public works when the person in that position also meets the requirements of a licensed professional engineer and is duly appointed by the county legislative authority under RCW 36.80.010;

(6) "County road," every highway or part thereof, outside the limits of incorporated cities and towns and which has not been designated as a state highway;

(7) "Department," the state department of transportation;

(8) "Director" or "secretary," the state secretary of transportation or his or her duly authorized assistant;

(9) "Pedestrian," any person afoot;

(10) "Private road or driveway," every way or place in private ownership and used for travel of vehicles by the owner or those having express or implied permission from the owner, but not by other persons;

(11) "Highway," every way, lane, road, street, boulevard, and every way or place in the state of Washington open as a matter of right to public vehicular travel both inside and outside the limits of incorporated cities and towns;

(12) "Railroad," a carrier of persons or property upon vehicles, other than streetcars, operated upon stationary rails, the route of which is principally outside incorporated cities and towns;

(13) "Roadway," the paved, improved, or proper driving portion of a highway designed or ordinarily used for vehicular travel;

(14) "Sidewalk," property between the curb lines or the lateral lines of a roadway, and the adjacent property, set aside and intended for the use of pedestrians or such portion of private property parallel and in proximity to a highway and dedicated to use by pedestrians;

(15) "State highway," includes every highway as herein defined, or part thereof, that has been designated as a state highway, or branch thereof, by legislative enactment.

Passed by the House March 11, 2005.

Passed by the Senate April 12, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 162

[House Bill 1600]

COUNTY ROAD CONSTRUCTION PROJECTS

AN ACT Relating to county road construction projects reporting requirements; and amending RCW 36.77.065 and 36.81.130.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 36.77.065 and 2001 c 108 s 1 are each amended to read as follows:

The board may cause any county road to be constructed or improved by day labor as provided in this section.

(1) As used in this section, "county road construction budget" means the aggregate total of those costs as defined by the budgeting, accounting, and reporting system for counties and cities and other local governments authorized under RCW 43.09.200 and 43.09.230 as prescribed in the state auditor's budget, accounting, and reporting manual's (BARS) road and street construction accounts (~~(541.00 through 541.90 in effect April 1, 1975)~~): PROVIDED, That such costs shall not include those costs assigned to the ~~((preliminary engineering account 541.11,))~~ right of way account~~((s 541.20 through 541.25)),~~ ancillary operations account ~~((541.80)),~~ and ~~((ferries account 541.81))~~ that portion of the engineering account that is preliminary engineering in the budget, accounting, and reporting manual.

(2) For counties with a population that equals or exceeds fifty thousand people, the total amount of day labor construction programs one county may perform annually shall total no more than the amounts determined in the following manner:

(a) Any county with a total annual county road construction budget of four million dollars or more may accumulate a day labor road construction budget equal to no more than eight hundred thousand dollars or fifteen percent of the county's total annual county road construction budget, whichever is greater.

(b) Any county with a total annual county road construction budget of one million five hundred thousand dollars or more and less than four million dollars may accumulate a day labor road construction budget equal to not more than five hundred twenty-five thousand dollars or twenty percent of the county's total annual county road construction budget, whichever is greater.

(c) Any county with a total annual county road construction budget of five hundred thousand dollars or more and less than one million five hundred thousand dollars may accumulate a day labor road construction budget equal to two hundred fifty thousand dollars or thirty-five percent of the county's total annual county road construction budget, whichever is greater.

(d) Any county with a total annual county road construction budget less than five hundred thousand dollars may accumulate a day labor road construction budget equal to two hundred fifty thousand dollars: PROVIDED, That any county with a total annual road construction budget of less than five hundred thousand dollars may, by resolution of the board at the time the county road construction budget is adopted, elect to construct or improve county roads by day labor in an amount not to exceed thirty-five thousand dollars on any one project, including labor, equipment, and materials; such election to be in lieu of the two hundred fifty thousand dollar limit provided for in this section, except that any project means a complete project and the division of any project into units of work or classes of work so as to permit construction by day labor is not authorized.

(3) For counties with a population of less than fifty thousand people, the total amount of day labor construction programs one county may perform annually may total no more than the amounts determined in the following manner:

(a) A county with a total annual county road construction budget of four million dollars or more may accumulate a day labor road construction budget equal to not more than eight hundred eighty thousand dollars or twenty-five percent of the county's total annual county road construction budget, whichever is greater;

(b) A county with a total annual county road construction budget of one million five hundred thousand dollars or more and less than four million dollars may accumulate a day labor road construction budget equal to not more than five hundred seventy-seven thousand dollars or thirty percent of the county's total annual county road construction budget, whichever is greater;

(c) A county with a total annual county road construction budget of five hundred thousand dollars or more and less than one million five hundred thousand dollars may accumulate a day labor road construction budget equal to two hundred seventy-five thousand dollars or forty-five percent of the county's total annual county road construction budget, whichever is greater;

(d) A county with a total annual county road construction budget less than five hundred thousand dollars may accumulate a day labor road construction budget equal to two hundred seventy-five thousand dollars. However, such a county may, by resolution of the board at the time the county road construction budget is adopted, elect instead to construct or improve county roads by day labor in an amount not to exceed thirty-eight thousand five hundred dollars on any one project, including labor, equipment, and materials. That election is in lieu of the two hundred seventy-five thousand dollar limit provided for in this section. As used in this section, "any project" means a complete project, and a county may not divide a project into units of work or classes of work so as to permit construction by day labor.

(4) Any county that adopts a county road construction budget unreasonably exceeding that county's actual road construction expenditures for the same budget year which has the effect of permitting the county to exceed the day labor amounts established in this section is in violation of the county road administration board's standards of good practice under RCW 36.78.020 and is in violation of this section. Any county, whose expenditure for day labor for road construction projects unreasonably exceeds the limits specified in this section, is in violation of the county road administration board's standards of good practice under RCW 36.78.020 and is in violation of this section.

(5) Notwithstanding any other provision in this section, whenever the construction work or improvement is the installation of electrical traffic control devices, highway illumination equipment, electrical equipment, wires, or equipment to convey electrical current, in an amount exceeding ten thousand dollars for any one project including labor, equipment, and materials, such work shall be performed by contract as in this chapter provided. This section means a complete project and does not permit the construction of any project by day labor by division of the project into units of work or classes of work.

Sec. 2. RCW 36.81.130 and 1991 c 363 s 86 are each amended to read as follows:

The laying out, construction, and maintenance of all county roads shall hereafter be in accordance with the following procedure:

On or before the first Monday in October of each year each county road engineer shall file with the county legislative authority a recommended plan for

the laying out, construction, (~~(maintenance,)~~) and (~~(special)~~) maintenance of county roads for the ensuing fiscal year. Such recommended plan need not be limited to but shall include the following items: Recommended projects, including capital expenditures for ferries, docks, and related facilities, and their priority; the estimated cost of all work, including labor and materials for each project recommended; a statement as to whether such work is to be done by the county forces or by publicly advertised contract; a list of all recommended (~~(repairs to and)~~) purchases of road equipment, together with the estimated costs thereof. Amounts to be expended for maintenance (~~(and special maintenance)~~) shall be recommended, but details of these proposed expenditures shall not be made. The recommended plan shall conform as nearly as practicable to the county's long range road program.

After filing of the road engineer's recommended plan, the county legislative authority shall consider the same. Revisions and changes may be made until a plan which is agreeable to a majority of the members of the county legislative authority has been adopted: PROVIDED, That such revisions shall conform as nearly as practicable to the county's long range road program. Any appropriations contained in the county road budget shall be void unless the county's road plan was adopted prior to such appropriation.

The final road plan for the fiscal year shall not thereafter be changed except by unanimous vote of the county legislative authority.

Passed by the House March 11, 2005.

Passed by the Senate April 12, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 163

[Engrossed Substitute House Bill 1607]

RESIDENT TUITION—AMERICAN INDIAN STUDENTS

AN ACT Relating to resident tuition rates for American Indian students; and amending RCW 28B.15.0131.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28B.15.0131 and 1994 c 188 s 1 are each amended to read as follows:

For the purposes of determining resident tuition rates, resident students shall include American Indian students who meet two conditions. First, for a period of one year immediately prior to enrollment at a state institution of higher education as defined in RCW 28B.10.016, the student must have been domiciled in one or a combination of the following states: Idaho; Montana; Oregon; or Washington. Second, the students must be members of one of the (~~(following American)~~) federally recognized Indian tribes whose traditional and customary tribal boundaries included portions of the state of Washington, or whose tribe was granted reserved lands within the state of Washington(=

(1) ~~Colville Confederated Tribes;~~

(2) ~~Confederated Tribes of the Chehalis Reservation;~~

(3) ~~Hoh Indian Tribe;~~

(4) ~~Jamestown S'Klallam Tribe;~~

- (5) Kalispel Tribe of Indians;
- (6) Lower Elwha Klallam Tribe;
- (7) Lummi Nation;
- (8) Makah Indian Tribe;
- (9) Muckleshoot Indian Tribe;
- (10) Nisqually Indian Tribe;
- (11) Nooksack Indian Tribe;
- (12) Port Gamble S'Klallam Community;
- (13) Puyallup Tribe of Indians;
- (14) Quileute Tribe;
- (15) Quinault Indian Nation;
- (16) Confederated Tribes of Salish Kootenai;
- (17) Sauk Suiattle Indian Nation;
- (18) Shoalwater Bay Indian Tribe;
- (19) Skokomish Indian Tribe;
- (20) Snoqualmie Tribe;
- (21) Spokane Tribe of Indians;
- (22) Squaxin Island Tribe;
- (23) Stillaguamish Tribe;
- (24) Suquamish Tribe of the Port Madison Reservation;
- (25) Swinomish Indian Community;
- (26) Tulalip Tribes;
- (27) Upper Skagit Indian Tribe;
- (28) Yakama Indian Nation;
- (29) Coeur d'Alene Tribe;
- (30) Confederated Tribes of the Umatilla Indian Reservation;
- (31) Confederated Tribes of Warm Springs;
- (32) Kootenai Tribe; and
- (33) Nez Perce Tribe).

Federal recognition of an Indian tribe shall be as determined under 25 C.F.R. by the United States bureau of Indian affairs.

Any student enrolled at a state institution of higher education as defined in RCW 28B.10.016 who is paying resident tuition under this section, and who has not established domicile in the state of Washington at least one year before enrollment, shall not be included in any calculation of state-funded enrollment for budgeting purposes, and no state general fund moneys shall be appropriated to a state institution of higher education for the support of such student.

Passed by the House March 3, 2005.

Passed by the Senate April 12, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 164

[House Bill 1612]

UNIVERSITY OF WASHINGTON—DENTAL SCHOOL FACULTY

AN ACT Relating to University of Washington dental school faculty; and amending RCW 18.32.195.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 18.32.195 and 1994 sp.s. c 9 s 218 are each amended to read as follows:

The commission may, without examination, issue a license to persons who possess the qualifications set forth in this section.

(1) The commission may, upon written request of the dean of the school of dentistry of the University of Washington, issue a license to practice dentistry in this state to persons who have been licensed or otherwise authorized to practice dentistry in another state or country and who have been accepted for employment by the school of dentistry as ~~((full-time))~~ faculty members. For purposes of this subsection, this means teaching members of the faculty of the school of dentistry of the University of Washington ~~((who are so employed on a one hundred percent of work time basis))~~. Such license shall permit the holder thereof to practice dentistry within the confines of the university facilities for a period of one year while he or she is so employed as a ~~((full-time))~~ faculty member by the school of dentistry of the University of Washington. It shall terminate whenever the holder ceases to be ~~((such))~~ a ~~((full-time))~~ faculty member. Such license shall permit the holder thereof to practice dentistry only in connection with his or her duties in employment with the school of dentistry of the University of Washington. This limitation shall be stated on the license.

(2) The commission may, upon written request of the dean of the school of dentistry of the University of Washington, issue a limited license to practice dentistry in this state to university residents in postgraduate dental education. The license shall permit the resident dentist to provide dental care only in connection with his or her duties as a university resident.

(3) The commission may condition the granting of a license under this section with terms the commission deems appropriate. All persons licensed under this section shall be subject to the jurisdiction of the commission to the same extent as other members of the dental profession, in accordance with this chapter, and in addition the licensee may be disciplined by the commission after a hearing has been held in accordance with the provisions set forth in this chapter, and determination by the commission that such licensee has violated any of the restrictions set forth in this section.

(4) Persons applying for licensure pursuant to this section shall pay the application fee determined by the secretary and, in the event the license applied for is issued, a license fee at the rate provided for licenses generally. After review by the commission, licenses issued under this section may be renewed annually if the licensee continues to be employed as a ~~((full-time))~~ faculty member of the school of dentistry of the University of Washington, or a university resident in postgraduate dental education, and otherwise meets the requirements of the provisions and conditions deemed appropriate by the commission. Any person who obtains a license pursuant to this section may, without an additional application fee, apply for licensure under this chapter, in which case the applicant shall be subject to examination and the other requirements of this chapter.

Passed by the House March 8, 2005.

Passed by the Senate April 13, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 165

[Substitute House Bill 1661]

JUVENILE COURTS—TRANSFER OF PROCEEDINGS

AN ACT Relating to transfer of juvenile proceedings; and amending RCW 13.40.060.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 13.40.060 and 1997 c 338 s 16 are each amended to read as follows:

(1) All actions under this chapter shall be commenced and tried in the county where any element of the offense was committed except as otherwise specially provided by statute. In cases in which diversion is provided by statute, venue is in the county in which the juvenile resides or in the county in which any element of the offense was committed.

(2)(a) The court upon motion of any party or upon its own motion may, at any time, transfer a proceeding to another juvenile court when there is reason to believe that an impartial proceeding cannot be held in the county in which the proceeding was begun; and

(b) A court may transfer a proceeding to another juvenile court following disposition for the purposes of supervision and enforcement of the disposition order.

(3) If the court orders a transfer of the proceeding pursuant to subsection (2)(b) of this section:

(a) The case and copies of ~~((att))~~ only those legal and social documents pertaining thereto ~~((may in the discretion of the court))~~ shall be transferred to the county in which the juvenile resides, without regard to whether or not his or her custodial parent resides there, for supervision and enforcement of the disposition order.

(b) If any restitution is yet to be determined, the originating court shall transfer the case to the new county with the exception of the restitution. Venue over restitution shall be retained by the originating court for purposes of establishing a restitution order. Once restitution is determined, the originating county shall then transfer venue over modification and enforcement of the restitution to the new county.

(c) The court of the receiving county ~~((has jurisdiction to))~~ may modify and enforce the disposition order, including restitution.

(d) The clerk of the originating county shall maintain the account receivable in the judicial information system and all payments shall be made to the clerk of the originating county.

(e) Any collection of the offender legal financial obligation shall be managed by the juvenile probation department of the new county while the offender is under juvenile probation supervision, or by the clerk of the original county at the conclusion of supervision by juvenile probation. The probation department of the new county shall notify the clerk of the originating county when they end supervision of the offender.

(f) In cases where a civil judgment has already been established, venue may not be transferred to another county.

~~((3) The court upon motion of any party or upon its own motion may, at any time, transfer a proceeding to another juvenile court when there is reason to~~

believe that an impartial proceeding cannot be held in the county in which the proceeding was begun.)

Passed by the House March 8, 2005.

Passed by the Senate April 12, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 166

[Substitute Senate Bill 5035]

FORENSIC PATHOLOGY PROGRAM

AN ACT Relating to forensic pathology; amending RCW 43.103.030 and 43.79.445; creating a new section; and repealing RCW 28B.20.426.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The Washington state forensic investigations council shall study and make recommendations to the legislature regarding the need for a state forensic pathologist program. The council may include in its recommendations information regarding the state forensic pathologist's annual salary, budget, and duties.

The study and recommendations shall be presented to the legislature by December 1, 2005.

Sec. 2. RCW 43.103.030 and 1999 c 40 s 4 are each amended to read as follows:

There is created the Washington state forensic investigations council. The council shall oversee the bureau of forensic laboratory services and, in consultation with the chief of the Washington state patrol or the chief's designee, control the operation and establish policies of the bureau of forensic laboratory services. The council may also study and recommend cost-efficient improvements to the death investigation system in Washington and report its findings to the legislature.

~~((Further, the council shall, jointly with the chairperson of the pathology department of the University of Washington's School of Medicine, or the chairperson's designee, oversee the state forensic pathology fellowship program, determine the budget for the program and set the fellow's annual salary, and take those steps necessary to administer the program.))~~

The forensic investigations council shall be responsible for the oversight of any state forensic pathology program authorized by the legislature.

The forensic investigations council shall be actively involved in the preparation of the bureau of forensic laboratory services budget and shall approve the bureau of forensic laboratory services budget prior to its formal submission to the office of financial management pursuant to RCW 43.88.030.

Sec. 3. RCW 43.79.445 and 1997 c 454 s 901 are each amended to read as follows:

There is established an account in the state treasury referred to as the "death investigations account" which shall exist for the purpose of receiving, holding, investing, and disbursing funds appropriated or provided in RCW 70.58.107 and any moneys appropriated or otherwise provided thereafter.

Moneys in the death investigations account shall be disbursed by the state treasurer once every year on December 31 and at any other time determined by the treasurer. The treasurer shall make disbursements to: The state toxicology laboratory, counties for the cost of autopsies, ~~((the University of Washington to fund the state forensic pathology fellowship program,))~~ the state patrol for providing partial funding for the state dental identification system, the criminal justice training commission for training county coroners, medical examiners and their staff, and the state forensic investigations council. Funds from the death investigations account may be appropriated during the 1997-99 biennium for the purposes of statewide child mortality reviews administered by the department of health.

~~((The University of Washington and the Washington state forensic investigations council shall jointly determine the yearly amount for the state forensic pathology fellowship program established by RCW 28B.20.426.))~~

NEW SECTION. Sec. 4. RCW 28B.20.426 (Fellowship program in forensic pathology—Funding—Recipient's services to county coroners) and 1991 c 176 s 3 & 1986 c 31 s 1 are each repealed.

- Passed by the Senate April 16, 2005.
- Passed by the House April 6, 2005.
- Approved by the Governor April 22, 2005.
- Filed in Office of Secretary of State April 22, 2005.

CHAPTER 167

[Engrossed Substitute Senate Bill 5060]
TRAFFIC SAFETY CAMERAS

AN ACT Relating to regulating the use of automated traffic safety cameras; amending RCW 46.63.030 and 46.63.075; and adding a new section to chapter 46.63 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 46.63 RCW to read as follows:

(1) The use of automated traffic safety cameras for issuance of notices of infraction is subject to the following requirements:

(a) The appropriate local legislative authority must first enact an ordinance allowing for their use to detect one or more of the following: Stoplight, railroad crossing, or school speed zone violations. At a minimum, the local ordinance must contain the restrictions described in this section and provisions for public notice and signage. Cities and counties using automated traffic safety cameras before the effective date of this act are subject to the restrictions described in this section, but are not required to enact an authorizing ordinance.

(b) Use of automated traffic safety cameras is restricted to two-arterial intersections, railroad crossings, and school speed zones only.

(c) Automated traffic safety cameras may only take pictures of the vehicle and vehicle license plate and only while an infraction is occurring. The picture must not reveal the face of the driver or of passengers in the vehicle.

(d) A notice of infraction must be mailed to the registered owner of the vehicle within fourteen days of the violation, or to the renter of a vehicle within fourteen days of establishing the renter's name and address under subsection

(3)(a) of this section. The law enforcement officer issuing the notice of infraction shall include with it a certificate or facsimile thereof, based upon inspection of photographs, microphotographs, or electronic images produced by an automated traffic safety camera, stating the facts supporting the notice of infraction. This certificate or facsimile is prima facie evidence of the facts contained in it and is admissible in a proceeding charging a violation under this chapter. The photographs, microphotographs, or electronic images evidencing the violation must be available for inspection and admission into evidence in a proceeding to adjudicate the liability for the infraction. A person receiving a notice of infraction based on evidence detected by an automated traffic safety camera may respond to the notice by mail.

(e) The registered owner of a vehicle is responsible for an infraction under RCW 46.63.030(1)(e) unless the registered owner overcomes the presumption in RCW 46.63.075, or, in the case of a rental car business, satisfies the conditions under subsection (3) of this section. If appropriate under the circumstances, a renter identified under subsection (3)(a) of this section is responsible for an infraction.

(f) Notwithstanding any other provision of law, all photographs, microphotographs, or electronic images prepared under this section are for the exclusive use of law enforcement in the discharge of duties under this section and are not open to the public and may not be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation under this section. No photograph, microphotograph, or electronic image may be used for any purpose other than enforcement of violations under this section nor retained longer than necessary to enforce this section.

(g) All locations where an automated traffic safety camera is used must be clearly marked by placing signs in locations that clearly indicate to a driver that he or she is entering a zone where traffic laws are enforced by an automated traffic safety camera.

(h) If a county or city has established an authorized automated traffic safety camera program under this section, the compensation paid to the manufacturer or vendor of the equipment used must be based only upon the value of the equipment and services provided or rendered in support of the system, and may not be based upon a portion of the fine or civil penalty imposed or the revenue generated by the equipment.

(2) Infractions detected through the use of automated traffic safety cameras are not part of the registered owner's driving record under RCW 46.52.101 and 46.52.120. Additionally, infractions generated by the use of automated traffic safety cameras under this section shall be processed in the same manner as parking infractions, including for the purposes of RCW 3.46.120, 3.50.100, 35.20.220, 46.16.216, and 46.20.270(3). However, the amount of the fine issued for an infraction generated through the use of an automated traffic safety camera shall not exceed the amount of a fine issued for other parking infractions within the jurisdiction.

(3) If the registered owner of the vehicle is a rental car business, the law enforcement agency shall, before a notice of infraction being issued under this section, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car business does

not, within eighteen days of receiving the written notice, provide to the issuing agency by return mail:

(a) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred; or

(b) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred; or

(c) In lieu of identifying the vehicle operator, the rental car business may pay the applicable penalty.

Timely mailing of this statement to the issuing law enforcement agency relieves a rental car business of any liability under this chapter for the notice of infraction.

(4) Nothing in this section prohibits a law enforcement officer from issuing a notice of traffic infraction to a person in control of a vehicle at the time a violation occurs under RCW 46.63.030(1) (a), (b), or (c).

(5) For the purposes of this section, "automated traffic safety camera" means a device that uses a vehicle sensor installed to work in conjunction with an intersection traffic control system, a railroad grade crossing control system, or a speed measuring device, and a camera synchronized to automatically record one or more sequenced photographs, microphotographs, or electronic images of the rear of a motor vehicle at the time the vehicle fails to stop when facing a steady red traffic control signal or an activated railroad grade crossing control signal, or exceeds a speed limit in a school speed zone as detected by a speed measuring device.

Sec. 2. RCW 46.63.030 and 2004 c 231 s 2 are each amended to read as follows:

(1) A law enforcement officer has the authority to issue a notice of traffic infraction:

(a) When the infraction is committed in the officer's presence;

(b) When the officer is acting upon the request of a law enforcement officer in whose presence the traffic infraction was committed;

(c) If an officer investigating at the scene of a motor vehicle accident has reasonable cause to believe that the driver of a motor vehicle involved in the accident has committed a traffic infraction; (~~(e)~~)

(d) When the notice of infraction is detected through the use of a photo enforcement system under RCW 46.63.160; or

(e) When the notice of infraction is detected through the use of an automated traffic safety camera under section 1 of this act.

(2) A court may issue a notice of traffic infraction upon receipt of a written statement of the officer that there is reasonable cause to believe that an infraction was committed.

(3) If any motor vehicle without a driver is found parked, standing, or stopped in violation of this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution, the officer finding the vehicle shall take its registration number and may take any other information displayed on the vehicle which may identify its user, and shall conspicuously affix to the vehicle a notice of traffic infraction.

(4) In the case of failure to redeem an abandoned vehicle under RCW 46.55.120, upon receiving a complaint by a registered tow truck operator that has incurred costs in removing, storing, and disposing of an abandoned vehicle,

an officer of the law enforcement agency responsible for directing the removal of the vehicle shall send a notice of infraction by certified mail to the last known address of the person responsible under RCW 46.55.105. The notice must be entitled "Littering—Abandoned Vehicle" and give notice of the monetary penalty. The officer shall append to the notice of infraction, on a form prescribed by the department of licensing, a notice indicating the amount of costs incurred as a result of removing, storing, and disposing of the abandoned vehicle, less any amount realized at auction, and a statement that monetary penalties for the infraction will not be considered as having been paid until the monetary penalty payable under this chapter has been paid and the court is satisfied that the person has made restitution in the amount of the deficiency remaining after disposal of the vehicle.

Sec. 3. RCW 46.63.075 and 2004 c 231 s 3 are each amended to read as follows:

(1) In a traffic infraction case involving an infraction detected through the use of a photo enforcement system under RCW 46.63.160, or detected through the use of an automated traffic safety camera under section 1 of this act, proof that the particular vehicle described in the notice of traffic infraction was in violation of any such provision of RCW 46.63.160 or section 1 of this act, together with proof that the person named in the notice of traffic infraction was at the time of the violation the registered owner of the vehicle, constitutes in evidence a prima facie presumption that the registered owner of the vehicle was the person in control of the vehicle at the point where, and for the time during which, the violation occurred.

(2) This presumption may be overcome only if the registered owner states, under oath, in a written statement to the court or in testimony before the court that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person other than the registered owner.

Passed by the Senate March 14, 2005.

Passed by the House April 15, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 168

[Engrossed Senate Bill 5089]

OFF-ROAD VEHICLES—NOISE MANAGEMENT

AN ACT Relating to reducing nuisance noise from off-road vehicles; creating a new section; and providing an expiration date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1)(a) A task force on off-road vehicle noise management is established. The task force consists of the following members:

(i) Two members from each of the two largest caucuses of the house of representatives, appointed by the speaker of the house of representatives;

(ii) Two members from each of the two largest caucuses of the senate, appointed by the president of the senate; and

(iii) Participants invited by the legislative members, including but not limited to persons representing the following:

(A) Three county commissioners, one representing counties with a population of two hundred thousand or more people and two representing counties with populations of fewer than two hundred thousand people;

(B) A representative of port districts;

(C) A representative of the department of natural resources, selected by the commissioner of public lands;

(D) A representative of the department of ecology, selected by the director of ecology;

(E) A representative of the interagency committee for outdoor recreation, selected by the director of the committee;

(F) A representative of the parks and recreation commission, selected by the director of the commission;

(G) A person representing manufacturers of off-road vehicles;

(H) A representative of the United States forest service;

(I) Recreational users; and

(J) Interested citizens.

(b) The committee shall choose its chair from among its membership.

(2) The committee shall review the following issues:

(a) The appropriateness and enforceability of current decibel requirements for off-road vehicles;

(b) The appropriateness of any off-road vehicle usage requirements that would minimize nuisance noise impacts on those not operating the off-road vehicle;

(c) The applicability and consistency of local ordinances concerning noise and off-road vehicle usage; and

(d) The availability of, and barriers to, using public lands or other large ownerships to create areas where off-road vehicles can be operated with minimum noise disturbance of neighbors.

(3)(a) The committee shall be staffed by the house office of program research and senate committee services.

(b) Legislative members of the committee will be reimbursed for travel expenses in accordance with RCW 44.04.120.

(4) The committee shall report its findings and recommendations in the form of draft legislation to the legislature by December 1, 2005.

(5) This section expires July 1, 2006.

Passed by the Senate March 12, 2005.

Passed by the House April 14, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 169

[Substitute Senate Bill 5146]

QUALITY IMPROVEMENT COMMITTEE MEETINGS—CONFIDENTIALITY

AN ACT Relating to allowing confidential quality improvement committee meetings, proceedings, and deliberations; and amending RCW 70.44.062.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 70.44.062 and 1985 c 166 s 1 are each amended to read as follows:

(1) All meetings, proceedings, and deliberations of the board of commissioners, its staff or agents, concerning the granting, denial, revocation, restriction, or other consideration of the status of the clinical or staff privileges of a physician or other health care provider as that term is defined in RCW 7.70.020, if such other providers at the discretion of the district's commissioners are considered for such privileges, shall be confidential and may be conducted in executive session: PROVIDED, That the final action of the board as to the denial, revocation, or restriction of clinical or staff privileges of a physician or other health care provider as defined in RCW 7.70.020 shall be done in public session.

(2) All meetings, proceedings, and deliberations of a quality improvement committee established under RCW 4.24.250, 43.70.510, or 70.41.200 and all meetings, proceedings, and deliberations of the board of commissioners, its staff or agents, to review the report or the activities of a quality improvement committee established under RCW 4.24.250, 43.70.510, or 70.41.200 may, at the discretion of the quality improvement committee or the board of commissioners, be confidential and may be conducted in executive session. Any review conducted by the board of commissioners or quality improvement committee, or their staffs or agents, shall be subject to the same protections, limitations, and exemptions that apply to quality improvement committee activities under RCW 4.24.240, 4.24.250, 43.70.510, and 70.41.200. However, any final action of the board of commissioners on the report of the quality improvement committee shall be done in public session.

Passed by the Senate March 8, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 170

[Second Substitute Senate Bill 5154]

LEASEHOLD EXCISE TAX—EXEMPTIONS—HISTORICAL PROPERTY

AN ACT Relating to a leasehold excise tax exemption for certain historical property; and amending RCW 82.29A.130.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 82.29A.130 and 1999 c 165 s 21 are each amended to read as follows:

The following leasehold interests shall be exempt from taxes imposed pursuant to RCW 82.29A.030 and 82.29A.040:

(1) All leasehold interests constituting a part of the operating properties of any public utility which is assessed and taxed as a public utility pursuant to chapter 84.12 RCW.

(2) All leasehold interests in facilities owned or used by a school, college or university which leasehold provides housing for students and which is otherwise exempt from taxation under provisions of RCW 84.36.010 and 84.36.050.

(3) All leasehold interests of subsidized housing where the fee ownership of such property is vested in the government of the United States, or the state of Washington or any political subdivision thereof but only if income qualification exists for such housing.

(4) All leasehold interests used for fair purposes of a nonprofit fair association that sponsors or conducts a fair or fairs which receive support from revenues collected pursuant to RCW 67.16.100 and allocated by the director of the department of agriculture where the fee ownership of such property is vested in the government of the United States, the state of Washington or any of its political subdivisions: PROVIDED, That this exemption shall not apply to the leasehold interest of any sublessee of such nonprofit fair association if such leasehold interest would be taxable if it were the primary lease.

(5) All leasehold interests in any property of any public entity used as a residence by an employee of that public entity who is required as a condition of employment to live in the publicly owned property.

(6) All leasehold interests held by enrolled Indians of lands owned or held by any Indian or Indian tribe where the fee ownership of such property is vested in or held in trust by the United States and which are not subleased to other than to a lessee which would qualify pursuant to this chapter, RCW 84.36.451 and 84.40.175.

(7) All leasehold interests in any real property of any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States: PROVIDED, That this exemption shall apply only where it is determined that contract rent paid is greater than or equal to ninety percent of fair market rental, to be determined by the department of revenue using the same criteria used to establish taxable rent in RCW 82.29A.020(2)(b).

(8) All leasehold interests for which annual taxable rent is less than two hundred fifty dollars per year. For purposes of this subsection leasehold interests held by the same lessee in contiguous properties owned by the same lessor shall be deemed a single leasehold interest.

(9) All leasehold interests which give use or possession of the leased property for a continuous period of less than thirty days: PROVIDED, That for purposes of this subsection, successive leases or lease renewals giving substantially continuous use of possession of the same property to the same lessee shall be deemed a single leasehold interest: PROVIDED FURTHER, That no leasehold interest shall be deemed to give use or possession for a period of less than thirty days solely by virtue of the reservation by the public lessor of the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

(10) All leasehold interests under month-to-month leases in residential units rented for residential purposes of the lessee pending destruction or removal for the purpose of constructing a public highway or building.

(11) All leasehold interests in any publicly owned real or personal property to the extent such leasehold interests arises solely by virtue of a contract for public improvements or work executed under the public works statutes of this state or of the United States between the public owner of the property and a contractor.

(12) All leasehold interests that give use or possession of state adult correctional facilities for the purposes of operating correctional industries under RCW 72.09.100.

(13) All leasehold interests used to provide organized and supervised recreational activities for disabled persons of all ages in a camp facility and for public recreational purposes by a nonprofit organization, association, or corporation that would be exempt from property tax under RCW 84.36.030(1) if it owned the property. If the publicly owned property is used for any taxable purpose, the leasehold excise taxes set forth in RCW 82.29A.030 and 82.29A.040 shall be imposed and shall be apportioned accordingly.

(14) All leasehold interests in the public or entertainment areas of a baseball stadium with natural turf and a retractable roof or canopy that is in a county with a population of over one million, that has a seating capacity of over forty thousand, and that is constructed on or after January 1, 1995. "Public or entertainment areas" include ticket sales areas, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality and stadium club areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas and suites, the playing field, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" does not include locker rooms or private offices exclusively used by the lessee.

(15) All leasehold interests in the public or entertainment areas of a stadium and exhibition center, as defined in RCW 36.102.010, that is constructed on or after January 1, 1998. For the purposes of this subsection, "public or entertainment areas" has the same meaning as in subsection (14) of this section, and includes exhibition areas.

(16) All leasehold interests in public facilities districts, as provided in chapter 36.100 or 35.57 RCW.

(17) All leasehold interests in property that is: (a) Owned by a municipal corporation; (b) listed on any federal or state register of historical sites; and (c) wholly contained within a designated national historic reserve under 16 U.S.C. Sec. 461.

Passed by the Senate March 15, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 171

[Substitute Senate Bill 5161]

ACCIDENT REPORTS—DISTRACTIONS

AN ACT Relating to accident reports; amending RCW 46.52.030 and 46.52.060; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.52.030 and 1997 c 248 s 1 are each amended to read as follows:

(1) Unless a report is to be made by a law enforcement officer under subsection (3) of this section, the driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to the property of any one person to an apparent extent equal to or greater than the minimum amount established by rule adopted by the chief of the Washington state patrol in accordance with subsection (5) of this section, shall, within four days after such accident, make a written report of such accident to the chief of police of the city or town if such accident occurred within an incorporated city or town or the county sheriff or state patrol if such accident occurred outside incorporated cities and towns. Nothing in this subsection prohibits accident reports from being filed by drivers where damage to property is less than the minimum amount or where a law enforcement officer has submitted a report.

(2) The original of the report shall be immediately forwarded by the authority receiving the report to the chief of the Washington state patrol at Olympia, Washington. The Washington state patrol shall give the department of licensing full access to the report.

(3) Any law enforcement officer who investigates an accident for which a report is required under subsection (1) of this section shall submit an investigator's report as required by RCW 46.52.070.

(4) The chief of the Washington state patrol may require any driver of any vehicle involved in an accident, of which report must be made as provided in this section, to file supplemental reports whenever the original report in the chief's opinion is insufficient, and may likewise require witnesses of any such accident to render reports. For this purpose, the chief of the Washington state patrol shall prepare and, upon request, supply to any police department, coroner, sheriff, and any other suitable agency or individual, sample forms of accident reports required hereunder, which reports shall be upon a form devised by the chief of the Washington state patrol and shall call for sufficiently detailed information to disclose all material facts with reference to the accident to be reported thereon, including the location, the circumstances, the conditions then existing, the persons and vehicles involved, the insurance information required under RCW 46.30.030, personal injury or death, if any, the amounts of property damage claimed, the total number of vehicles involved, whether the vehicles were legally parked, legally standing, or moving, ~~(and)~~ whether such vehicles were occupied at the time of the accident, and whether any driver involved in the accident was distracted at the time of the accident. Distractions contributing to an accident must be reported on the accident form and include at least the following minimum reporting options: Not distracted; operating a handheld electronic telecommunication device; operating a hands-free wireless telecommunication device; other electronic devices (including, but not limited to, PDA's, laptop computers, navigational devices, etc.); adjusting an audio or entertainment system; smoking; eating or drinking; reading or writing; grooming; interacting with children, passengers, animals, or objects in the vehicle; other inside distractions; outside distractions; and distraction unknown. Every required accident report shall be made on a form prescribed by the chief of the Washington state patrol and each authority charged with the duty of receiving such reports shall provide sufficient report forms in compliance with

the form devised. The report forms shall be designated so as to provide that a copy may be retained by the reporting person.

(5) The chief of the Washington state patrol shall adopt rules establishing the accident-reporting threshold for property damage accidents. Beginning October 1, 1987, the accident-reporting threshold for property damage accidents shall be five hundred dollars. The accident-reporting threshold for property damage accidents shall be revised when necessary, but not more frequently than every two years. The revisions shall only be for the purpose of recognizing economic changes as reflected by an inflationary index recommended by the office of financial management. The revisions shall be guided by the change in the index for the time period since the last revision.

Sec. 2. RCW 46.52.060 and 1998 c 169 s 1 are each amended to read as follows:

It shall be the duty of the chief of the Washington state patrol to file, tabulate, and analyze all accident reports and to publish annually, immediately following the close of each fiscal year, and monthly during the course of the year, statistical information based thereon showing the number of accidents, the location, the frequency, whether any driver involved in the accident was distracted at the time of the accident and the circumstances thereof, and other statistical information which may prove of assistance in determining the cause of vehicular accidents. Distractions contributing to an accident to be reported must include at least the following: Not distracted; operating a handheld electronic telecommunication device; operating a hands-free wireless telecommunication device; other electronic devices (including, but not limited to, PDA's, laptop computers, navigational devices, etc.); adjusting an audio or entertainment system; smoking; eating or drinking; reading or writing; grooming; interacting with children, passengers, animals, or objects in the vehicle; other inside distractions; outside distractions; and distraction unknown.

Such accident reports and analysis or reports thereof shall be available to the director of licensing, the department of transportation, the utilities and transportation commission, the traffic safety commission, and other public entities authorized by the chief of the Washington state patrol, or their duly authorized representatives, for further tabulation and analysis for pertinent data relating to the regulation of highway traffic, highway construction, vehicle operators and all other purposes, and to publish information so derived as may be deemed of publication value.

NEW SECTION. Sec. 3. This act takes effect January 1, 2006.

Passed by the Senate February 9, 2005.

Passed by the House April 7, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 172

[Engrossed Substitute Senate Bill 5173]

UNIFORM MEDIATION ACT

AN ACT Relating to the uniform mediation act; amending RCW 5.60.070, 5.60.072, 7.75.050, 26.09.015, 35.63.260, and 48.43.055; reenacting and amending RCW 42.17.310; adding a new chapter to Title 7 RCW; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. TITLE. This act may be cited as the Uniform Mediation Act.

NEW SECTION. Sec. 2. DEFINITIONS. In this chapter:

(1) "Mediation" means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

(2) "Mediation communication" means a statement, whether oral or in a record or verbal or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.

(3) "Mediator" means an individual who conducts a mediation.

(4) "Nonparty participant" means a person, other than a party or mediator, that participates in a mediation.

(5) "Mediation party" means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; or public corporation, or any other legal or commercial entity.

(7) "Proceeding" means:

(a) A judicial, administrative, arbitral, or other adjudicative process, including related prehearing and posthearing motions, conferences, and discovery; or

(b) A legislative hearing or similar process.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "Sign" means:

(a) To execute or adopt a tangible symbol with the present intent to authenticate a record; or

(b) To attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate a record.

NEW SECTION. Sec. 3. SCOPE. (1) Except as otherwise provided in subsection (2) or (3) of this section, this chapter applies to a mediation in which:

(a) The mediation parties are required to mediate by statute or court or administrative agency rule or referred to mediation by a court, administrative agency, or arbitrator;

(b) The mediation parties and the mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure; or

(c) The mediation parties use as a mediator an individual who holds himself or herself out as a mediator or the mediation is provided by a person that holds itself out as providing mediation.

(2) This chapter does not apply to a mediation:

(a) Conducted by a judge who might make a ruling on the case; or

(b) Conducted under the auspices of:

(i) A primary or secondary school if all the parties are students; or

(ii) A correctional institution for youths if all the parties are residents of that institution.

(3) If the parties agree in advance in a signed record, or a record of proceeding reflects agreement by the parties, that all or part of a mediation is not privileged, the privileges under sections 4 through 6 of this act do not apply to the mediation or part agreed upon. However, sections 4 through 6 of this act apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

NEW SECTION. Sec. 4. PRIVILEGE AGAINST DISCLOSURE; ADMISSIBILITY; DISCOVERY. (1) Except as otherwise provided in section 6 of this act, a mediation communication is privileged as provided in subsection (2) of this section and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by section 5 of this act.

(2) In a proceeding, the following privileges apply:

(a) A mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication;

(b) A mediator may refuse to disclose a mediation communication, and may prevent any other person from disclosing a mediation communication of the mediator; and

(c) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.

(3) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

NEW SECTION. Sec. 5. WAIVER AND PRECLUSION OF PRIVILEGE. (1) A privilege under section 4 of this act may be waived in a record or orally during a proceeding if it is expressly waived by all parties to the mediation and:

(a) In the case of the privilege of a mediator, it is expressly waived by the mediator; and

(b) In the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.

(2) A person that discloses or makes a representation about a mediation communication which prejudices another person in a proceeding is precluded from asserting a privilege under section 4 of this act, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

(3) A person that intentionally uses a mediation to plan, attempt to commit, or commit a crime, or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege under section 4 of this act.

NEW SECTION. Sec. 6. EXCEPTIONS TO PRIVILEGE. (1) There is no privilege under section 4 of this act for a mediation communication that is:

(a) In an agreement evidenced by a record signed by all parties to the agreement;

(b) Made during a session of a mediation which is open, or is required by law to be open, to the public;

(c) A threat or statement of a plan to inflict bodily injury or commit a crime of violence;

(d) Intentionally used to plan a crime, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity;

(e) Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator;

(f) Except as otherwise provided in subsection (3) of this section, sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a mediation; or

(g) Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding in which a child or adult protective services agency is a party, unless the public agency participates in the child or adult protection mediation.

(2) There is no privilege under section 4 of this act if a court finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and that the mediation communication is sought or offered in:

(a) A criminal court proceeding involving a felony; or

(b) Except as otherwise provided in subsection (3) of this section, a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.

(3) A mediator may not be compelled to provide evidence of a mediation communication referred to in subsection (1)(f) or (2)(b) of this section.

(4) If a mediation communication is not privileged under subsection (1) or (2) of this section, only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under subsection (1) or (2) of this section does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

(5) Records of mediation communications that are privileged under this chapter are exempt from the requirements of chapter 42.17 RCW.

NEW SECTION. Sec. 7. PROHIBITED MEDIATOR REPORTS. (1) Except as provided in subsection (2) of this section, a mediator may not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, administrative agency, or other authority that may make a ruling on the dispute that is the subject of the mediation.

(2) A mediator may disclose:

(a) Whether the mediation occurred or has terminated, whether a settlement was reached, attendance, and efforts to schedule a mediation ordered by a court, administrative agency, or other authority that may make a ruling on the dispute;

(b) A mediation communication as permitted under section 6 of this act; or

(c) A mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment.

(3) A communication made in violation of subsection (1) of this section may not be considered by a court, administrative agency, or arbitrator.

NEW SECTION. Sec. 8. CONFIDENTIALITY. Unless subject to chapter 42.30 RCW, mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this state.

NEW SECTION. Sec. 9. MEDIATOR'S DISCLOSURE OF CONFLICTS OF INTEREST; BACKGROUND. (1) Before accepting a mediation, an individual who is requested to serve as a mediator shall:

(a) Make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and an existing or past relationship with a mediation party or foreseeable participant in the mediation; and

(b) Disclose any such known fact to the mediation parties as soon as is practical before accepting a mediation.

(2) If a mediator learns any fact described in subsection (1)(a) of this section after accepting a mediation, the mediator shall disclose it as soon as is practicable.

(3) At the request of a mediation party, an individual who is requested to serve as a mediator shall disclose the mediator's qualifications to mediate a dispute.

(4) A person that violates subsection (1) or (2) of this section is precluded by the violation from asserting a privilege under section 4 of this act.

(5) Subsections (1) through (3) of this section do not apply to an individual acting as a judge.

(6) This chapter does not require that a mediator have a special qualification by background or profession.

NEW SECTION. Sec. 10. PARTICIPATION IN MEDIATION. An attorney or other individual designated by a party may accompany the party to and participate in a mediation, except that if the dispute being mediated is the subject of pending proceedings under chapter 12.40 RCW, then a party may not be represented by an attorney in mediation unless the party may be represented by an attorney in the proceedings under chapter 12.40 RCW. A waiver of participation given before the mediation may be rescinded.

NEW SECTION. Sec. 11. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, or supersedes the federal electronic signatures in global and national commerce act (15 U.S.C. Sec. 7001 et seq.), but this chapter does not modify, limit, or supersede section 101(c) of that act or authorize electronic delivery of any of the notices described in section 103(b) of that act.

NEW SECTION. Sec. 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this chapter, consideration should be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Sec. 13. RCW 42.17.310 and 2003 c 277 s 3 and 2003 c 124 s 1 are each reenacted and amended to read as follows:

(1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) 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.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

(m) 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 (i) a ferry system construction or repair contract as required by RCW 47.60.680

through 47.60.750 or (ii) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed prior to July 28, 1991, with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to export projects pursuant to RCW 43.23.035.

(p) Financial disclosures filed by private vocational schools under chapters 28B.85 and 28C.10 RCW.

(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.

(r) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 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.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

(t) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(u) The residential addresses or residential telephone numbers of employees or volunteers of a public agency which are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency.

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order.

(w)(i) The federal social security number of individuals governed under chapter 18.130 RCW maintained in the files of the department of health, except this exemption does not apply to requests made directly to the department from federal, state, and local agencies of government, and national and state licensing, credentialing, investigatory, disciplinary, and examination organizations; (ii) the current residential address and current residential telephone number of a health care provider governed under chapter 18.130 RCW maintained in the files of the department, if the provider requests that this information be withheld from public inspection and copying, and provides to the department an accurate alternate or business address and business telephone number. On or after January 1, 1995, the current residential address and residential telephone number

of a health care provider governed under RCW 18.130.040 maintained in the files of the department shall automatically be withheld from public inspection and copying unless the provider specifically requests the information be released, and except as provided for under RCW 42.17.260(9).

(x) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(y) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420.

(z) 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.

(aa) 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.

(bb) Financial and valuable trade information under RCW 51.36.120.

(cc) Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or 70.123.075 or a rape crisis center as defined in RCW 70.125.030.

(dd) Information that identifies a person who, while an agency employee:
(i) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (ii) requests his or her identity or any identifying information not be disclosed.

(ee) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment.

(ff) Business related information protected from public inspection and copying under RCW 15.86.110.

(gg) 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.

(hh) Information and documents created specifically for, and collected and maintained by a quality improvement committee pursuant to RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW 4.24.250, regardless of which agency is in possession of the information and documents.

(ii) Personal information in files maintained in a data base created under RCW 43.07.360.

(jj) 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.

(kk) Names of individuals residing in emergency or transitional housing that are furnished to the department of revenue or a county assessor in order to substantiate a claim for property tax exemption under RCW 84.36.043.

(ll) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool,

carpool, or other ride-sharing program or service. However, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides.

(mm) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons.

(nn) The personally identifying information of persons who acquire and use transit passes and other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose this information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media, or to the news media when reporting on public transportation or public safety. This information may also be disclosed at the agency's discretion to governmental agencies or groups concerned with public transportation or public safety.

(oo) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310. If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this section as exempt from disclosure. If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality.

(pp) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110.

(qq) Financial and commercial information supplied by or on behalf of a person, firm, corporation, or entity under chapter 28B.95 RCW relating to the purchase or sale of tuition units and contracts for the purchase of multiple tuition units.

(rr) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b).

(ss) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law.

(tt) 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 liquor license, gambling license, or lottery retail license.

(uu) Records maintained by the employment security department and subject to chapter 50.13 RCW if provided to another individual or organization for operational, research, or evaluation purposes.

(vv) Individually identifiable information received by the work force training and education coordinating board for research or evaluation purposes.

(ww) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(i) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and

(ii) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism.

(xx) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher providing the catch data. However, this information may be released to government agencies concerned with the management of fish and wildlife resources.

(yy) Sensitive wildlife data obtained by the department of fish and wildlife. However, sensitive wildlife data may be released to government agencies concerned with the management of fish and wildlife resources. Sensitive wildlife data includes:

(i) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;

(ii) Radio frequencies used in, or locational data generated by, telemetry studies; or

(iii) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(A) The species has a known commercial or black market value;

(B) There is a history of malicious take of that species; or

(C) There is a known demand to visit, take, or disturb, and the species behavior or ecology renders it especially vulnerable or the species has an extremely limited distribution and concentration.

(zz) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW, except name, address of contact used by the department, and type of license, endorsement, or tag. However, the department of fish and wildlife may disclose personally identifying information to:

(i) Government agencies concerned with the management of fish and wildlife resources;

(ii) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and

(iii) Law enforcement agencies for the purpose of firearm possession enforcement under RCW 9.41.040.

(aaa)(i) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have not been commingled with other recorded documents. These records will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding that veteran's general power of attorney, or to anyone else designated in writing by that veteran to receive the records.

(ii) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have been commingled with other records, if the veteran has recorded a "request for exemption from public disclosure of discharge papers" with the county auditor. If such a request has been recorded, these records may be released only to the veteran filing the papers, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iii) Discharge papers of a veteran filed at the office of the county auditor after June 30, 2002, are not public records, but will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iv) For the purposes of this subsection (1)(aaa), next of kin of deceased veterans have the same rights to full access to the record. Next of kin are the veteran's widow or widower who has not remarried, son, daughter, father, mother, brother, and sister.

(bbb) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility or any individual's safety.

(ccc) Information compiled by school districts or schools in the development of their comprehensive safe school plans pursuant to RCW 28A.320.125, to the extent that they identify specific vulnerabilities of school districts and each individual school.

(ddd) Information regarding the infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities.

(eee) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained

by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW.

(fff) Proprietary data, trade secrets, or other information that relates to: (i) A vendor's unique methods of conducting business; (ii) data unique to the product or services of the vendor; or (iii) 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.

(ggg) Records of mediation communications that are privileged under chapter 7.— RCW (sections 1 through 12 and 20 through 23 of this act).

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

Sec. 14. RCW 5.60.070 and 1993 c 492 s 422 are each amended to read as follows:

(1) If there is a court order to mediate, a written agreement between the parties to mediate, or if mediation is mandated under RCW 7.70.100, then any communication made or materials submitted in, or in connection with, the mediation proceeding, whether made or submitted to or by the mediator, a mediation organization, a party, or any person present, are privileged and confidential and are not subject to disclosure in any judicial or administrative proceeding except:

- (a) When all parties to the mediation agree, in writing, to disclosure;
- (b) When the written materials or tangible evidence are otherwise subject to discovery, and were not prepared specifically for use in and actually used in the mediation proceeding;
- (c) When a written agreement to mediate permits disclosure;
- (d) When disclosure is mandated by statute;
- (e) When the written materials consist of a written settlement agreement or other agreement signed by the parties resulting from a mediation proceeding;
- (f) When those communications or written materials pertain solely to administrative matters incidental to the mediation proceeding, including the agreement to mediate; or

(g) In a subsequent action between the mediator and a party to the mediation arising out of the mediation.

(2) When there is a court order, a written agreement to mediate, or when mediation is mandated under RCW 7.70.100, as described in subsection (1) of this section, the mediator or a representative of a mediation organization shall not testify in any judicial or administrative proceeding unless:

- (a) All parties to the mediation and the mediator agree in writing; or
- (b) In an action described in subsection (1)(g) of this section.

(3) Beginning on January 1, 2006, this section governs only mediations pursuant to a referral or an agreement made before January 1, 2006. Mediations pursuant to a referral or an agreement made on or after January 1, 2006, are governed by chapter 7.— RCW (sections 1 through 12 and 20 through 23 of this act).

Sec. 15. RCW 5.60.072 and 1991 c 321 s 2 are each amended to read as follows:

Notwithstanding the provisions of RCW 5.60.070 and chapter 7.— RCW (sections 1 through 12 and 20 through 23 of this act), when any party participates in mediation conducted by a state or federal agency under the provisions of a collective bargaining law or similar statute, the agency's rules govern questions of privilege and confidentiality.

Sec. 16. RCW 7.75.050 and 1984 c 258 s 505 are each amended to read as follows:

Regardless of any provision to the contrary in chapter 42.17 RCW, all memoranda, work notes or products, or case files of centers established under this chapter are confidential and privileged and are not subject to disclosure in any judicial or administrative proceeding unless the court or administrative tribunal determines that the materials were submitted by a participant to the center for the purpose of avoiding discovery of the material in a subsequent proceeding. ((Any communication relating to the subject matter of the resolution made during the resolution process by any participant, mediator, or any other person is a privileged communication and is not subject to disclosure in any judicial or administrative proceeding unless all parties to the communication waive the privilege. The foregoing privilege and limitation on evidentiary use does not apply to any communication of a threat that injury or damage may be inflicted on any person or on the property of a party to the dispute, to the extent the communication may be relevant evidence in a criminal matter.)) In all other respects, chapter 7.— RCW. (sections 1 through 12 and 20 through 23 of this act), shall govern the privilege and confidentiality to be accorded to communications made in conjunction with a mediation conducted by a dispute resolution center established under this chapter.

Sec. 17. RCW 26.09.015 and 1991 c 367 s 2 are each amended to read as follows:

(1) In any proceeding under this chapter, the matter may be set for mediation of the contested issues before or concurrent with the setting of the matter for hearing. The purpose of the mediation proceeding shall be to reduce acrimony which may exist between the parties and to develop an agreement assuring the child's close and continuing contact with both parents after the

marriage is dissolved. The mediator shall use his or her best efforts to effect a settlement of the dispute.

(2) Each superior court may make available a mediator. The mediator may be a member of the professional staff of a family court or mental health services agency, or may be any other person or agency designated by the court. In order to provide mediation services, the court is not required to institute a family court.

~~(3)(a) Mediation proceedings under this chapter shall be (held in private and shall be confidential. The mediator shall not testify as to any aspect of the mediation proceedings. This subsection shall not apply to postdecreed mediation required pursuant to a parenting plan) governed in all respects by chapter 7.— RCW (sections 1 through 12 and 20 through 23 of this act), except as follows:~~

(i) Mediation communications in postdecreed mediations mandated by a parenting plan are admissible in subsequent proceedings for the limited purpose of proving:

(A) Abuse, neglect, abandonment, exploitation, or unlawful harassment as defined in RCW 9A.46.020(1), of a child;

(B) Abuse or unlawful harassment as defined in RCW 9A.46.020(1), of a family or household member as defined in RCW 26.50.010(2); or

(C) That a parent used or frustrated the dispute resolution process without good reason for purposes of RCW 26.09.184(3)(d).

(ii) If a postdecreed mediation-arbitration proceeding is required pursuant to a parenting plan and the same person acts as both mediator and arbitrator, mediation communications in the mediation phase of such a proceeding may be admitted during the arbitration phase, and shall be admissible in the judicial review of such a proceeding under RCW 26.09.184(3)(e) to the extent necessary for such review to be effective.

(b) None of the exceptions under (a)(i) and (ii) of this subsection shall subject a mediator to compulsory process to testify except by court order for good cause shown, taking into consideration the need for the mediator's testimony and the interest in the mediator maintaining an appearance of impartiality. If a mediation communication is not privileged under (a)(i) of this subsection or that portion of (a)(ii) of this subsection pertaining to judicial review, only the portion of the communication necessary for the application of the exception may be admitted, and such admission of evidence shall not render any other mediation communication discoverable or admissible except as may be provided in chapter 7.— RCW (sections 1 through 12 and 20 through 23 of this act).

(4) The mediator shall assess the needs and interests of the child or children involved in the controversy and may interview the child or children if the mediator deems such interview appropriate or necessary.

(5) Any agreement reached by the parties as a result of mediation shall be reported to the court and to counsel for the parties by the mediator on the day set for mediation or any time thereafter designated by the court.

Sec. 18. RCW 35.63.260 and 1998 c 119 s 1 are each amended to read as follows:

(1) Prior to filing an appeal of a final decision by a hearing examiner involving a conditional or special use permit application requested by a party that is licensed or certified by the department of social and health services or the department of corrections, the aggrieved party must, within five days after the

final decision, initiate formal mediation procedures in an attempt to resolve the parties' differences. If, after initial evaluation of the dispute, the parties agree to proceed with a mediation, the mediation shall be conducted by a trained mediator selected by agreement of the parties. The agreement to mediate shall be in writing and subject to ~~((RCW 5.60.070))~~ chapter 7.— RCW (sections 1 through 12 and 20 through 23 of this act. If the parties are unable to agree on a mediator, each party shall nominate a mediator and the mediator shall be selected by lot from among the nominees. The mediator must be selected within five days after formal mediation procedures are initiated. The mediation process must be completed within fourteen days from the time the mediator is selected except that the mediation process may extend beyond fourteen days by agreement of the parties. The mediator shall, within the fourteen-day period or within the extension if an extension is agreed to, provide the parties with a written summary of the issues and any agreements reached. If the parties agree, the mediation report shall be made available to the governing jurisdiction. The cost of the mediation shall be shared by the parties.

(2) Any time limits for filing of appeals are tolled during the pendency of the mediation process.

(3) As used in this section, "party" does not include county, city, or town.

Sec. 19. RCW 48.43.055 and 2002 c 300 s 6 are each amended to read as follows:

Each health carrier as defined under RCW 48.43.005 shall file with the commissioner its procedures for review and adjudication of complaints initiated by health care providers. Procedures filed under this section shall provide a fair review for consideration of complaints. Every health carrier shall provide reasonable means allowing any health care provider aggrieved by actions of the health carrier to be heard after submitting a written request for review. If the health carrier fails to grant or reject a request within thirty days after it is made, the complaining health care provider may proceed as if the complaint had been rejected. A complaint that has been rejected by the health carrier may be submitted to nonbinding mediation. Mediation shall be conducted under ~~((mediation rules similar to those of the American arbitration association, the center for public resources, the judicial arbitration and mediation service, RCW 7.70.100))~~ chapter 7.— RCW (sections 1 through 12 and 20 through 23 of this act, or any other rules of mediation agreed to by the parties. This section is solely for resolution of provider complaints. Complaints by, or on behalf of, a covered person are subject to the grievance processes in RCW 48.43.530.

NEW SECTION. Sec. 20. CAPTIONS NOT LAW. Captions used in this act are not any part of the law.

NEW SECTION. Sec. 21. SEVERABILITY CLAUSE. 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. 22. APPLICATION TO EXISTING AGREEMENTS OR REFERRALS. (1) This chapter governs a mediation pursuant to a referral or an agreement to mediate made on or after January 1, 2006.

(2) If all parties agree in a signed record or a record of proceeding reflects such an agreement by all parties, then this chapter governs a mediation pursuant to a referral or an agreement to mediate whenever made.

NEW SECTION. Sec. 23. EFFECTIVE DATE. This act takes effect January 1, 2006.

NEW SECTION. Sec. 24. Sections 1 through 12 and 20 through 23 of this act constitute a new chapter in Title 7 RCW.

Passed by the Senate March 2, 2005.

Passed by the House April 6, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 173

[Senate Bill 5181]

MOTOR VEHICLES—VEHICLE PART INVOICES

AN ACT Relating to ownership of vehicle parts used in reconstruction; and amending RCW 46.12.030.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.12.030 and 2004 c 188 s 1 are each amended to read as follows:

(1) The application for a certificate of ownership shall be upon a form furnished or approved by the department and shall contain:

(a) A full description of the vehicle, which shall contain the proper vehicle identification number, the number of miles indicated on the odometer at the time of delivery of the vehicle, and any distinguishing marks of identification;

(b) The name and address of the person who is to be the registered owner of the vehicle and, if the vehicle is subject to a security interest, the name and address of the secured party;

(c) Such other information as the department may require.

(2) The department may in any instance, in addition to the information required on the application, require additional information and a physical examination of the vehicle or of any class of vehicles, or either.

(3)~~((a))~~ (a) A physical examination of the vehicle is mandatory if it has been rebuilt after surrender of the certificate of ownership to the department under RCW 46.12.070 due to the vehicle's destruction or declaration as a total loss. The inspection must verify that the vehicle identification number is genuine and agrees with the number shown on the title and registration certificate. The inspection must be made by a member of the Washington state patrol or other person authorized by the department to make such inspections.

(b)(i) A physical examination of the vehicle is mandatory if the vehicle was declared totaled or salvage under the laws of this state, or the vehicle is presented with documents from another state showing the vehicle was totaled or salvage and has not been reissued a valid registration from that state after the declaration of total loss or salvage.

(ii) The inspection must verify that the vehicle identification number is genuine and agrees with the number shown on the original documents supporting the vehicle purchase or ownership.

(iii) A Washington state patrol VIN specialist must ensure that all major component parts used for the reconstruction of a salvage or rebuildable vehicle were obtained legally. Original invoices for new and used parts must be from a vendor that is registered with the department of revenue for the collection of retail sales or use taxes or comparable agency in the jurisdiction where the major component parts were purchased. The invoices must include the name and address of the business, a description of the part or parts sold, the date of sale, and the amount of sale to include all taxes paid unless exempted by the department of revenue or comparable agency in the jurisdiction where the major component parts were purchased. Original invoices for used parts must be from a vehicle wrecker licensed under chapter 46.80 RCW or a comparable business in the jurisdiction outside Washington state where the major component part was purchased. If the parts or components were purchased from a private individual, ~~((that))~~ the private individual must have title to the vehicle the parts were taken from, except as provided by RCW 46.04.3815, and the bill of sale for the parts must be notarized. The bills of sale must include the names and addresses of the sellers and purchasers, a description of the vehicle, the part or parts being sold, including the make, model, year, and identification or serial number, that date of sale, and the purchase price of the vehicle or part or parts. If the presenter is unable to provide an acceptable release of interest or proof of ownership for a vehicle or major component part as described above, an inspection must be completed for ownership-in-doubt purposes as prescribed by WAC 308-56A-210.

(iv) A vehicle presented for inspection must have all damaged major component parts replaced or repaired to meet RCW and WAC requirements before inspection of the salvage vehicle by the Washington state patrol.

(4) Rebuilt or salvage vehicles licensed in Washington must meet the requirements found under chapter 46.37 RCW to be driven upon public roadways.

(5) The application shall be subscribed by the person applying to be the registered owner and be sworn to by that applicant in the manner described by RCW 9A.72.085. The department shall retain the application in either the original, computer, or photostatic form.

Passed by the Senate March 9, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 174

[Engrossed Second Substitute Senate Bill 5213]

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES—ELIGIBILITY

AN ACT Relating to supporting the long-term success of families with children by removing barriers to Temporary Assistance for Needy Families and the WorkFirst programs; amending RCW 74.08.025; creating a new section; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that:

(1) Too many families with children in Washington are unable to afford shelter, clothing, and other necessities of life; basic necessities that are at the core of economic security and family stability.

(2) Parents who lack resources for shelter, clothing, and transportation are less likely to obtain employment or have the ability to adequately provide for their children's physical and emotional well-being and educational success.

(3) Washington's temporary assistance for needy families helps financially struggling families find jobs, keep their jobs, get better jobs, and build a better life for their children through the WorkFirst program.

(4) Participation in the WorkFirst program through temporary assistance for needy families is an important step towards self-sufficiency and decreased long-term reliance on governmental assistance.

(5) Removing this barrier to participation in temporary assistance for needy families and WorkFirst will serve to strengthen families and communities throughout the state.

(6) Preventing even one percent of these individuals from reoffending by extending economic and employment opportunities will result in law enforcement and correctional savings that substantially exceed the cost of temporary assistance for needy families and WorkFirst services.

Sec. 2. RCW 74.08.025 and 2004 c 54 s 5 are each amended to read as follows:

(1) Public assistance may be awarded to any applicant:

(a) Who is in need and otherwise meets the eligibility requirements of department assistance programs; and

(b) Who has not made a voluntary assignment of property or cash for the purpose of qualifying for an assistance grant; and

(c) Who is not an inmate of a public institution except as a patient in a medical institution or except as an inmate in a public institution who could qualify for federal aid assistance: PROVIDED, That the assistance paid by the department to recipients in nursing homes, or receiving nursing home care, may cover the cost of clothing and incidentals and general maintenance exclusive of medical care and health services. The department may pay a grant to cover the cost of clothing and personal incidentals in public or private medical institutions and institutions for tuberculosis. The department shall allow recipients in nursing homes to retain, in addition to the grant to cover the cost of clothing and incidentals, wages received for work as a part of a training or rehabilitative program designed to prepare the recipient for less restrictive placement to the extent permitted under Title XIX of the federal social security act.

(2) Any person otherwise qualified for temporary assistance for needy families under this title who has resided in the state of Washington for fewer than twelve consecutive months immediately preceding application for assistance is limited to the benefit level in the state in which the person resided immediately before Washington, using the eligibility rules and other definitions established under this chapter, that was obtainable on the date of application in Washington state, if the benefit level of the prior state is lower than the level provided to similarly situated applicants in Washington state. The benefit level under this subsection shall be in effect for the first twelve months a recipient is on temporary assistance for needy families in Washington state.

(3) Any person otherwise qualified for temporary assistance for needy families who is assessed through the state alcohol and substance abuse program as drug or alcohol-dependent and requiring treatment to become employable shall be required by the department to participate in a drug or alcohol treatment program as a condition of benefit receipt.

~~(4) ((In order to be eligible for temporary assistance for needy families benefits, any applicant with a felony conviction after August 21, 1996, involving drug use or possession, must: (a) Have been assessed as chemically dependent by a chemical dependency program approved under chapter 70.96A RCW and be participating in or have completed a coordinated rehabilitation plan consisting of chemical dependency treatment and vocational services; and (b) have not been convicted of a felony involving drug use or possession in the three years prior to the most current conviction.~~

~~(5)) Pursuant to 21 U.S.C. 862a(d)(1), the department shall exempt individuals from the eligibility restrictions of 21 U.S.C. 862a(a)(1) and (2) to ensure eligibility for temporary assistance for needy families benefits and federal food assistance.~~

NEW SECTION. Sec. 3. This act takes effect September 1, 2005.

Passed by the Senate March 14, 2005.

Passed by the House April 15, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 175

[Engrossed Substitute Senate Bill 5348]

APPLIANCE REPAIR—PUBLIC UTILITY DISTRICTS

AN ACT Relating to maintenance and repair of electrical appliances by a public utility district; adding new sections to chapter 54.16 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. It is the intent of the legislature to avoid unnecessary hardships on the citizens of a community by recognizing the traditional appliance repair services that have been offered for many years by any public utility district described in section 2 of this act.

The legislature understands that some of these services improve the energy efficiency of the appliance repaired, which helps citizens save money and energy as well as extending the life of the appliance.

The legislature recognizes these historic services coexist with the private sector without creating aggressive competition between public and private enterprises.

It is the intent of the legislature to have these services be financially self-supporting and not be subsidized by any other customer rate structures.

Public utility districts affected by this act are encouraged to continue to work collaboratively with the private sector in providing these services.

NEW SECTION. Sec. 2. A new section is added to chapter 54.16 RCW to read as follows:

Any public utility district that has operated an electrical appliance repair service for at least ten years prior to the effective date of this act, may continue to operate an electrical appliance repair service within its service territory.

NEW SECTION. Sec. 3. A new section is added to chapter 54.16 RCW to read as follows:

When a public utility district provides electrical appliance repair services under section 2 of this act, the public utility district shall:

- (1) Charge customers the true and fair cost for the services;
- (2) Keep records documenting the revenues and expenditures for the services and make those records available to the public; and
- (3) Develop measures or benchmarks to track and evaluate the performance of the services.

Passed by the Senate March 4, 2005.

Passed by the House April 13, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 176

[Engrossed Substitute Senate Bill 5720]

NONCOMPETITION AGREEMENTS—BROADCASTING

AN ACT Relating to employee noncompetition agreements in the broadcasting industry; and adding a new section to chapter 49.44 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 49.44 RCW to read as follows:

(1) If an employee subject to an employee noncompetition agreement is terminated without just cause or laid off by action of the employer, the noncompetition agreement is void and unenforceable.

(2) Nothing in this section restricts the right of an employer to protect trade secrets or other proprietary information by lawful means in equity or under applicable law.

(3) Nothing in this section has the effect of terminating, or in any way modifying, any rights or liabilities resulting from an employee noncompetition agreement that was entered into before December 31, 2005.

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

(a) "Employee" means an employee of a broadcasting industry employer other than a sales or management employee.

(b) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other entity which engages in any business, industry, profession, or activity in this state and employs one or more employees, and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations.

(c) "Employee noncompetition agreement" means an agreement, written or oral, express or implied, between an employer and employee under which the employee agrees not to compete, either alone or as an employee of another, with the employer in providing services after termination of employment.

(d) "Broadcasting industry" means employers that distribute or transmit electronic signals to the public at large using television (VHF or UHF), radio (AM, FM, or satellite), or cable television technologies, or which prepare, develop, or create programs or messages to be transmitted by electronic signal using television, radio, or cable technology.

Passed by the Senate March 16, 2005.

Passed by the House April 13, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 177

[Substitute Senate Bill 5832]

LICENSE PLATES—WASHINGTON'S NATIONAL PARK FUND

AN ACT Relating to the "Washington's National Park Fund" special license plate; reenacting and amending RCW 46.16.313; adding new sections to chapter 46.16 RCW; and adding a new section to chapter 46.04 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION, Sec. 1. A new section is added to chapter 46.16 RCW to read as follows:

(1) The legislature recognizes that the "Washington's National Park Fund" license plate has been reviewed by the special license plate review board under RCW 46.16.725, and found to fully comply with RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying a symbol or artwork, approved by the special license plate review board and the legislature, recognizing Washington's National Park Fund, that may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department.

NEW SECTION, Sec. 2. A new section is added to chapter 46.04 RCW to read as follows:

"Washington's National Park Fund license plates" means license plates issued under section 1 of this act that display a symbol or artwork recognizing the efforts of Washington's National Park Fund in preserving Washington's national parks for future generations in Washington state.

Sec. 3. RCW 46.16.313 and 2004 c 221 s 3, 2004 c 48 s 3, and 2004 c 35 s 3 are each reenacted and amended to read as follows:

(1) The department may establish a fee of no more than forty dollars for each type of special license plates issued under RCW 46.16.301(1) (a), (b), or (c), as existing before amendment by section 5, chapter 291, Laws of 1997, in an amount calculated to offset the cost of production of the special license plates and the administration of this program. This fee is in addition to all other fees required to register and license the vehicle for which the plates have been requested. All such additional special license plate fees collected by the department shall be deposited in the state treasury and credited to the motor vehicle fund.

(2) In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a collegiate license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(3) In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a collegiate license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(4) In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a special baseball stadium license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds, minus the cost of plate production, shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(5) In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a special baseball stadium license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(6) Effective with vehicle registrations due or to become due on January 1, 2005, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a professional fire fighters and paramedics license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the professional fire fighters and paramedics license plates. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit

the proceeds to the Washington State Council of Fire Fighters benevolent fund established under RCW 46.16.30902.

(7) Effective with annual renewals due or to become due on January 1, 2006, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a professional fire fighters and paramedics license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the professional fire fighters and paramedics special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Washington State Council of Fire Fighters benevolent fund established under RCW 46.16.30902.

(8) Effective with vehicle registrations due or to become due on November 1, 2004, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Helping Kids Speak" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Helping Kids Speak" account established under RCW 46.16.30904.

(9) Effective with annual renewals due or to become due on November 1, 2005, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Helping Kids Speak" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Helping Kids Speak" account established under RCW 46.16.30904.

(10) Effective with vehicle registrations due or to become due on January 1, 2005, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "law enforcement memorial" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper

identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the law enforcement memorial special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the law enforcement memorial account established under RCW 46.16.30906.

(11) Effective with annual renewals due or to become due on January 1, 2006, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "law enforcement memorial" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the law enforcement memorial special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the law enforcement memorial account established under RCW 46.16.30906.

(12) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Washington's National Park Fund" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Washington's National Park Fund" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Washington's National Park Fund" account established under section 4 of this act.

(13) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Washington's National Park Fund" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Washington's National Park Fund" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Washington's National Park Fund" account established under section 4 of this act.

NEW SECTION. Sec. 4. A new section is added to chapter 46.16 RCW to read as follows:

(1) The "Washington's National Park Fund" account is created in the custody of the state treasurer. Upon the department's determination that the state had been reimbursed for the cost of implementing the "Washington's National Park Fund" special license plate, all receipts, except as provided in RCW 46.16.313 (12) and (13), from "Washington's National Park Fund" license plates must be deposited into the account. Only the director of the department of licensing or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Funds in the account must be disbursed subject to the following conditions and limitations:

(a) Under the requirements set out in RCW 46.16.765, the department must contract with a qualified nonprofit organization to build awareness of Washington's national parks and to support priority park programs and projects in Washington's national parks, such as enhancing visitor experience, promoting volunteerism, engaging communities, and providing educational opportunities related to Washington's national parks.

(b) For the purpose of this section, a "qualified nonprofit organization" means a not-for-profit corporation incorporated and of tax exempt status under section 501(c)(3) of the federal internal revenue code. The organization must have been established for the express purposes of building awareness of Washington's national parks, enhancing visitor experience, promoting volunteerism, engaging communities, and providing educational opportunities related to Washington's national parks.

(c) The qualified nonprofit organization must meet all requirements set out in RCW 46.16.765.

Passed by the Senate March 12, 2005.

Passed by the House April 5, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 178

[Senate Bill 6012]

PARKING AND BUSINESS IMPROVEMENT AREAS—PURPOSES

AN ACT Relating to parking and business improvement areas; and amending RCW 35.87A.010.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 35.87A.010 and 2000 c 201 s 1 are each amended to read as follows:

To aid general economic development and neighborhood revitalization, and to facilitate the cooperation of merchants, businesses, and residential property owners which assists trade, economic viability, and liveability, the legislature hereby authorizes all counties and all incorporated cities and towns, including unclassified cities and towns operating under special charters:

(1) To establish, after a petition submitted by the operators responsible for sixty percent of the assessments by businesses and multifamily residential or mixed-use projects within the area, parking and business improvement areas, hereafter referred to as area or areas, for the following purposes:

(a) The acquisition, construction or maintenance of parking facilities for the benefit of the area;

(b) Decoration of any public place in the area;

(c) Sponsorship or promotion of public events which are to take place on or in public places in the area;

(d) Furnishing of music in any public place in the area;

(e) Providing professional management, planning, and promotion for the area, including the management and promotion of retail trade activities in the area; (~~or~~)

(f) Providing maintenance and security for common, public areas; or

(g) Providing transportation services for the benefit of the area.

(2) To levy special assessments on all businesses and multifamily residential or mixed-use projects within the area and specially benefited by a parking and business improvement area to pay in whole or in part the damages or costs incurred therein as provided in this chapter.

Passed by the Senate March 14, 2005.

Passed by the House April 13, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 179

[Substitute Senate Bill 6064]

HOMEOWNERS' ASSOCIATIONS—YARD SIGNS

AN ACT Relating to homeowners' associations; and adding a new section to chapter 64.38 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. **Sec. 1.** A new section is added to chapter 64.38 RCW to read as follows:

(1) The governing documents may not prohibit the outdoor display of political yard signs by an owner or resident on the owner's or resident's property before any primary or general election. The governing documents may include reasonable rules and regulations regarding the placement and manner of display of political yard signs.

(2) This section applies retroactively to any governing documents in effect on the effective date of this section. Any provision in a governing document in effect on the effective date of this section that is inconsistent with this section is void and unenforceable.

Passed by the Senate March 16, 2005.

Passed by the House April 15, 2005.

Approved by the Governor April 22, 2005.

Filed in Office of Secretary of State April 22, 2005.

CHAPTER 180

[Senate Bill 6097]

TAXATION—TOBACCO PRODUCTS

AN ACT Relating to increasing other tobacco products tax revenue through various measures that include the establishment of a new tax rate coupled with enhanced enforcement provisions; amending RCW 82.26.030, 82.26.010, 82.26.020, 82.26.060, 82.26.080, 82.26.070, 82.26.100, 82.26.110, and 82.24.550; adding new sections to chapter 82.26 RCW; repealing RCW 82.26.025, 82.26.028, and 82.26.050; prescribing penalties; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 82.26.030 and 2002 c 325 s 4 are each amended to read as follows:

It is the intent and purpose of this chapter to levy a tax on all tobacco products sold, used, consumed, handled, or distributed within this state and to collect the tax from the distributor as defined in RCW 82.26.010. It is the further intent and purpose of this chapter to impose the tax once, and only once, on all tobacco products for sale in this state, but nothing in this chapter shall be construed to exempt any person taxable under any other law or under any other tax imposed under Title 82 RCW. It is the further intent and purpose of this chapter that the distributor who first possesses the tobacco product in this state shall be the distributor liable for the tax and that in most instances the tax will be based on the actual price that the distributor paid for the tobacco product, unless the distributor is affiliated with the seller.

Sec. 2. RCW 82.26.010 and 2002 c 325 s 1 are each amended to read as follows:

~~((As used in this chapter:))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, but shall not include cigarettes as defined in RCW 82.24.010((?)).

(2) "Manufacturer" means a person who manufactures and sells tobacco products((?)).

(3) "Distributor" means (a) any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale, (b) any person who makes, manufactures, ((?)) fabricates, or stores tobacco products in this state for sale in this state, (c) any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers, (d) any person engaged in the business of selling tobacco products in this state who handles for sale any tobacco products that are within this state but upon which tax has not been imposed((?)).

~~(4) ("Subjobber" means any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and sells them to persons other than the ultimate consumers;~~

~~(5))~~ "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers(~~(5)~~).

~~((6))~~ (5)(a) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person.

~~((4))~~ (b) The term "sale" includes a gift by a person engaged in the business of selling tobacco products, for advertising, promoting, or as a means of evading the provisions of this chapter(~~(, or for any other purposes whatsoever;~~

~~(7)~~ ~~"Wholesale sales price" means the established price for which a manufacturer sells a tobacco product to a distributor, exclusive of any discount or other reduction(5);).~~

~~((8))~~ (6) "Business" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state(~~(5)~~).

~~((9))~~ (7) "Place of business" means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale (~~or consumption~~), including any vessel, vehicle, airplane, train, or vending machine(~~(5)~~).

~~((10))~~ (8) "Retail outlet" means each place of business from which tobacco products are sold to consumers(~~(5)~~).

~~((11))~~ (9) "Department" means the (~~state~~) department of revenue(~~(5)~~).

~~((12))~~ (10) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the state and its departments and institutions, political subdivision of the state of Washington, corporation, limited liability company, association, society, (~~or~~) any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise. The term excludes any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country(~~(5)~~).

~~((13))~~ (11) "Indian country" means the same as defined in chapter 82.24 RCW.

(12) "Actual price" means the total amount of consideration for which tobacco products are sold, valued in money, whether received in money or otherwise, including any charges by the seller necessary to complete the sale such as charges for delivery, freight, transportation, or handling.

(13) "Affiliated" means related in any way by virtue of any form or amount of common ownership, control, operation, or management.

(14) "Board" means the liquor control board.

(15) "Cigar" means a roll for smoking that is of any size or shape and that is made wholly or in part of tobacco, irrespective of whether the tobacco is pure or flavored, adulterated or mixed with any other ingredient, if the roll has a wrapper made wholly or in greater part of tobacco. "Cigar" does not include a cigarette.

(16) "Cigarette" has the same meaning as in RCW 82.24.010.

(17) "Manufacturer's representative" means a person hired by a manufacturer to sell or distribute the manufacturer's tobacco products, and includes employees and independent contractors.

(18)(a) "Taxable sales price" means:

(i) In the case of a taxpayer that is not affiliated with the manufacturer, distributor, or other person from whom the taxpayer purchased tobacco products, the actual price for which the taxpayer purchased the tobacco products;

(ii) In the case of a taxpayer that purchases tobacco products from an affiliated manufacturer, affiliated distributor, or other affiliated person, and that sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers, the actual price for which that taxpayer sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers;

(iii) In the case of a taxpayer that sells tobacco products only to affiliated distributors or affiliated retailers, the price, determined as nearly as possible according to the actual price, that other distributors sell similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers;

(iv) In the case of a taxpayer that is a manufacturer selling tobacco products directly to ultimate consumers, the actual price for which the taxpayer sells those tobacco products to ultimate consumers;

(v) In the case of a taxpayer that has acquired tobacco products under a sale as defined in subsection (5)(b) of this section, the price, determined as nearly as possible according to the actual price, that the taxpayer or other distributors sell the same tobacco products or similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers; or

(vi) In any case where (a)(i) through (v) of this subsection do not apply, the price, determined as nearly as possible according to the actual price, that the taxpayer or other distributors sell the same tobacco products or similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers.

(b) For purposes of (a)(i) and (ii) of this subsection only, "person" includes both persons as defined in subsection (10) of this section and any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(c) The department may adopt rules regarding the determination of taxable sales price under this subsection.

(19) "Taxpayer" means a person liable for the tax imposed by this chapter.

(20) "Unaffiliated distributor" means a distributor that is not affiliated with the manufacturer, distributor, or other person from whom the distributor has purchased tobacco products.

(21) "Unaffiliated retailer" means a retailer that is not affiliated with the manufacturer, distributor, or other person from whom the retailer has purchased tobacco products.

Sec. 3. RCW 82.26.020 and 2002 c 325 s 2 are each amended to read as follows:

(1) There is levied and there shall be collected a tax upon the sale, (~~use, consumption,~~) handling, or distribution of all tobacco products in this state at the following rate (~~of forty-five percent of the wholesale sales price of such tobacco products~~):

(a) Seventy-five percent of the taxable sales price of cigars, not to exceed fifty cents per cigar; or

(b) Seventy-five percent of the taxable sales price of all tobacco products that are not cigars.

(2) Taxes under this section shall be imposed at the time the distributor (a) brings, or causes to be brought, into this state from without the state tobacco products for sale, (b) makes, manufactures, ~~((or))~~ fabricates, or stores tobacco products in this state for sale in this state, (c) ships or transports tobacco products to retailers in this state, to be sold by those retailers, or (d) handles for sale any tobacco products that are within this state but upon which tax has not been imposed.

(3) ~~((An additional tax is imposed equal to seven percent multiplied by the tax payable under subsection (1) of this section.~~

~~((4) An additional tax is imposed equal to ten percent of the wholesale sales price of tobacco products. The moneys collected under this subsection shall be deposited in the health services account created under RCW 43.72.900))~~ The moneys collected under this section shall be deposited as follows:

(a) Thirty-seven percent in the general fund;

(b) Fifty percent in the health services account created under RCW 43.72.900; and

(c) Thirteen percent in the water quality account under RCW 70.146.030 for the period beginning July 1, 2005, through June 30, 2021, and in the general fund for the period beginning July 1, 2021.

Sec. 4. RCW 82.26.060 and 1975 1st ex.s. c 278 s 73 are each amended to read as follows:

(1) Every distributor shall keep at each ~~((registered))~~ place of business complete and accurate records for that place of business, including itemized invoices, of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made~~((, except sales to the ultimate consumer))~~.

(2) These records shall show the names and addresses of purchasers, the inventory of all tobacco products ~~((on hand on July 1, 1959))~~, and other pertinent papers and documents relating to the purchase, sale, or disposition of tobacco products. All invoices and other records required by this section to be kept shall be preserved for a period of five years from the date of the invoices or other documents or the date of the entries appearing in the records.

~~((When a registered distributor sells tobacco products exclusively to the ultimate consumer at the address given in the certificate, no invoice of those sales shall be required, but itemized invoices shall be made of all tobacco products transferred to other retail outlets owned or controlled by that registered distributor. All books, records, and other papers and documents required by this section to be kept shall be preserved for a period of at least five years after the date of the documents, as aforesaid, or the date of the entries thereof appearing in the records, unless the department of revenue, in writing, authorizes their destruction or disposal at an earlier date.))~~

(3) At any time during usual business hours the department, board, or its duly authorized agents or employees, may enter any place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under this chapter, and the tobacco products contained therein, to determine whether or not all the provisions of this chapter are being

fully complied with. If the department, board, or any of its agents or employees, are denied free access or are hindered or interfered with in making such examination, the registration certificate issued under RCW 82.32.030 of the distributor at such premises shall be subject to revocation, and any licenses issued under this chapter or chapter 82.24 RCW are subject to suspension or revocation, by the department.

Sec. 5. RCW 82.26.080 and 1975 1st ex.s. c 278 s 74 are each amended to read as follows:

(1) Every retailer (~~(and subjobber)~~) shall procure itemized invoices of all tobacco products purchased. The invoices shall show the seller's name and address (~~(of the seller and)~~), the date of purchase, and all prices and discounts.

(2) The retailer (~~(and subjobber)~~) shall (~~(preserve a legible copy of each such invoice)~~) keep at each retail outlet copies of complete, accurate, and legible invoices for that retail outlet or place of business. All invoices required to be kept under this section shall be preserved for five years from the date of purchase. (~~(Invoices shall be available for inspection by the department of revenue or its authorized agents or employees at the retailer's or subjobber's place of business.)~~)

(3) At any time during usual business hours the department, board, or its duly authorized agents or employees may enter any retail outlet without a search warrant, and inspect the premises for invoices required to be kept under this section and the tobacco products contained in the retail outlet, to determine whether or not all the provisions of this chapter are being fully complied with. If the department, board, or any of its agents or employees, are denied free access or are hindered or interfered with in making the inspection, the registration certificate issued under RCW 82.32.030 of the retailer at the premises is subject to revocation, and any licenses issued under this chapter or chapter 82.24 RCW are subject to suspension or revocation by the department.

NEW SECTION. **Sec. 6.** (1) For the purposes of obtaining information concerning any matter relating to the administration or enforcement of this chapter, the department, the board, or any of its agents, may inspect the books, documents, or records of any person transporting tobacco products for sale to any person or entity in the state, and books, documents, or records containing any information relating to the transportation or possession of tobacco products for sale in the possession of a specific common carrier as defined in RCW 81.80.010 doing business in this state.

(2) If a person neglects or refuses to produce and submit for inspection any book, record, or document as required by this section when requested to do so by the department, the board, or its agent, then the department or the board may seek an order in superior court compelling production of the books, records, or documents.

Sec. 7. RCW 82.26.070 and 1961 c 15 s 82.26.070 are each amended to read as follows:

Every person required to be licensed under this chapter who sells tobacco products to persons other than the ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices (~~(and discounts)~~). ~~((He))~~ The person

shall preserve legible copies of all such invoices for five years from the date of sale.

Sec. 8. RCW 82.26.100 and 1983 c 3 s 218 are each amended to read as follows:

Every ~~((distributor))~~ taxpayer shall report and make returns as provided in RCW 82.32.045. ~~((Every registered distributor outside of this state shall in like manner report and make returns.))~~

Sec. 9. RCW 82.26.110 and 1975 1st ex.s. c 278 s 76 are each amended to read as follows:

(1) Where tobacco products upon which the tax imposed by this chapter has been reported and paid, are shipped or transported outside this state by the distributor to ~~((retailers without the state))~~ a person engaged in the business of selling tobacco products, to be sold by ~~((those retailers))~~ that person, or are returned to the manufacturer by the distributor or destroyed by the distributor, credit of such tax may be made to the distributor in accordance with ~~((regulations))~~ rules prescribed by the department ~~((of revenue))~~.

(2) Credit allowed under this section shall be determined based on the tax rate in effect for the period for which the tax imposed by this chapter, for which a credit is sought, was paid.

NEW SECTION. Sec. 10. (1) No person other than (a) a licensed distributor in the distributor's own vehicle, a manufacturer's representative authorized to sell or distribute tobacco products in this state under section 14 of this act, or a licensed retailer in the retailer's own vehicle, or (b) a person who has given notice to the board in advance of the commencement of transportation shall transport or cause to be transported in this state tobacco products for sale.

(2) When transporting tobacco products for sale, the person shall have in his or her actual possession, or cause to have in the actual possession of those persons transporting such tobacco products on his or her behalf, invoices or delivery tickets for the tobacco products, which shall show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the tobacco products being transported.

(3) In any case where the department or the board, or any peace officer of the state, has knowledge or reasonable grounds to believe that any vehicle is transporting tobacco products in violation of this section, the department, the board, or peace officer, is authorized to stop the vehicle and to inspect it for contraband tobacco products.

NEW SECTION. Sec. 11. (1) The licenses issuable by the department under this chapter are as follows:

- (a) A distributor's license; and
- (b) A retailer's license.

(2) Application for the licenses shall be made through the master license system under chapter 19.02 RCW. The department may adopt rules regarding the regulation of the licenses. The department may refuse to issue any license under this chapter if the department has reasonable cause to believe that the applicant has willfully withheld information requested for the purpose of determining the eligibility of the applicant to receive a license, or if the department has reasonable cause to believe that information submitted in the

application is false or misleading or is not made in good faith. In addition, for the purpose of reviewing an application for a distributor's license and for considering the denial, suspension, or revocation of any such license, the department may consider criminal convictions of the applicant related to the selling of tobacco products within the previous five years in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions, and the provisions of RCW 9.95.240 and chapter 9.96A RCW shall not apply to such cases. The department may, in its discretion, issue or refuse to issue the distributor's license, subject to the provisions of section 18 of this act.

(3) No person may qualify for a distributor's license under this section without first undergoing a criminal background check. The background check shall be performed by the board and must disclose any criminal convictions related to the selling of tobacco products within the previous five years in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions. If the applicant or licensee also has a license issued under chapter 66.24 or 82.24 RCW, the background check done under the authority of chapter 66.24 or 82.24 RCW satisfies the requirements of this section.

(4) Each license issued under this chapter shall expire on the master license expiration date. The license shall be continued annually if the licensee has paid the required fee and complied with all the provisions of this chapter and the rules of the department adopted pursuant to this chapter.

(5) Each license and any other evidence of license as the department requires shall be exhibited in the place of business for which it is issued and in the manner required for the display of a master license.

NEW SECTION. Sec. 12. (1) A fee of six hundred fifty dollars shall accompany each distributor's license application or license renewal application. If a distributor sells or intends to sell tobacco products at two or more places of business, whether established or temporary, a separate license with a license fee of one hundred fifteen dollars shall be required for each additional place of business.

(2) The fees imposed under subsection (1) of this section do not apply to any person applying for a distributor's license or for renewal of a distributor's license if the person has a valid wholesaler's license under RCW 82.24.510 for the place of business associated with the distributor's license application or license renewal application.

NEW SECTION. Sec. 13. (1) A fee of ninety-three dollars shall accompany each retailer's license application or license renewal application. A separate license is required for each separate location at which the retailer operates.

(2) The fee imposed under subsection (1) of this section does not apply to any person applying for a retailer's license or for renewal of a retailer's license if the person has a valid retailer's license under RCW 82.24.510 for the place of business associated with the retailer's license application or renewal application.

NEW SECTION. Sec. 14. A manufacturer that has manufacturer's representatives who sell or distribute the manufacturer's tobacco products in this state must provide the department a list of the names and addresses of all such representatives and must ensure that the list provided to the department is kept current. A manufacturer's representative is not authorized to distribute or sell

tobacco products in this state unless the manufacturer that hired the representative has a valid distributor's license under this chapter and that manufacturer provides the department a current list of all of its manufacturer's representatives as required by this section. A manufacturer's representative must carry a copy of the distributor's license of the manufacturer that hired the representative at all times when selling or distributing the manufacturer's tobacco products.

NEW SECTION. Sec. 15. The department shall compile and maintain a current record of the names of all distributors and retailers licensed under this chapter and the status of their license or licenses. The information must be updated on a monthly basis and published on the department's official internet web site. This information is not subject to the confidentiality provisions of RCW 82.32.330 and shall be disclosed to manufacturers, distributors, retailers, and the general public upon request.

NEW SECTION. Sec. 16. (1)(a) No person may engage in or conduct business as a distributor or retailer in this state after September 30, 2005, without a valid license issued by the department under this chapter. Any person who sells tobacco products to persons other than ultimate consumers or who meets the definition of distributor under RCW 82.26.010(3)(d) must obtain a distributor's license under this chapter. Any person who sells tobacco products to ultimate consumers must obtain a retailer's license under this chapter.

(b) A violation of this subsection (1) is punishable as a class C felony according to chapter 9A.20 RCW.

(2)(a) No person engaged in or conducting business as a distributor or retailer in this state may:

(i) Refuse to allow the department or the board, on demand, to make a full inspection of any place of business where any of the tobacco products taxed under this chapter are sold, stored, or handled, or otherwise hinder or prevent such inspection;

(ii) Make, use, or present or exhibit to the department or the board any invoice for any of the tobacco products taxed under this chapter that bears an untrue date or falsely states the nature or quantity of the goods invoiced; or

(iii) Fail to produce on demand of the department or the board all invoices of all the tobacco products taxed under this chapter within five years prior to such demand unless the person can show by satisfactory proof that the nonproduction of the invoices was due to causes beyond the person's control.

(b) No person, other than a licensed distributor or retailer, may transport tobacco products for sale in this state for which the taxes imposed under this chapter have not been paid unless:

(i) Notice of the transportation has been given as required under section 10 of this act;

(ii) The person transporting the tobacco products actually possesses invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of tobacco products being transported; and

(iii) The tobacco products are consigned to or purchased by a person in this state who is licensed under this chapter.

(c) A violation of this subsection (2) is a gross misdemeanor.

(3) Any person licensed under this chapter as a distributor, and any person licensed under this chapter as a retailer, shall not operate in any other capacity unless the additional appropriate license is first secured. A violation of this subsection (3) is a misdemeanor.

(4) The penalties provided in this section are in addition to any other penalties provided by law for violating the provisions of this chapter or the rules adopted under this chapter.

NEW SECTION. Sec. 17. (1) A retailer that obtains tobacco products from an unlicensed distributor or any other person that is not licensed under this chapter must be licensed both as a retailer and a distributor under this chapter and is liable for the tax imposed under RCW 82.26.020 with respect to the tobacco products acquired from the unlicensed person that are held for sale, handling, or distribution in this state. For the purposes of this subsection, "person" includes both persons defined in RCW 82.26.010(10) and any person immune from state taxation, such as the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(2) Every distributor licensed under this chapter shall sell tobacco products to retailers located in Washington only if the retailer has a current retailer's license under this chapter.

NEW SECTION. Sec. 18. (1) The board shall enforce this chapter. The board may adopt, amend, and repeal rules necessary to enforce this chapter.

(2) The department may adopt, amend, and repeal rules necessary to administer this chapter. The department has full power and authority to revoke or suspend the distributor's or retailer's license of any distributor or retailer of tobacco products in the state upon sufficient cause showing a violation of this chapter or upon the failure of the licensee to comply with any of the rules adopted under it.

(3) A license shall not be suspended or revoked except upon notice to the licensee and after a hearing as prescribed by the department. The department, upon finding that the licensee has failed to comply with any provision of this chapter or of any rule adopted under it, shall, in the case of the first offense, suspend the license or licenses of the licensee for a period of not less than thirty consecutive business days, and in the case of a second or further offense, suspend the license or licenses for a period of not less than ninety consecutive business days but not more than twelve months, and in the event the department finds the licensee has been guilty of willful and persistent violations, it may revoke the license or licenses.

(4) Any licenses issued under chapter 82.24 RCW to a person whose license or licenses have been suspended or revoked under this section shall also be suspended or revoked during the period of suspension or revocation under this section.

(5) Any person whose license or licenses have been revoked under this section may apply to the department at the expiration of one year for a reinstatement of the license or licenses. The license or licenses may be reinstated by the department if it appears to the satisfaction of the department that the licensee will comply with the provisions of this chapter and the rules adopted under it.

(6) A person whose license has been suspended or revoked shall not sell tobacco products or cigarettes or permit tobacco products or cigarettes to be sold during the period of suspension or revocation on the premises occupied by the person or upon other premises controlled by the person or others or in any other manner or form.

(7) Any determination and order by the department, and any order of suspension or revocation by the department of the license or licenses, or refusal to reinstate a license or licenses after revocation is reviewable by an appeal to the superior court of Thurston county. The superior court shall review the order or ruling of the department and may hear the matter de novo, having due regard to the provisions of this chapter and the duties imposed upon the department and the board.

Sec. 19. RCW 82.24.550 and 1997 c 420 s 8 are each amended to read as follows:

(1) The board shall enforce the provisions of this chapter. The board may adopt, amend, and repeal rules necessary to enforce the provisions of this chapter.

(2) The department (~~(of revenue)~~) may adopt, amend, and repeal rules necessary to administer the provisions of this chapter. The department (~~(of revenue)~~) has full power and authority to revoke or suspend the license or permit of any wholesale or retail cigarette dealer in the state upon sufficient cause appearing of the violation of this chapter or upon the failure of such licensee to comply with any of the provisions of this chapter.

(3) A license shall not be suspended or revoked except upon notice to the licensee and after a hearing as prescribed by the department (~~(of revenue)~~). The department (~~(of revenue)~~), upon (~~(a)~~) finding (~~(by same)~~) that the licensee has failed to comply with any provision of this chapter or any rule (~~(promulgated thereunder)~~) adopted under this chapter, shall, in the case of the first (~~(offender)~~) offense, suspend the license or licenses of the licensee for a period of not less than thirty consecutive business days, and, in the case of a second or (~~(plural offender)~~) further offense, shall suspend the license or licenses for a period of not less than ninety consecutive business days nor more than twelve months, and, in the event the department (~~(of revenue)~~) finds the (~~(offender)~~) licensee has been guilty of willful and persistent violations, it may revoke the license or licenses.

(4) Any licenses issued under chapter 82.26 RCW to a person whose license or licenses have been suspended or revoked under this section shall also be suspended or revoked during the period of suspension or revocation under this section.

(5) Any person whose license or licenses have been (~~(so)~~) revoked under this section may apply to the department (~~(of revenue)~~) at the expiration of one year for a reinstatement of the license or licenses. The license or licenses may be reinstated by the department (~~(of revenue)~~) if it appears to the satisfaction of the department (~~(of revenue)~~) that the licensee will comply with the provisions of this chapter and the rules (~~(promulgated thereunder)~~) adopted under this chapter.

(~~(5)~~) (6) A person whose license has been suspended or revoked shall not sell cigarettes or tobacco products or permit cigarettes or tobacco products to be sold during the period of such suspension or revocation on the premises

occupied by the person or upon other premises controlled by the person or others or in any other manner or form whatever.

~~((6))~~ (7) Any determination and order by the department ~~((of revenue))~~, and any order of suspension or revocation by the department ~~((of revenue))~~ of the license or licenses, or refusal to reinstate a license or licenses after revocation shall be reviewable by an appeal to the superior court of Thurston county. The superior court shall review the order or ruling of the department ~~((of revenue))~~ and may hear the matter de novo, having due regard to the provisions of this chapter and the duties imposed upon the department ~~((of revenue))~~ and the board.

(8) For purposes of this section, "tobacco products" has the same meaning as in RCW 82.26.010.

NEW SECTION. Sec. 20. (1) Any tobacco products in the possession of a person selling tobacco products in this state acting as a distributor or retailer and who is not licensed as required under section 16 of this act, or a person who is selling tobacco products in violation of section 18(6) of this act, may be seized without a warrant by any agent of the department, agent of the board, or law enforcement officer of this state. Any tobacco products seized under this subsection shall be deemed forfeited.

(2) Any tobacco products in the possession of a person who is not a licensed distributor or retailer and who transports tobacco products for sale without having provided notice to the board required under section 10 of this act, or without invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of tobacco products being transported may be seized and are subject to forfeiture.

(3) All conveyances, including aircraft, vehicles, or vessels that are used, or intended for use to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of tobacco products under subsection (2) of this section, may be seized and are subject to forfeiture except:

(a) A conveyance used by any person as a common or contract carrier having in actual possession invoices or delivery tickets showing the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the tobacco products transported, unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(b) A conveyance subject to forfeiture under this section by reason of any act or omission of which the owner establishes to have been committed or omitted without his or her knowledge or consent; or

(c) A conveyance encumbered by a bona fide security interest if the secured party neither had knowledge of nor consented to the act or omission.

(4) Property subject to forfeiture under subsections (2) and (3) of this section may be seized by any agent of the department, the board, or law enforcement officer of this state upon process issued by any superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search warrant or an inspection under an administrative inspection warrant; or

(b) The department, board, or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable.

(5) This section shall not be construed to require the seizure of tobacco products if the department's agent, board's agent, or law enforcement officer reasonably believes that the tobacco products are possessed for personal consumption by the person in possession of the tobacco products.

(6) Any tobacco products seized by a law enforcement officer shall be turned over to the board as soon as practicable.

NEW SECTION. Sec. 21. (1) In all cases of seizure of any tobacco products made subject to forfeiture under this chapter, the department or board shall proceed as provided in RCW 82.24.135.

(2) When tobacco products are forfeited under this chapter, the department or board may:

(a) Retain the property for official use or upon application by any law enforcement agency of this state, another state, or the District of Columbia, or of the United States for the exclusive use of enforcing this chapter or the laws of any other state or the District of Columbia or of the United States; or

(b) Sell the tobacco products at public auction to the highest bidder after due advertisement. Before delivering any of the goods to the successful bidder, the department or board shall require the purchaser to pay the proper amount of any tax due. The proceeds of the sale shall be first applied to the payment of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. The balance of the proceeds and all money shall be deposited in the general fund of the state. Proper expenses of investigation include costs incurred by any law enforcement agency or any federal, state, or local agency.

(3) The department or the board may return any property seized under the provisions of this chapter when it is shown that there was no intention to violate the provisions of this chapter. When any property is returned under this section, the department or the board may return the property to the parties from whom they were seized if and when such parties have paid the proper amount of tax due under this chapter.

NEW SECTION. Sec. 22. When the department or the board has good reason to believe that any of the tobacco products taxed under this chapter are being kept, sold, offered for sale, or given away in violation of the provisions of this chapter, it may make affidavit of facts describing the place or thing to be searched, before any judge of any court in this state, and the judge shall issue a search warrant directed to the sheriff, any deputy, police officer, or duly authorized agent of the department or the board commanding him or her diligently to search any building, room in a building, place, or vehicle as may be designated in the affidavit and search warrant, and to seize the tobacco products and hold them until disposed of by law.

NEW SECTION. Sec. 23. The following acts or parts of acts are each repealed:

(1) RCW 82.26.025 (Additional tax imposed—Rate—Where deposited) and 2002 c 325 s 3, 1999 c 309 s 926, & 1986 c 3 s 14;

(2) RCW 82.26.028 (Surtax imposed—Rate—Health services account) and 2002 c 2 s 4; and

(3) RCW 82.26.050 (Certificate of registration required) and 1975 1st ex.s. c 278 s 72 & 1961 c 15 s 82.26.050.

NEW SECTION. Sec. 24. Sections 6, 10 through 18, and 20 through 22 of this act are each added to chapter 82.26 RCW.

NEW SECTION. Sec. 25. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005.

Passed by the Senate April 15, 2005.

Passed by the House April 20, 2005.

Approved by the Governor April 23, 2005.

Filed in Office of Secretary of State April 23, 2005.

CHAPTER 181

[House Bill 1555]

SPECIAL DISTRICTS—MONETARY ASSESSMENTS

AN ACT Relating to monetary assessments by drainage, diking, flood control, and mosquito control districts; amending RCW 17.28.255; and adding a new section to chapter 85.38 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 85.38 RCW to read as follows:

(1) Every special district must use the assessed value applicable to forest land, farm and agricultural land, or open space land, under chapter 84.33 or 84.34 RCW, when the land has been designated as such and the assessed value is used as a component in determining the district assessment.

(2) If a district uses a fractional amount of assessed value as a component in determining the district assessment, then a fractional amount of the value applicable to forest land, farm and agricultural land, or open space land, under chapter 84.33 or 84.34 RCW, shall be used.

Sec. 2. RCW 17.28.255 and 1959 c 64 s 7 are each amended to read as follows:

The board of trustees shall annually determine the amount of money necessary to carry on the operations of the district and shall classify the property therein in proportion to the benefits to be derived from the operations of the district and in accordance with such classification shall apportion and assess the several lots, blocks, tracts, and parcels of land or other property within the district, which assessment shall be collected with the general taxes of the county or counties. A mosquito control district must use the assessed value applicable to forest land, farm and agricultural land, or open space land, under chapter 84.33 or 84.34 RCW, when the land has been designated as such and the assessed value is used as a component in determining the district assessment. If a district uses a fractional amount of assessed value as a component in determining the district assessment, then a fractional amount of the value

applicable to forest land, farm and agricultural land, or open space land, under chapter 84.33 or 84.34 RCW, shall be used.

Passed by the House March 3, 2005.
Passed by the Senate April 15, 2005.
Approved by the Governor April 26, 2005.
Filed in Office of Secretary of State April 26, 2005.

CHAPTER 182

[House Bill 1024]

COURTS—SALARY WARRANTS

AN ACT Relating to requirements for issuing salary warrants for judges; and amending RCW 2.56.040.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 2.56.040 and 1957 c 259 s 4 are each amended to read as follows:

The chief justice shall consider all recommendations of the administrator for the assignment of judges, and, in ~~((his))~~ the discretion of the chief justice, direct any judge whose calendar, in the judgment of the chief justice, will permit, to hold court in any county or district where need therefor exists, to the end that the courts of this state shall function with maximum efficiency, and that the work of other courts shall be equitably distributed. It shall be the duty of every judge to obey such direction of the chief justice unless excused by ~~((him))~~ the chief justice for sufficient cause. ~~((No salary warrant shall be issued pursuant to RCW 2.08.100 until the judge who is to receive the same shall have made an affidavit, in the manner provided by law, that he has fully complied with the provisions of RCW 2.56.040 and 2.56.050. Said affidavit may be made a part of the affidavit required by RCW 2.08.100.))~~

Passed by the House February 4, 2005.
Passed by the Senate April 15, 2005.
Approved by the Governor April 26, 2005.
Filed in Office of Secretary of State April 26, 2005.

CHAPTER 183

[Substitute House Bill 1113]

SIGNAL PREEMPTION DEVICES

AN ACT Relating to traffic control signal preemption devices; amending RCW 46.37.190 and 46.63.020; reenacting and amending RCW 9.94A.515; adding a new section to chapter 46.04 RCW; adding new sections to chapter 46.61 RCW; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. **Sec. 1.** A new section is added to chapter 46.04 RCW to read as follows:

"Signal preemption device" means a device that is capable of altering the normal operation of a traffic control signal. Any such device manufactured by a vehicle manufacturer is not a signal preemption device for purposes of this section if the primary purpose of the device is any purpose other than the

preemption of traffic signals and the device's ability to alter traffic signals is unintended and incidental to the device's primary purpose.

NEW SECTION, Sec. 2. A new section is added to chapter 46.61 RCW to read as follows:

(1) Signal preemption devices shall not be installed or used on or with any vehicle other than an emergency vehicle authorized by the state patrol, a publicly owned law enforcement or emergency vehicle, a department of transportation, city, or county maintenance vehicle, or a public transit vehicle.

(2) This section does not apply to any of the following:

(a) A law enforcement agency and law enforcement personnel in the course of providing law enforcement services;

(b) A fire station or a fire fighter in the course of providing fire prevention or fire extinguishing services;

(c) An emergency medical service or ambulance in the course of providing emergency medical transportation or ambulance services;

(d) An operator, passenger, or owner of an authorized emergency vehicle in the course of his or her emergency duties;

(e) Department of transportation, city, or county maintenance personnel while performing maintenance;

(f) Public transit personnel in the performance of their duties. However, public transit personnel operating a signal preemption device shall have second degree priority to law enforcement personnel, fire fighters, emergency medical personnel, and other authorized emergency vehicle personnel, when simultaneously approaching the same traffic control signal;

(g) A mail or package delivery service or employee or agent of a mail or package delivery service in the course of shipping or delivering a signal preemption device;

(h) An employee or agent of a signal preemption device manufacturer or retailer in the course of his or her employment in providing, selling, manufacturing, or transporting a signal preemption device to an individual or agency described in this subsection.

NEW SECTION, Sec. 3. A new section is added to chapter 46.61 RCW to read as follows:

(1) It is unlawful to possess a signal preemption device except as authorized in section 2 of this act.

(2) A person who violates this section is guilty of a misdemeanor.

NEW SECTION, Sec. 4. A new section is added to chapter 46.61 RCW to read as follows:

(1) It is unlawful to:

(a) Use a signal preemption device except as authorized in section 2 of this act;

(b) Sell a signal preemption device to a person other than a person described in section 2 of this act; or

(c) Purchase a signal preemption device for use other than a duty as described in section 2 of this act.

(2) A person who violates this section is guilty of a gross misdemeanor.

NEW SECTION, Sec. 5. A new section is added to chapter 46.61 RCW to read as follows:

(1) When an accident that results only in injury to property or injury to a person that does not arise to substantial bodily harm as defined in RCW 9A.04.110 occurs as a proximate result of the operation of a signal preemption device which was not authorized in section 2 of this act, the driver is guilty of negligently causing an accident by use of a signal preemption device.

(2) Negligently causing an accident by use of a signal preemption device is a class C felony punishable under chapter 9A.20 RCW.

NEW SECTION. Sec. 6. A new section is added to chapter 46.61 RCW to read as follows:

(1) When an accident that results in injury to a person that arises to substantial bodily harm as defined in RCW 9A.04.110 occurs as a proximate result of the operation of a signal preemption device which was not authorized in section 2 of this act, the driver is guilty of negligently causing substantial bodily harm by use of a signal preemption device.

(2) Negligently causing substantial bodily harm by use of a signal preemption device is a class B felony punishable under chapter 9A.20 RCW.

NEW SECTION. Sec. 7. A new section is added to chapter 46.61 RCW to read as follows:

(1) When an accident that results in death to a person occurs as a proximate result of the operation of a signal preemption device which was not authorized in section 2 of this act, the driver is guilty of negligently causing death by use of a signal preemption device.

(2) Negligently causing death by use of a signal preemption device is a class B felony punishable under chapter 9A.20 RCW.

Sec. 8. RCW 46.37.190 and 1993 c 401 s 2 are each amended to read as follows:

(1) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive marking required by this chapter, be equipped with at least one lamp capable of displaying a red light visible from at least five hundred feet in normal sunlight and a siren capable of giving an audible signal.

(2) Every school bus and private carrier bus shall, in addition to any other equipment and distinctive markings required by this chapter, be equipped with a "stop" signal upon a background not less than fourteen by eighteen inches displaying the word "stop" in letters of distinctly contrasting colors not less than eight inches high, and shall further be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall be capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level and these lights shall have sufficient intensity to be visible at five hundred feet in normal sunlight.

(3) Vehicles operated by public agencies whose law enforcement duties include the authority to stop and detain motor vehicles on the public highways of the state may be equipped with a siren and lights of a color and type designated by the state patrol for that purpose. The state patrol may prohibit the use of these sirens and lights on vehicles other than the vehicles described in this subsection.

(4) The lights described in this section shall not be mounted nor used on any vehicle other than a school bus, a private carrier bus, or an authorized emergency or law enforcement vehicle. ~~((Optical strobe light devices shall not be installed~~

~~or used on any vehicle other than an emergency vehicle authorized by the state patrol, a publicly owned law enforcement or emergency vehicle, a department of transportation, city, or county maintenance vehicle, or a public transit vehicle.~~

~~(a) An "optical strobe light device" used by emergency vehicles means a strobe light device which emits an optical signal at a specific frequency to a traffic control light enabling the emergency vehicle in which the strobe light device is used to obtain the right of way at intersections.~~

~~(b) An "optical strobe light device" used by department of transportation, city, or county maintenance vehicles means a strobe light device that emits an optical signal at a specific frequency to a traffic control light enabling the department of transportation maintenance vehicle in which the strobe light device is used to perform maintenance tests.~~

~~(c) An "optical strobe light device" used by public transit vehicles means a strobe light device that emits an optical signal at a specific frequency to a traffic control light enabling the public transit vehicle in which the strobe light device is used to accelerate the cycle of the traffic control light. For the purposes of this section, "public transit vehicle" means vehicles, owned by a governmental entity, with a seating capacity for twenty five or more persons and used to provide mass transportation. Public transit vehicles operating an optical strobe light will have second degree priority to emergency vehicles when simultaneously approaching the same traffic control light.)~~

(5) The use of the signal equipment described (~~herein~~) in this section and section 2 of this act, except the ((optical strobe light)) signal preemption devices used by public transit vehicles and department of transportation, city, or county maintenance vehicles that are not used in conjunction with emergency equipment, shall impose upon drivers of other vehicles the obligation to yield right of way and stop as prescribed in RCW 46.61.210, 46.61.370, and 46.61.350.

Sec. 9. RCW 9.94A.515 and 2004 c 176 s 2 and 2004 c 94 s 3 are each reenacted and amended to read as follows:

TABLE 2
CRIMES INCLUDED WITHIN EACH
SERIOUSNESS LEVEL

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

- XII Assault 1 (RCW 9A.36.011)
 - Assault of a Child 1 (RCW 9A.36.120)
 - Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
 - Rape 1 (RCW 9A.44.040)
 - Rape of a Child 1 (RCW 9A.44.073)
 - Trafficking 2 (RCW 9A.40.100(2))
- XI Manslaughter 1 (RCW 9A.32.060)
 - Rape 2 (RCW 9A.44.050)
 - Rape of a Child 2 (RCW 9A.44.076)
- X Child Molestation 1 (RCW 9A.44.083)
 - Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
 - Kidnapping 1 (RCW 9A.40.020)
 - Leading Organized Crime (RCW 9A.82.060(1)(a))
 - Malicious explosion 3 (RCW 70.74.280(3))
 - Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Assault of a Child 2 (RCW 9A.36.130)
 - Explosive devices prohibited (RCW 70.74.180)
 - Hit and Run—Death (RCW 46.52.020(4)(a))
 - Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
 - Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
 - Malicious placement of an explosive 2 (RCW 70.74.270(2))
 - Robbery 1 (RCW 9A.56.200)
 - Sexual Exploitation (RCW 9.68A.040)
 - Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- VIII Arson 1 (RCW 9A.48.020)

- Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
- Manslaughter 2 (RCW 9A.32.070)
- Promoting Prostitution 1 (RCW 9A.88.070)
- Theft of Ammonia (RCW 69.55.010)
- Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)
- Child Molestation 2 (RCW 9A.44.086)
- Civil Disorder Training (RCW 9A.48.120)
- Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
- Drive-by Shooting (RCW 9A.36.045)
- Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)
- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
- Introducing Contraband 1 (RCW 9A.76.140)
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- Negligently Causing Death By Use of a Signal Preemption Device (section 7 of this act)
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
- Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1))
- Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)

- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a))
 - Bribery (RCW 9A.68.010)
 - Incest 1 (RCW 9A.64.020(1))
 - Intimidating a Judge (RCW 9A.72.160)
 - Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
 - Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
 - Rape of a Child 3 (RCW 9A.44.079)
 - Theft of a Firearm (RCW 9A.56.300)
 - Unlawful Storage of Ammonia (RCW 69.55.020)
- V Abandonment of dependent person 1 (RCW 9A.42.060)
 - Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
 - Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))
 - Child Molestation 3 (RCW 9A.44.089)
 - Criminal Mistreatment 1 (RCW 9A.42.020)
 - Custodial Sexual Misconduct 1 (RCW 9A.44.160)
 - Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
 - Extortion 1 (RCW 9A.56.120)
 - Extortionate Extension of Credit (RCW 9A.82.020)
 - Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
 - Incest 2 (RCW 9A.64.020(2))

- Kidnapping 2 (RCW 9A.40.030)
- Perjury 1 (RCW 9A.72.020)
- Persistent prison misbehavior (RCW 9.94.070)
- Possession of a Stolen Firearm (RCW 9A.56.310)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Sexually Violating Human Remains (RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070)
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault by Watercraft (RCW 79A.60.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Cheating 1 (RCW 9.46.1961)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))
- Endangerment with a Controlled Substance (RCW 9A.42.100)
- Escape 1 (RCW 9A.76.110)
- Hit and Run—Injury (RCW 46.52.020(4)(b))
- Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))
- Identity Theft 1 (RCW 9.35.020(2))
- Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)
- Influencing Outcome of Sporting Event (RCW 9A.82.070)

- Malicious Harassment (RCW 9A.36.080)
- Residential Burglary (RCW 9A.52.025)
- Robbery 2 (RCW 9A.56.210)
- Theft of Livestock 1 (RCW 9A.56.080)
- Threats to Bomb (RCW 9.61.160)
- Trafficking in Stolen Property 1 (RCW 9A.82.050)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(b))
- Unlawful transaction of health coverage as a health care service contractor (RCW 48.44.016(3))
- Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3))
- Unlawful transaction of insurance business (RCW 48.15.023(3))
- Unlicensed practice as an insurance professional (RCW 48.17.063(3))
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)
- Willful Failure to Return from Furlough (RCW 72.66.060)
- III Abandonment of dependent person 2 (RCW 9A.42.070)
- Assault 3 (RCW 9A.36.031)
- Assault of a Child 3 (RCW 9A.36.140)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c))
- Burglary 2 (RCW 9A.52.030)

Communication with a Minor for Immoral Purposes (RCW 9.68A.090)

Criminal Gang Intimidation (RCW 9A.46.120)

Criminal Mistreatment 2 (RCW 9A.42.030)

Custodial Assault (RCW 9A.36.100)

Cyberstalking (subsequent conviction or threat of death) (RCW 9.61.260(3))

Escape 2 (RCW 9A.76.120)

Extortion 2 (RCW 9A.56.130)

Harassment (RCW 9A.46.020)

Intimidating a Public Servant (RCW 9A.76.180)

Introducing Contraband 2 (RCW 9A.76.150)

Malicious Injury to Railroad Property (RCW 81.60.070)

Negligently Causing Substantial Bodily Harm By Use of a Signal Preemption Device (section 6 of this act)

Patronizing a Juvenile Prostitute (RCW 9.68A.100)

Perjury 2 (RCW 9A.72.030)

Possession of Incendiary Device (RCW 9.40.120)

Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)

Promoting Prostitution 2 (RCW 9A.88.080)

Securities Act violation (RCW 21.20.400)

Tampering with a Witness (RCW 9A.72.120)

Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(2))

- Theft of Livestock 2 (RCW 9A.56.083)
- Trafficking in Stolen Property 2 (RCW 9A.82.055)
- Unlawful Imprisonment (RCW 9A.40.040)
- Unlawful possession of firearm in the second degree (RCW 9A.41.040(2))
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- Willful Failure to Return from Work Release (RCW 72.65.070)
- II Computer Trespass 1 (RCW 9A.52.110)
- Counterfeiting (RCW 9.16.035(3))
- Escape from Community Custody (RCW 72.09.310)
- Health Care False Claims (RCW 48.80.030)
- Identity Theft 2 (RCW 9.35.020(3))
- Improperly Obtaining Financial Information (RCW 9.35.010)
- Malicious Mischief 1 (RCW 9A.48.070)
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Theft 1 (RCW 9A.56.030)
- Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(5)(a))
- Trafficking in Insurance Claims (RCW 48.30A.015)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))
- Unlawful Practice of Law (RCW 2.48.180)
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))

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

Unlawful Use of Food Stamps (RCW
9.91.144)
Vehicle Prowl 1 (RCW 9A.52.095)

Sec. 10. RCW 46.63.020 and 2004 c 95 s 14 are each amended to read as follows:

Failure to perform any act required or the performance of any act prohibited by this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to traffic including parking, standing, stopping, and pedestrian offenses, is designated as a traffic infraction and may not be classified as a criminal offense, except for an offense contained in the following provisions of this title or a violation of an equivalent administrative regulation or local law, ordinance, regulation, or resolution:

(1) RCW 46.09.120(2) relating to the operation of a nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance;

(2) RCW 46.09.130 relating to operation of nonhighway vehicles;

(3) RCW 46.10.090(2) relating to the operation of a snowmobile while under the influence of intoxicating liquor or narcotics or habit-forming drugs or in a manner endangering the person of another;

(4) RCW 46.10.130 relating to the operation of snowmobiles;

(5) Chapter 46.12 RCW relating to certificates of ownership and registration and markings indicating that a vehicle has been destroyed or declared a total loss;

(6) RCW 46.16.010 relating to initial registration of motor vehicles;

(7) RCW 46.16.011 relating to permitting unauthorized persons to drive;

(8) RCW 46.16.160 relating to vehicle trip permits;

(9) RCW 46.16.381(2) relating to knowingly providing false information in conjunction with an application for a special placard or license plate for disabled persons' parking;

(10) RCW 46.20.005 relating to driving without a valid driver's license;

(11) RCW 46.20.091 relating to false statements regarding a driver's license or instruction permit;

(12) RCW 46.20.0921 relating to the unlawful possession and use of a driver's license;

(13) RCW 46.20.342 relating to driving with a suspended or revoked license or status;

(14) RCW 46.20.345 relating to the operation of a motor vehicle with a suspended or revoked license;

(15) RCW 46.20.410 relating to the violation of restrictions of an occupational or temporary restricted driver's license;

(16) RCW 46.20.740 relating to operation of a motor vehicle without an ignition interlock device in violation of a license notation that the device is required;

(17) RCW 46.20.750 relating to assisting another person to start a vehicle equipped with an ignition interlock device;

(18) RCW 46.25.170 relating to commercial driver's licenses;

(19) Chapter 46.29 RCW relating to financial responsibility;

(20) RCW 46.30.040 relating to providing false evidence of financial responsibility;

(21) RCW 46.37.435 relating to wrongful installation of suncreening material;

(22) RCW 46.37.650 relating to the sale, resale, distribution, or installation of a previously deployed air bag;

(23) RCW 46.44.180 relating to operation of mobile home pilot vehicles;

(24) RCW 46.48.175 relating to the transportation of dangerous articles;

(25) RCW 46.52.010 relating to duty on striking an unattended car or other property;

(26) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(27) RCW 46.52.090 relating to reports by repairmen, storagemen, and appraisers;

(28) RCW 46.52.130 relating to confidentiality of the driving record to be furnished to an insurance company, an employer, and an alcohol/drug assessment or treatment agency;

(29) RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;

(30) RCW 46.55.035 relating to prohibited practices by tow truck operators;

(31) RCW 46.61.015 relating to obedience to police officers, flaggers, or fire fighters;

(32) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;

(33) RCW 46.61.022 relating to failure to stop and give identification to an officer;

(34) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;

(35) RCW 46.61.500 relating to reckless driving;

(36) RCW 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;

(37) RCW 46.61.503 relating to a person under age twenty-one driving a motor vehicle after consuming alcohol;

(38) RCW 46.61.520 relating to vehicular homicide by motor vehicle;

(39) RCW 46.61.522 relating to vehicular assault;

(40) RCW 46.61.5249 relating to first degree negligent driving;

(41) RCW 46.61.527(4) relating to reckless endangerment of roadway workers;

(42) RCW 46.61.530 relating to racing of vehicles on highways;

(43) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;

(44) RCW 46.61.740 relating to theft of motor vehicle fuel;

(45) Sections 3 through 7 of this act relating to signal preemption devices;

(46) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;

~~((46))~~ (47) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;

~~((47))~~ (48) Chapter 46.65 RCW relating to habitual traffic offenders;

~~((48))~~ (49) RCW 46.68.010 relating to false statements made to obtain a refund;

~~((49))~~ (50) Chapter 46.70 RCW relating to unfair motor vehicle business practices, except where that chapter provides for the assessment of monetary penalties of a civil nature;

~~((50))~~ (51) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;

~~((51))~~ (52) RCW 46.72A.060 relating to limousine carrier insurance;

~~((52))~~ (53) RCW 46.72A.070 relating to operation of a limousine without a vehicle certificate;

~~((53))~~ (54) RCW 46.72A.080 relating to false advertising by a limousine carrier;

~~((54))~~ (55) Chapter 46.80 RCW relating to motor vehicle wreckers;

~~((55))~~ (56) Chapter 46.82 RCW relating to driver's training schools;

~~((56))~~ (57) RCW 46.87.260 relating to alteration or forgery of a cab card, letter of authority, or other temporary authority issued under chapter 46.87 RCW;

~~((57))~~ (58) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW.

Passed by the House February 11, 2005.

Passed by the Senate April 12, 2005.

Approved by the Governor April 26, 2005.

Filed in Office of Secretary of State April 26, 2005.

CHAPTER 184

[House Bill 1130]

CAMPAIGN FINANCE—INSPECTION OF CONTRIBUTIONS AND EXPENDITURES

AN ACT Relating to inspection of political candidates' contributions and expenditures; and amending RCW 42.17.080.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 42.17.080 and 2002 c 75 s 2 are each amended to read as follows:

(1) On the day the treasurer is designated, each candidate or political committee shall file with the commission and the county auditor or elections officer of the county in which the candidate resides, or in the case of a political committee, the county in which the treasurer resides, in addition to any statement of organization required under RCW 42.17.040 or 42.17.050, a report of all contributions received and expenditures made prior to that date, if any.

(2) At the following intervals each treasurer shall file with the commission and the county auditor or elections officer of the county in which the candidate resides, or in the case of a political committee, the county in which the committee maintains its office or headquarters, and if there is no office or headquarters then in the county in which the treasurer resides, a report containing the information required by RCW 42.17.090:

(a) On the twenty-first day and the seventh day immediately preceding the date on which the election is held; and

(b) On the tenth day of the first month after the election: PROVIDED, That this report shall not be required following a primary election from:

(i) A candidate whose name will appear on the subsequent general election ballot; or

(ii) Any continuing political committee; and

(c) On the tenth day of each month in which no other reports are required to be filed under this section: PROVIDED, That such report shall only be filed if the committee has received a contribution or made an expenditure in the preceding calendar month and either the total contributions received or total expenditures made since the last such report exceed two hundred dollars.

When there is no outstanding debt or obligation, and the campaign fund is closed, and the campaign is concluded in all respects, and in the case of a political committee, the committee has ceased to function and has dissolved, the treasurer shall file a final report. Upon submitting a final report, the duties of the treasurer shall cease and there shall be no obligation to make any further reports.

The report filed twenty-one days before the election shall report all contributions received and expenditures made as of the end of the fifth business day before the date of the report. The report filed seven days before the election shall report all contributions received and expenditures made as of the end of the one business day before the date of the report. Reports filed on the tenth day of the month shall report all contributions received and expenditures made from the closing date of the last report filed through the last day of the month preceding the date of the current report.

(3) For the period beginning the first day of the fourth month preceding the date on which the special or general election is held and ending on the date of that election, each Monday the treasurer shall file with the commission and the appropriate county elections officer a report of each bank deposit made during the previous seven calendar days. The report shall contain the name of each person contributing the funds so deposited and the amount contributed by each person. However, contributions of no more than twenty-five dollars in the aggregate from any one person may be deposited without identifying the contributor. A copy of the report shall be retained by the treasurer for his or her records. In the event of deposits made by a deputy treasurer, the copy shall be forwarded to the treasurer for his or her records. Each report shall be certified as correct by the treasurer or deputy treasurer making the deposit.

(4) If a city requires that candidates or committees for city offices file reports with a city agency, the candidate or treasurer so filing need not also file the report with the county auditor or elections officer.

(5) The treasurer or candidate shall maintain books of account accurately reflecting all contributions and expenditures on a current basis within five business days of receipt or expenditure. During the eight days immediately preceding the date of the election the books of account shall be kept current within one business day. As specified in the committee's statement of organization filed under RCW 42.17.040, the books of account must be open for public inspection (~~as follows:~~

~~(a) For at least two consecutive hours between 8:00 a.m. and 8:00 p.m. on the eighth day immediately before the election, except when it is a legal holiday; in which case on the seventh day immediately before the election, at the~~

~~principal headquarters or, if there is no headquarters, at the address of the treasurer or such other place as may be authorized by the commission; and~~

~~(b) By appointment for inspections to be conducted))~~ by appointment at the designated place for inspections between 8:00 a.m. and 8:00 p.m. on any ~~((other))~~ day from the ~~((seventh))~~ eighth day immediately before the election through the day immediately before the election, other than Saturday, Sunday, or a legal holiday. It is a violation of this chapter for a candidate or political committee to refuse to allow and keep an appointment for an inspection to be conducted during these authorized times and days ~~((in the week prior to the election))~~. The appointment must be allowed at an authorized time and day for such inspections that is within twenty-four hours of the time and day that is requested for the inspection.

(6) The treasurer or candidate shall preserve books of account, bills, receipts, and all other financial records of the campaign or political committee for not less than five calendar years following the year during which the transaction occurred.

(7) All reports filed pursuant to subsection (1) or (2) of this section shall be certified as correct by the candidate and the treasurer.

(8) Copies of all reports filed pursuant to this section shall be readily available for public inspection for at least two consecutive hours Monday through Friday, excluding legal holidays, between 8:00 a.m. and 8:00 p.m., as specified in the committee's statement of organization filed pursuant to RCW 42.17.040, at the principal headquarters or, if there is no headquarters, at the address of the treasurer or such other place as may be authorized by the commission.

(9) After January 1, 2002, a report that is filed with the commission electronically need not also be filed with the county auditor or elections officer.

(10) The commission shall adopt administrative rules establishing requirements for filer participation in any system designed and implemented by the commission for the electronic filing of reports.

Passed by the House February 11, 2005.

Passed by the Senate April 15, 2005.

Approved by the Governor April 26, 2005.

Filed in Office of Secretary of State April 26, 2005.

CHAPTER 185

[House Bill 1141]

REAL ESTATE RESEARCH ACCOUNT—EXTENSION

AN ACT Relating to the Washington real estate research account; amending RCW 18.85.520, 18.85.530, and 18.85.540; and providing expiration dates.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 18.85.520 and 1999 c 192 s 1 are each amended to read as follows:

(1) A fee of ten dollars is created and shall be assessed on each real estate broker, associate broker, and salesperson originally licensed after October 1, 1999, and upon each renewal of a license with an expiration date after October 1, 1999, including renewals of inactive licenses.

(2) This section expires September 30, (~~2005~~) 2010.

Sec. 2. RCW 18.85.530 and 1999 c 192 s 2 are each amended to read as follows:

(1) The Washington real estate research account is created in the state treasury. All receipts from the fee under RCW 18.85.520 shall 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 purposes of RCW 18.85.540.

(2) This section expires September 30, (~~2005~~) 2010.

Sec. 3. RCW 18.85.540 and 2002 c 294 s 5 are each amended to read as follows:

(1) The purpose of a real estate research center in Washington state is to provide credible research, value-added information, education services, and project-oriented research to real estate licensees, real estate consumers, real estate service providers, institutional customers, public agencies, and communities in Washington state and the Pacific Northwest region. The center may:

(a) Conduct studies and research on affordable housing and strategies to meet the affordable housing needs of the state;

(b) Conduct studies in all areas directly or indirectly related to real estate and urban or rural economics and economically isolated communities;

(c) Disseminate findings and results of real estate research conducted at or by the center or elsewhere, using a variety of dissemination media;

(d) Supply research results and educational expertise to the Washington state real estate commission to support its regulatory functions, as requested;

(e) Prepare information of interest to real estate consumers and make the information available to the general public, universities, or colleges, and appropriate state agencies;

(f) Encourage economic growth and development within the state of Washington;

(g) Support the professional development and continuing education of real estate licensees in Washington;

(h) Study and recommend changes in state statutes relating to real estate; and

(i) Develop a vacancy rate standard for low-income housing in the state.

(2) The director shall establish a memorandum of understanding with an institution of higher learning that establishes a real estate research center for the purposes under subsection (1) of this section.

(3) This section expires September 30, (~~2005~~) 2010.

Passed by the House March 4, 2005.

Passed by the Senate April 12, 2005.

Approved by the Governor April 26, 2005.

Filed in Office of Secretary of State April 26, 2005.

CHAPTER 186

[Substitute House Bill 1699]

REAL ESTATE CONVEYANCES—LIQUIDATED DAMAGES

AN ACT Relating to agreements for the purchase and sale of real estate; amending RCW 64.04.005; creating a new section; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 64.04.005 and 1991 c 210 s 1 are each amended to read as follows:

(1)~~((a))~~) A provision in a written agreement for the purchase and sale of real estate which provides for liquidated damages or the forfeiture of an earnest money deposit to the seller as the seller's sole and exclusive remedy if ~~((the purchaser))~~ a party fails, without legal excuse, to complete the purchase, is valid and enforceable, regardless of whether the ~~((seller))~~ other party incurs any actual damages~~(, PROVIDED That:~~

~~(i) The total earnest money deposit to be forfeited does not exceed five percent of the purchase price; and~~

~~(ii) The agreement includes an express provision in substantially the following form: "In the event the purchaser fails, without legal excuse, to complete the purchase of the property, the earnest money deposit made by the purchaser shall be forfeited to the seller as the sole and exclusive remedy available to the seller for such failure."~~

~~(b) If the real estate which is the subject of the agreement is being purchased by the purchaser primarily for the purchaser's personal, family, or household purposes, then the agreement provision required by (a)(ii) of this subsection must be:~~

~~(i) In typeface no smaller than other text provisions of the agreement; and~~

~~(ii) Must be separately initialed or signed by the purchaser and seller.~~

~~(2) If an agreement for the purchase and sale of real estate does not satisfy the requirements of subsection (1) of this section, then the seller shall have all rights and remedies otherwise available at law or in equity as a result of the failure of the purchaser, without legal excuse, to complete the purchase.~~

~~(3) Nothing in subsection (1) of this section shall affect or limit the rights of any party to an agreement for the purchase and sale of real estate with respect to:~~

~~(a) Any cause of action arising from any other breach or default by either party under the agreement; or~~

~~(b) The recovery of attorneys' fees in any action commenced with respect to the agreement, if the agreement so provides.~~

~~(4)). However, the amount of liquidated damages or amount of earnest money to be forfeited under this subsection may not exceed five percent of the purchase price.~~

~~(2) For purposes of this section((;):~~

~~(a) "Earnest money deposit" means any deposit, deposits, payment, or payments of a part of the purchase price for the property, made in the form of cash, check, promissory note, or other things of value for the purpose of binding the purchaser to the agreement and identified in the agreement as an earnest money deposit, and does not include other deposits or payments made by the purchaser; and~~

(b) "Liquidated damages" means an amount agreed by the parties as the amount of damages to be recovered for a breach of the agreement by the other and identified in the agreement as liquidated damages, and does not include other deposits or payments made by the purchaser.

(3) This section does not prohibit, or supersede the common law with respect to, liquidated damages or earnest money forfeiture provisions in excess of five percent of the purchase price. A liquidated damages or earnest money forfeiture provision not meeting the requirements of subsection (1) of this section shall be interpreted and enforced without regard to this statute.

NEW SECTION. Sec. 2. This act applies to all contracts executed after the effective date of this act.

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House April 18, 2005.

Passed by the Senate April 13, 2005.

Approved by the Governor April 26, 2005.

Filed in Office of Secretary of State April 26, 2005.

CHAPTER 187

[House Bill 1160]

HOSPITALS—WORKPLACE VIOLENCE—REPORT

AN ACT Relating to reducing workplace violence in state hospitals; and adding a new section to chapter 72.23 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 72.23 RCW to read as follows:

By September 1st of each year, the department shall report to the house committee on commerce and labor and the senate committee on commerce and trade, or successor committees, on the department's efforts to reduce violence in the state hospitals.

Passed by the House February 28, 2005.

Passed by the Senate April 13, 2005.

Approved by the Governor April 26, 2005.

Filed in Office of Secretary of State April 26, 2005.

CHAPTER 188

[House Bill 1170]

BASIC HEALTH PLAN—STUDENTS WITH TEMPORARY VISAS

AN ACT Relating to basic health plan eligibility of persons studying in the United States under temporary visas; amending RCW 70.47.020; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that the basic health plan is a valuable means of providing access to affordable health insurance coverage for low-income families and individuals in Washington state. The legislature

further finds that persons studying in the United States as full-time students under temporary visas must show, as a condition of receiving their temporary visa, that they have sufficient funds available for self-support during their entire proposed course of study. For this reason, the legislature finds that it is not appropriate to provide subsidized basic health plan coverage to this group of students.

Sec. 2. RCW 70.47.020 and 2004 c 192 s 1 are each amended to read as follows:

As used in this chapter:

(1) "Washington basic health plan" or "plan" means the system of enrollment and payment for basic health care services, administered by the plan administrator through participating managed health care systems, created by this chapter.

(2) "Administrator" means the Washington basic health plan administrator, who also holds the position of administrator of the Washington state health care authority.

(3) "Health coverage tax credit program" means the program created by the Trade Act of 2002 (P.L. 107-210) that provides a federal tax credit that subsidizes private health insurance coverage for displaced workers certified to receive certain trade adjustment assistance benefits and for individuals receiving benefits from the pension benefit guaranty corporation.

(4) "Health coverage tax credit eligible enrollee" means individual workers and their qualified family members who lose their jobs due to the effects of international trade and are eligible for certain trade adjustment assistance benefits; or are eligible for benefits under the alternative trade adjustment assistance program; or are people who receive benefits from the pension benefit guaranty corporation and are at least fifty-five years old.

(5) "Managed health care system" means: (a) Any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof, that provides directly or by contract basic health care services, as defined by the administrator and rendered by duly licensed providers, to a defined patient population enrolled in the plan and in the managed health care system; or (b) a self-funded or self-insured method of providing insurance coverage to subsidized enrollees provided under RCW 41.05.140 and subject to the limitations under RCW 70.47.100(7).

(6) "Subsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children: (a) Who is not eligible for medicare; (b) who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator; (c) who is not a full-time student who has received a temporary visa to study in the United States; (d) who resides in an area of the state served by a managed health care system participating in the plan; (~~((d))~~) (e) whose gross family income at the time of enrollment does not exceed two hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services; and (~~((e))~~) (f) who chooses to obtain basic health care coverage from a particular managed health care system in return for periodic payments to the plan. To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match,

"subsidized enrollee" also means an individual, or an individual's spouse or dependent children, who meets the requirements in (a) through ~~((e))~~ (d) and ~~((e))~~ (f) of this subsection and whose gross family income at the time of enrollment is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services.

(7) "Nonsubsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children: (a) Who is not eligible for medicare; (b) who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator; (c) who resides in an area of the state served by a managed health care system participating in the plan; (d) who chooses to obtain basic health care coverage from a particular managed health care system; and (e) who pays or on whose behalf is paid the full costs for participation in the plan, without any subsidy from the plan.

(8) "Subsidy" means the difference between the amount of periodic payment the administrator makes to a managed health care system on behalf of a subsidized enrollee plus the administrative cost to the plan of providing the plan to that subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

(9) "Premium" means a periodic payment, based upon gross family income which an individual, their employer or another financial sponsor makes to the plan as consideration for enrollment in the plan as a subsidized enrollee, a nonsubsidized enrollee, or a health coverage tax credit eligible enrollee.

(10) "Rate" means the amount, negotiated by the administrator with and paid to a participating managed health care system, that is based upon the enrollment of subsidized, nonsubsidized, and health coverage tax credit eligible enrollees in the plan and in that system.

Passed by the House March 3, 2005.

Passed by the Senate April 14, 2005.

Approved by the Governor April 26, 2005.

Filed in Office of Secretary of State April 26, 2005.

CHAPTER 189

[House Bill 1180]

MOTOR VEHICLES—LENGTH AND WIDTH MEASUREMENT EXCLUSIVE DEVICES

AN ACT Relating to vehicle length and width measurement exclusive devices and specialized equipment; amending RCW 46.44.010 and 46.44.030; and adding a new section to chapter 46.44 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.44.010 and 1997 c 63 s 1 are each amended to read as follows:

The total outside width of any vehicle or load thereon ~~((shall))~~ must not exceed eight and one-half feet~~((:—PROVIDED, That no))~~; except that an externally mounted rear vision mirror may extend ((more than five inches)) beyond the ((extreme)) width limits of the vehicle body((:—PROVIDED FURTHER, That)) to a point that allows the driver a view to the rear of the vehicle along both sides in conformance with Federal National Safety Standard 111 (49 C.F.R. 571.111), and RCW 46.37.400. Excluded from this calculation of

width are (~~safety appliances such as clearance lights, rub rails, flexible fender extensions, mud flaps, and splash and spray suppressant devices, and appurtenances such as door handles, door hinges, and turning signal brackets and such other safety appliances and appurtenances as the department may determine are necessary for the safe and efficient operation of motor vehicles: AND PROVIDED FURTHER, That no appliances or appurtenances may~~) certain devices that provide added safety, energy conservation, or are otherwise necessary, and are not designed or used to carry cargo. The width-exclusive devices must be identified in rules adopted by the department of transportation under section 3 of this act. A width-exclusive device must not extend more than three inches beyond the ((extreme)) width limit((s)) of the vehicle body.

Sec. 2. RCW 46.44.030 and 2000 c 102 s 1 are each amended to read as follows:

It is unlawful for any person to operate upon the public highways of this state any vehicle having an overall length, with or without load, in excess of forty feet. This restriction does not apply to (1) a municipal transit vehicle, (2) auto stage, private carrier bus, school bus, or motor home with an overall length not to exceed forty-six feet, or (3) an articulated auto stage with an overall length not to exceed sixty-one feet.

It is unlawful for any person to operate upon the public highways of this state any combination consisting of a tractor and semitrailer that has a semitrailer length in excess of fifty-three feet or a combination consisting of a tractor and two trailers in which the combined length of the trailers exceeds sixty-one feet, with or without load.

It is unlawful for any person to operate on the highways of this state any combination consisting of a truck and trailer, or log truck and stinger-steered pole trailer, with an overall length, with or without load, in excess of seventy-five feet. (~~However, a combination of vehicles transporting automobiles or boats may have a front overhang of three feet and a rear overhang of four feet beyond this allowed length.~~) "Stinger-steered," as used in this section, means the coupling device is located behind the tread of the tires of the last axle of the towing vehicle.

These length limitations do not apply to vehicles transporting poles, pipe, machinery, or other objects of a structural nature that cannot be dismembered and operated by a public utility when required for emergency repair of public service facilities or properties, but in respect to night transportation every such vehicle and load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of any projecting load to clearly mark the dimensions of the load.

(~~The length limitations described in this section are exclusive of safety and energy conservation devices, such as mud flaps and splash and spray suppressant devices, refrigeration units or air compressors, and other devices that the department determines to be necessary for safe and efficient operation of commercial vehicles. No device excluded under this paragraph from the limitations of this section may have, by its design or use, the capability to carry cargo.~~) Excluded from the calculation of length are certain devices that provide added safety, energy conservation, or are otherwise necessary, and are not designed or used to carry cargo. The length-exclusive devices must be identified in rules adopted by the department of transportation under section 3 of this act.

NEW SECTION, Sec. 3. A new section is added to chapter 46.44 RCW to read as follows:

The department of transportation may, within the provisions set forth in this chapter, adopt rules for size and weight criteria relating to vehicles considered to be specialized equipment by the federal highway administration for interstate travel or as determined by the department for intrastate travel.

Passed by the House March 3, 2005.

Passed by the Senate April 14, 2005.

Approved by the Governor April 26, 2005.

Filed in Office of Secretary of State April 26, 2005.

CHAPTER 190

[House Bill 1183]

WASHINGTON COURT REPORTS COMMISSION

AN ACT Relating to renaming the commission on supreme court reports; and amending RCW 2.32.160.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 2.32.160 and 1995 c 257 s 1 are each amended to read as follows:

There is hereby created a commission advisory to the supreme court regarding the publication of the decisions of the supreme court and court of appeals of this state in both the form of advance sheets for temporary use and in permanent form, to be known as the (~~commission on supreme~~) Washington court reports commission, and to include the reporter of decisions, the state law librarian, and such other members, including a judge of the court of appeals and a member in good standing of the Washington state bar association, as determined by the chief justice of the supreme court, who shall be chairman of the commission. Members of the commission shall serve as such without additional or any compensation: PROVIDED, That members shall be compensated in accordance with RCW 43.03.240.

Passed by the House February 4, 2005.

Passed by the Senate April 14, 2005.

Approved by the Governor April 26, 2005.

Filed in Office of Secretary of State April 26, 2005.

CHAPTER 191

[Substitute House Bill 1208]

FORFEITED PROPERTY—OWNER OR OPERATOR

AN ACT Relating to forfeited property; and amending RCW 70.105D.020.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 70.105D.020 and 1998 c 6 s 1 are each amended to read as follows:

(1) "Agreed order" means an order issued by the department under this chapter with which the potentially liable person receiving the order agrees to comply. An agreed order may be used to require or approve any cleanup or other

remedial actions but it is not a settlement under RCW 70.105D.040(4) and shall not contain a covenant not to sue, or provide protection from claims for contribution, or provide eligibility for public funding of remedial actions under RCW 70.105D.070(2)(d)(xi).

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

(3) "Director" means the director of ecology or the director's designee.

(4) "Facility" means (a) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft, or (b) any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(5) "Federal cleanup law" means the federal comprehensive environmental response, compensation, and liability act of 1980, 42 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

(6) "Foreclosure and its equivalents" means purchase at a foreclosure sale, acquisition, or assignment of title in lieu of foreclosure, termination of a lease, or other repossession, acquisition of a right to title or possession, an agreement in satisfaction of the obligation, or any other comparable formal or informal manner, whether pursuant to law or under warranties, covenants, conditions, representations, or promises from the borrower, by which the holder acquires title to or possession of a facility securing a loan or other obligation.

(7) "Hazardous substance" means:

(a) Any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste designated by rule pursuant to chapter 70.105 RCW;

(b) Any hazardous substance as defined in RCW 70.105.010(14) or any hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

(c) Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14);

(d) Petroleum or petroleum products; and

(e) Any substance or category of substances, including solid waste decomposition products, determined by the director by rule to present a threat to human health or the environment if released into the environment.

The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local law.

(8) "Independent remedial actions" means remedial actions conducted without department oversight or approval, and not under an order, agreed order, or consent decree.

(9) "Holder" means a person who holds indicia of ownership primarily to protect a security interest. A holder includes the initial holder such as the loan originator, any subsequent holder such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market, a guarantor of an obligation, surety, or any other person who holds indicia of ownership primarily to protect a security interest, or a receiver, court-appointed trustee, or other person who acts on behalf or for the benefit of a holder. A holder can be a public or privately owned financial institution, receiver, conservator, loan guarantor, or

other similar persons that loan money or guarantee repayment of a loan. Holders typically are banks or savings and loan institutions but may also include others such as insurance companies, pension funds, or private individuals that engage in loaning of money or credit.

(10) "Indicia of ownership" means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in a facility securing a loan or other obligation, including any legal or equitable title to a facility acquired incident to foreclosure and its equivalents. Evidence of such interests includes, mortgages, deeds of trust, sellers interest in a real estate contract, liens, surety bonds, and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased facility, or legal or equitable title obtained pursuant to foreclosure and their equivalents. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against the facility that are held primarily to protect a security interest.

(11) "Operating a facility primarily to protect a security interest" occurs when all of the following are met: (a) Operating the facility where the borrower has defaulted on the loan or otherwise breached the security agreement; (b) operating the facility to preserve the value of the facility as an ongoing business; (c) the operation is being done in anticipation of a sale, transfer, or assignment of the facility; and (d) the operation is being done primarily to protect a security interest. Operating a facility for longer than one year prior to foreclosure or its equivalents shall be presumed to be operating the facility for other than to protect a security interest.

(12) "Owner or operator" means:

(a) Any person with any ownership interest in the facility or who exercises any control over the facility; or

(b) In the case of an abandoned facility, any person who had owned, or operated, or exercised control over the facility any time before its abandonment;

The term does not include:

(i) An agency of the state or unit of local government which acquired ownership or control through a drug forfeiture action under RCW 69.50.505, or involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title. This exclusion does not apply to an agency of the state or unit of local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility;

(ii) A person who, without participating in the management of a facility, holds indicia of ownership primarily to protect the person's security interest in the facility. Holders after foreclosure and its equivalent and holders who engage in any of the activities identified in subsection (13)(e) through (g) of this section shall not lose this exemption provided the holder complies with all of the following:

(A) The holder properly maintains the environmental compliance measures already in place at the facility;

(B) The holder complies with the reporting requirements in the rules adopted under this chapter;

(C) The holder complies with any order issued to the holder by the department to abate an imminent or substantial endangerment;

(D) The holder allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the holder are in compliance with any preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and

(F) The holder does not exacerbate an existing release. The exemption in this subsection (12)(b)(ii) does not apply to holders who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e); provided, however, that a holder shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release;

(iii) A fiduciary in his, her, or its personal or individual capacity. This exemption does not preclude a claim against the assets of the estate or trust administered by the fiduciary or against a nonemployee agent or independent contractor retained by a fiduciary. This exemption also does not apply to the extent that a person is liable under this chapter independently of the person's ownership as a fiduciary or for actions taken in a fiduciary capacity which cause or contribute to a new release or exacerbate an existing release of hazardous substances. This exemption applies provided that, to the extent of the fiduciary's powers granted by law or by the applicable governing instrument granting fiduciary powers, the fiduciary complies with all of the following:

(A) The fiduciary properly maintains the environmental compliance measures already in place at the facility;

(B) The fiduciary complies with the reporting requirements in the rules adopted under this chapter;

(C) The fiduciary complies with any order issued to the fiduciary by the department to abate an imminent or substantial endangerment;

(D) The fiduciary allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the fiduciary are in compliance with any preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and

(F) The fiduciary does not exacerbate an existing release.

The exemption in this subsection (12)(b)(iii) does not apply to fiduciaries who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e); provided however, that a fiduciary shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release. The exemption in this subsection (12)(b)(iii) also does not apply where the

fiduciary's powers to comply with this subsection (12)(b)(iii) are limited by a governing instrument created with the objective purpose of avoiding liability under this chapter or of avoiding compliance with this chapter; or

(iv) Any person who has any ownership interest in, operates, or exercises control over real property where a hazardous substance has come to be located solely as a result of migration of the hazardous substance to the real property through the ground water from a source off the property, if:

(A) The person can demonstrate that the hazardous substance has not been used, placed, managed, or otherwise handled on the property in a manner likely to cause or contribute to a release of the hazardous substance that has migrated onto the property;

(B) The person has not caused or contributed to the release of the hazardous substance;

(C) The person does not engage in activities that damage or interfere with the operation of remedial actions installed on the person's property or engage in activities that result in exposure of humans or the environment to the contaminated ground water that has migrated onto the property;

(D) If requested, the person allows the department, potentially liable persons who are subject to an order, agreed order, or consent decree, and the authorized employees, agents, or contractors of each, access to the property to conduct remedial actions required by the department. The person may attempt to negotiate an access agreement before allowing access; and

(E) Legal withdrawal of ground water does not disqualify a person from the exemption in this subsection (12)(b)(iv).

(13) "Participation in management" means exercising decision-making control over the borrower's operation of the facility, environmental compliance, or assuming or manifesting responsibility for the overall management of the enterprise encompassing the day-to-day decision making of the enterprise.

The term does not include any of the following: (a) A holder with the mere capacity or ability to influence, or the unexercised right to control facility operations; (b) a holder who conducts or requires a borrower to conduct an environmental audit or an environmental site assessment at the facility for which indicia of ownership is held; (c) a holder who requires a borrower to come into compliance with any applicable laws or regulations at the facility for which indicia of ownership is held; (d) a holder who requires a borrower to conduct remedial actions including setting minimum requirements, but does not otherwise control or manage the borrower's remedial actions or the scope of the borrower's remedial actions except to prepare a facility for sale, transfer, or assignment; (e) a holder who engages in workout or policing activities primarily to protect the holder's security interest in the facility; (f) a holder who prepares a facility for sale, transfer, or assignment or requires a borrower to prepare a facility for sale, transfer, or assignment; (g) a holder who operates a facility primarily to protect a security interest, or requires a borrower to continue to operate, a facility primarily to protect a security interest; and (h) a prospective holder who, as a condition of becoming a holder, requires an owner or operator to conduct an environmental audit, conduct an environmental site assessment, come into compliance with any applicable laws or regulations, or conduct remedial actions prior to holding a security interest is not participating in the management of the facility.

(14) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or Indian tribe.

(15) "Policing activities" means actions the holder takes to insure that the borrower complies with the terms of the loan or security interest or actions the holder takes or requires the borrower to take to maintain the value of the security. Policing activities include: Requiring the borrower to conduct remedial actions at the facility during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, regulations, and permits during the term of the security interest; securing or exercising authority to monitor or inspect the facility including on-site inspections, or to monitor or inspect the borrower's business or financial condition during the term of the security interest; or taking other actions necessary to adequately police the loan or security interest such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower.

(16) "Potentially liable person" means any person whom the department finds, based on credible evidence, to be liable under RCW 70.105D.040. The department shall give notice to any such person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.

(17) "Prepare a facility for sale, transfer, or assignment" means to secure access to the facility; perform routine maintenance on the facility; remove inventory, equipment, or structures; properly maintain environmental compliance measures already in place at the facility; conduct remedial actions to clean up releases at the facility; or to perform other similar activities intended to preserve the value of the facility where the borrower has defaulted on the loan or otherwise breached the security agreement or after foreclosure and its equivalents and in anticipation of a pending sale, transfer, or assignment, primarily to protect the holder's security interest in the facility. A holder can prepare a facility for sale, transfer, or assignment for up to one year prior to foreclosure and its equivalents and still stay within the security interest exemption in subsection (12)(b)(ii) of this section.

(18) "Primarily to protect a security interest" means the indicia of ownership is held primarily for the purpose of securing payment or performance of an obligation. The term does not include indicia of ownership held primarily for investment purposes nor indicia of ownership held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons, for maintaining indicia of ownership, but the primary reason must be for protection of a security interest. Holding indicia of ownership after foreclosure or its equivalents for longer than five years shall be considered to be holding the indicia of ownership for purposes other than primarily to protect a security interest. For facilities that have been acquired through foreclosure or its equivalents prior to July 23, 1995, this five-year period shall begin as of July 23, 1995.

(19) "Public notice" means, at a minimum, adequate notice mailed to all persons who have made timely request of the department and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropriate news media; published in the newspaper of largest circulation in the city or

county of the proposed action; and opportunity for interested persons to comment.

(20) "Release" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.

(21) "Remedy" or "remedial action" means any action or expenditure consistent with the purposes of this chapter to identify, eliminate, or minimize any threat or potential threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

(22) "Security interest" means an interest in a facility created or established for the purpose of securing a loan or other obligation. Security interests include deeds of trusts, sellers interest in a real estate contract, liens, legal, or equitable title to a facility acquired incident to foreclosure and its equivalents, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, easements, and consignments, if the transaction creates or establishes an interest in a facility for the purpose of securing a loan or other obligation.

(23) "Industrial properties" means properties that are or have been characterized by, or are to be committed to, traditional industrial uses such as processing or manufacturing of materials, marine terminal and transportation areas and facilities, fabrication, assembly, treatment, or distribution of manufactured products, or storage of bulk materials, that are either:

(a) Zoned for industrial use by a city or county conducting land use planning under chapter 36.70A RCW; or

(b) For counties not planning under chapter 36.70A RCW and the cities within them, zoned for industrial use and adjacent to properties currently used or designated for industrial purposes.

(24) "Workout activities" means those actions by which a holder, at any time prior to foreclosure and its equivalents, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Workout activities include: Restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owed to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owed to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(25)(a) "Fiduciary" means a person acting for the benefit of another party as a bona fide trustee; executor; administrator; custodian; guardian of estates or guardian ad litem; receiver; conservator; committee of estates of incapacitated persons; trustee in bankruptcy; trustee, under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates

of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender. Except as provided in subsection (12)(b)(iii) of this section, the liability of a fiduciary under this chapter shall not exceed the assets held in the fiduciary capacity.

(b) "Fiduciary" does not mean:

(i) A person acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, one or more estate plans or because of the incapacity of a natural person;

(ii) A person who acquires ownership or control of a facility with the objective purpose of avoiding liability of the person or any other person. It is prima facie evidence that the fiduciary acquired ownership or control of the facility to avoid liability if the facility is the only substantial asset in the fiduciary estate at the time the facility became subject to the fiduciary estate;

(iii) A person who acts in a capacity other than that of a fiduciary or in a beneficiary capacity and in that capacity directly or indirectly benefits from a trust or fiduciary relationship;

(iv) A person who is a beneficiary and fiduciary with respect to the same fiduciary estate, and who while acting as a fiduciary receives benefits that exceed customary or reasonable compensation, and incidental benefits permitted under applicable law;

(v) A person who is a fiduciary and receives benefits that substantially exceed customary or reasonable compensation, and incidental benefits permitted under applicable law; or

(vi) A person who acts in the capacity of trustee of state or federal lands or resources.

(26) "Fiduciary capacity" means the capacity of a person holding title to a facility, or otherwise having control of an interest in the facility pursuant to the exercise of the responsibilities of the person as a fiduciary.

Passed by the House March 8, 2005.

Passed by the Senate April 12, 2005.

Approved by the Governor April 26, 2005.

Filed in Office of Secretary of State April 26, 2005.

CHAPTER 192

[Substitute House Bill 1210]

TEMPORARY COMBINATION FISHING LICENSES

AN ACT Relating to short-term fishing licenses; and amending RCW 77.32.470 and 77.32.430.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 77.32.470 and 2003 c 181 s 1 are each amended to read as follows:

(1) A personal use saltwater, freshwater, combination, temporary, or family fishing weekend license is required for all persons fifteen years of age or older to

fish for or possess fish taken for personal use from state waters or offshore waters.

(2) The fees for annual personal use saltwater, freshwater, or combination licenses are as follows:

(a) A combination license allows the holder to fish for or possess fish, shellfish, and seaweed from state waters or offshore waters. The fee for this license is thirty-six dollars for residents, seventy-two dollars for nonresidents, and five dollars for youth.

(b) A saltwater license allows the holder to fish for or possess fish taken from saltwater areas. The fee for this license is eighteen dollars for residents, thirty-six dollars for nonresidents, and five dollars for resident seniors.

(c) A freshwater license allows the holder to fish for, take, or possess food fish or game fish species in all freshwater areas. The fee for this license is twenty dollars for residents, forty dollars for nonresidents, and five dollars for resident seniors.

(3)(a) A temporary combination fishing license is valid for ~~((two))~~ one to five consecutive days and allows the holder to fish for or possess fish, shellfish, and seaweed taken from state waters or offshore waters. The fee for this temporary fishing license is ~~((six))~~:

(i) One day - Seven dollars for ~~((both))~~ residents and fourteen dollars for nonresidents(-);

(ii) Two days - Ten dollars for residents and twenty dollars for nonresidents;

(iii) Three days - Thirteen dollars for residents and twenty-six dollars for nonresidents;

(iv) Four days - Fifteen dollars for residents and thirty dollars for nonresidents; and

(v) Five days - Seventeen dollars for residents and thirty-four dollars for nonresidents.

(b) The fee for a charter stamp is seven dollars for a one-day temporary combination fishing license for residents and nonresidents for use on a charter boat as defined in RCW 77.65.150.

(c) A transaction fee to support the automated licensing system will be taken from the amounts set forth in this subsection for temporary licenses.

(d) Except for active duty military personnel serving in any branch of the United States armed forces, ~~((this))~~ the temporary combination fishing license is not valid on game fish species for an eight-consecutive-day period beginning on the opening day of the lowland lake fishing season.

(4) A family fishing weekend license allows for a maximum of six anglers: One resident and five youth; two residents and four youth; or one resident, one nonresident, and four youth. This license allows the holders to fish for or possess fish taken from state waters or offshore waters. The fee for this license is twenty dollars. This license is only valid during periods as specified by rule of the department.

(5) The commission may adopt rules to create and sell combination licenses for all hunting and fishing activities at or below a fee equal to the total cost of the individual license contained within any combination.

Sec. 2. RCW 77.32.430 and 2004 c 107 s 2 are each amended to read as follows:

(1) Catch record card information is necessary for proper management of the state's food fish and game fish species and shellfish resources. Catch record card administration shall be under rules adopted by the commission. There is no charge for an initial catch record card. Each subsequent or duplicate catch record card costs ten dollars.

(2) A license to take and possess Dungeness crab is only valid in Puget Sound waters east of the Bonilla-Tatoosh line if the fisher has in possession a valid catch record card officially endorsed for Dungeness crab. The endorsement shall cost no more than three dollars, including any or all fees authorized under RCW 77.32.050, when purchased for a personal use saltwater combination, or shellfish and seaweed license. The endorsement shall cost no more than one dollar, including any or all fees authorized under RCW 77.32.050, when purchased for a temporary combination fishing license authorized under RCW 77.32.470(3)(a).

(3) Catch record cards issued with affixed temporary short-term charter stamp licenses are not subject to the ten-dollar charge nor to the Dungeness crab endorsement fee provided for in this section. Charter boat or guide operators issuing temporary short-term charter stamp licenses shall affix the stamp to each catch record card issued before fishing commences. Catch record cards issued with a temporary short-term charter stamp are valid for (~~two consecutive days~~) one day.

(4) The department shall include provisions for recording marked and unmarked salmon in catch record cards issued after March 31, 2004.

(5) The funds received from the sale of catch record cards and the Dungeness crab endorsement must be deposited into the wildlife fund. The funds received from the Dungeness crab endorsement may be used only for the sampling, monitoring, and management of catch associated with the Dungeness crab recreational fisheries. Moneys allocated under this section shall supplement and not supplant other federal, state, and local funds used for Dungeness crab recreational fisheries management.

Passed by the House March 15, 2005.

Passed by the Senate April 14, 2005.

Approved by the Governor April 26, 2005.

Filed in Office of Secretary of State April 26, 2005.

CHAPTER 193

[House Bill 1237]

PATIENT TRANSPORTATION—BANANA CARTS

AN ACT Relating to specialized commercial vehicles used for patient transportation; amending RCW 18.73.030; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that requiring all patients who need to travel in a prone or supine position but are medically stable, to be transported by ambulance can be overly restrictive to individuals with disabilities. These individuals frequently travel by means of reclining wheelchairs or devices commonly referred to as banana carts. Expanding travel

options for these individuals will give them greater opportunities for mobility and reduce their costs of travel.

Sec. 2. RCW 18.73.030 and 2000 c 93 s 16 are each amended to read as follows:

Unless a different meaning is plainly required by the context, the following words and phrases as used in this chapter shall have the meanings indicated.

- (1) "Secretary" means the secretary of the department of health.
- (2) "Department" means the department of health.
- (3) "Committee" means the emergency medical services licensing and certification advisory committee.
- (4) "Ambulance" means a ground or air vehicle designed and used to transport the ill and injured and to provide personnel, facilities, and equipment to treat patients before and during transportation.
- (5) "Aid vehicle" means a vehicle used to carry aid equipment and individuals trained in first aid or emergency medical procedure.
- (6) "Emergency medical technician" means a person who is authorized by the secretary to render emergency medical care pursuant to RCW 18.73.081.
- (7) "Ambulance service" means an organization that operates one or more ambulances.
- (8) "Aid service" means an organization that operates one or more aid vehicles.
- (9) "Emergency medical service" means medical treatment and care which may be rendered at the scene of any medical emergency or while transporting any patient in an ambulance to an appropriate medical facility, including ambulance transportation between medical facilities.
- (10) "Communications system" means a radio and landline network which provides rapid public access, coordinated central dispatching of services, and coordination of personnel, equipment, and facilities in an emergency medical services and trauma care system.
- (11) "Prehospital patient care protocols" means the written procedure adopted by the emergency medical services medical program director which direct the out-of-hospital emergency care of the emergency patient which includes the trauma care patient. These procedures shall be based upon the assessment of the patient's medical needs and what treatment will be provided for emergency conditions. The protocols shall meet or exceed statewide minimum standards developed by the department in rule as authorized in chapter 70.168 RCW.
- (12) "Patient care procedures" means written operating guidelines adopted by the regional emergency medical services and trauma care council, in consultation with the local emergency medical services and trauma care councils, emergency communication centers, and the emergency medical services medical program director, in accordance with statewide minimum standards. The patient care procedures shall identify the level of medical care personnel to be dispatched to an emergency scene, procedures for triage of patients, the level of trauma care facility to first receive the patient, and the name and location of other trauma care facilities to receive the patient should an interfacility transfer be necessary. Procedures on interfacility transfer of patients shall be consistent with the transfer procedures in chapter 70.170 RCW.

(13) "Emergency medical services medical program director" means a person who is an approved medical program director as defined by RCW 18.71.205(4).

(14) "Council" means the local or regional emergency medical services and trauma care council as authorized under chapter 70.168 RCW.

(15) "Basic life support" means noninvasive emergency medical services requiring basic medical treatment skills as defined in chapter 18.73 RCW.

(16) "Advanced life support" means invasive emergency medical services requiring advanced medical treatment skills as defined by chapter 18.71 RCW.

(17) "First responder" means a person who is authorized by the secretary to render emergency medical care as defined by RCW 18.73.081.

(18) "Stretcher" means a cart designed to serve as a litter for the transportation of a patient in a prone or supine position as is commonly used in the ambulance industry, such as wheeled stretchers, portable stretchers, stair chairs, solid backboards, scoop stretchers, basket stretchers, or flexible stretchers. The term does not include personal mobility aids that recline at an angle or remain at a flat position, that are owned or leased for a period of at least one week by the individual using the equipment or the individual's guardian or representative, such as wheelchairs, personal gurneys, or banana carts.

Passed by the House March 30, 2005.

Passed by the Senate April 13, 2005.

Approved by the Governor April 26, 2005.

Filed in Office of Secretary of State April 26, 2005.

CHAPTER 194

[House Bill 1259]

PROPORTIONAL REGISTRATION

AN ACT Relating to technical corrections to chapter 46.87 RCW; amending RCW 46.87.010, 46.87.020, 46.87.030, 46.87.050, 46.87.070, 46.87.080, 46.87.120, 46.87.130, 46.87.140, and 46.87.190; and repealing RCW 46.87.085, 46.87.170, 46.87.180, and 46.87.901.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.87.010 and 1987 c 244 s 15 are each amended to read as follows:

This chapter applies to proportional registration and reciprocity granted under the provisions of the International Registration Plan (IRP) (~~and the Uniform Vehicle Registration, Proration, and Reciprocity Agreement (Western Compact)~~). This chapter shall become effective and be implemented beginning with the 1988 registration year (~~;- however, if Washington is not then registering vehicles under the provisions of the IRP, the effective date and implementation date for the IRP shall both be delayed until such time as Washington begins registering vehicles under the provisions of the IRP)~~).

(1) Provisions and terms of the IRP (~~and the Western Compact, as applicable, shall~~) prevail unless given a different meaning in chapter 46.04 RCW, this chapter, or in rules adopted under the authority of this chapter.

(2) The director may adopt and enforce rules deemed necessary to implement and administer this chapter.

(3) (~~Beginning with the first registration year in which the state of Washington begins registering fleets under provisions of the IRP,)~~ Owners

having a fleet of apportionable vehicles operating in two or more IRP member jurisdictions may elect to proportionally register the vehicles of the fleet under the provisions of the IRP and this chapter in lieu of full or temporary registration as provided for in chapters 46.16 or 46.88 RCW.

~~(4) ((Owners having a fleet of commercial vehicles operating and registered in at least one Western Compact member jurisdiction other than Washington may elect to proportionally register the vehicles of the fleet under provisions of the Western Compact and this chapter in lieu of full or temporary registration as provided for in chapter 46.16 or 46.88 RCW.~~

~~(5))~~ If a due date or an expiration date established under authority of this chapter falls on a Saturday, Sunday, or a state legal holiday, such period is automatically extended through the end of the next business day.

Sec. 2. RCW 46.87.020 and 2003 c 85 s 1 are each amended to read as follows:

Terms used in this chapter have the meaning given to them in the International Registration Plan (IRP), ~~((the Uniform Vehicle Registration, Proration, and Reciprocity Agreement (Western Compact),))~~ in chapter 46.04 RCW, or as otherwise defined in this section. Definitions given to terms by the IRP ~~((and the Western Compact, as applicable, shall))~~ prevail unless given a different meaning in this chapter or in rules adopted under authority of this chapter.

(1) "Apportionable vehicle" has the meaning given by the IRP, except that it does not include vehicles with a declared gross weight of twelve thousand pounds or less. Apportionable vehicles include trucks, tractors, truck tractors, road tractors, and buses, each as separate and licensable vehicles. ~~((For IRP jurisdictions that require the registration of nonmotor vehicles, this term may include trailers, semitrailers, and pole trailers as applicable, each as separate and licensable vehicles.))~~

(2) "Cab card" is a certificate of registration issued for a vehicle ~~((by the registering jurisdiction under the Western Compact. Under the IRP, it is a certificate of registration issued by the base jurisdiction for a vehicle))~~ upon which is disclosed the jurisdictions and registered gross weights in such jurisdictions for which the vehicle is registered.

(3) ~~((("Commercial vehicle" is a term used by the Western Compact and means any vehicle, except recreational vehicles, vehicles displaying restricted plates, and government owned or leased vehicles, that is operated and registered in more than one jurisdiction and is used or maintained for the transportation of persons for hire, compensation, or profit, or is designed, used, or maintained primarily for the transportation of property and:~~

~~(a) Is a motor vehicle having a declared gross weight in excess of twenty six thousand pounds; or~~

~~(b) Is a motor vehicle having three or more axles with a declared gross weight in excess of twelve thousand pounds; or~~

~~(c) Is a motor vehicle, trailer, pole trailer, or semitrailer used in combination when the gross weight or declared gross weight of the combination exceeds twenty six thousand pounds combined gross weight. The nonmotor vehicles mentioned are only applicable to those jurisdictions requiring the registration of such vehicles.~~

~~Although a two-axle motor vehicle, trailer, pole trailer, semitrailer, or any combination of such vehicles with an actual or declared gross weight or declared combined gross weight exceeding twelve thousand pounds but not more than twenty-six thousand is not considered to be a commercial vehicle, at the option of the owner, such vehicles may be considered as "commercial vehicles" for the purpose of proportional registration. The nonmotor vehicles mentioned are only applicable to those jurisdictions requiring the registration of such vehicles.~~

~~Commercial vehicles include trucks, tractors, truck tractors, road tractors, and buses. Trailers, pole trailers, and semitrailers, will also be considered as commercial vehicles for those jurisdictions who require registration of such vehicles.~~

~~(4))~~ (4) "Credentials" means cab cards, apportioned plates (for Washington-based fleets), and validation tabs issued for proportionally registered vehicles.

~~((5))~~ (4) "Declared combined gross weight" means the total unladen weight of any combination of vehicles plus the weight of the maximum load to be carried on the combination of vehicles as set by the registrant in the application pursuant to chapter 46.44 RCW and for which registration fees have been or are to be paid.

~~((6))~~ (5) "Declared gross weight" means the total unladen weight of any vehicle plus the weight of the maximum load to be carried on the vehicle as set by the registrant in the application pursuant to chapter 46.44 RCW and for which registration fees have been or are to be paid. In the case of a bus, auto stage, or a passenger-carrying for hire vehicle with a seating capacity of more than six, the declared gross weight shall be determined by multiplying the average load factor of one hundred and fifty pounds by the number of seats in the vehicle, including the driver's seat, and add this amount to the unladen weight of the vehicle. If the resultant gross weight is not listed in RCW 46.16.070, it will be increased to the next higher gross weight so listed pursuant to chapter 46.44 RCW.

~~((7))~~ (6) "Department" means the department of licensing.

~~((8))~~ (7) "Fleet" means ~~((one or more commercial vehicles in the Western Compact and))~~ one or more apportionable vehicles in the IRP.

~~((9))~~ (8) "In-jurisdiction miles" means the total miles accumulated in a jurisdiction during the preceding year by vehicles of the fleet while they were a part of the fleet.

~~((10))~~ (9) "IRP" means the International Registration Plan.

~~((11))~~ (10) "Jurisdiction" means and includes a state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country, and a state or province of a foreign country.

~~((12))~~ (11) "Motor carrier" means an entity engaged in the transportation of goods or persons. The term includes a for-hire motor carrier, private motor carrier, contract motor carrier, or exempt motor carrier. The term includes a registrant licensed under this chapter, a motor vehicle lessor, and a motor vehicle lessee.

~~((13))~~ (12) "Owner" means a person or business firm who holds the legal title to a vehicle, or if a vehicle is the subject of an agreement for its conditional sale with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or if a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or if a mortgagor

of a vehicle is entitled to possession, then the owner is deemed to be the person or business firm in whom is vested right of possession or control.

~~((14))~~ (13) "Preceding year" means the period of twelve consecutive months immediately before July 1st of the year immediately before the commencement of the registration or license year for which apportioned registration is sought.

~~((15))~~ "Properly registered," as applied to the place of registration under the provisions of the Western Compact, means:

~~(a) In the case of a commercial vehicle, the jurisdiction in which it is registered if the commercial enterprise in which the vehicle is used has a place of business therein, and, if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled in or from that place of business, and the vehicle has been assigned to that place of business; or~~

~~(b) In the case of a commercial vehicle, the jurisdiction where, because of an agreement or arrangement between two or more jurisdictions, or pursuant to a declaration, the vehicle has been registered as required by that jurisdiction.~~

~~In case of doubt or dispute as to the proper place of registration of a commercial vehicle, the department shall make the final determination, but in making such determination, may confer with departments of the other jurisdictions affected.~~

~~((16))~~ (14) "Prorate percentage" is the factor that is applied to the total proratable fees and taxes to determine the apportionable or prorate fees required for registration in a particular jurisdiction. It is determined by dividing the jurisdiction miles for a particular jurisdiction by the total miles. This term is synonymous with the term "mileage percentage."

~~((17))~~ (15) "Registrant" means a person, business firm, or corporation in whose name or names a vehicle or fleet of vehicles is registered.

~~((18))~~ (16) "Registration year" means the twelve-month period during which the registration plates issued by the base jurisdiction are valid according to the laws of the base jurisdiction.

~~((19))~~ (17) "Total miles" means the total number of miles accumulated in all jurisdictions during the preceding year by all vehicles of the fleet while they were a part of the fleet. Mileage accumulated by vehicles of the fleet that did not engage in interstate operations is not included in the fleet miles.

~~((20))~~ "Western Compact" means the Uniform Vehicle Registration, Proration, and Reciprocity Agreement.)

Sec. 3. RCW 46.87.030 and 1997 c 183 s 3 are each amended to read as follows:

(1) When application to register an apportionable ~~((or commercial))~~ vehicle is made, the Washington prorated fees may be reduced by one-twelfth for each full registration month that has elapsed at the time a temporary authorization permit (TAP) was issued or if no TAP was issued, at such time as an application for registration is received in the department. If a vehicle is being added to a currently registered fleet, the prorate percentage previously established for the fleet for such registration year shall be used in the computation of the proportional fees and taxes due.

(2) If any vehicle is withdrawn from a proportionally registered fleet during the period for which it is registered under this chapter, the registrant of the fleet shall notify the department on appropriate forms prescribed by the department.

The department may require the registrant to surrender credentials that were issued to the vehicle. If a motor vehicle is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold, or otherwise completely removed from the service of the fleet registrant, the unused portion of the licensing fee paid under RCW 46.16.070 with respect to the vehicle reduced by one-twelfth for each calendar month and fraction thereof elapsing between the first day of the month of the current registration year in which the vehicle was registered and the date the notice of withdrawal, accompanied by such credentials as may be required, is received in the department, shall be credited to the fleet proportional registration account of the registrant. Credit shall be applied against the licensing fee liability for subsequent additions of motor vehicles to be proportionally registered in the fleet during such registration year or for additional licensing fees due under RCW 46.16.070 or to be due upon audit under RCW 46.87.310. If any credit is less than fifteen dollars, no credit will be entered. In lieu of credit, the registrant may choose to transfer the unused portion of the licensing fee for the motor vehicle to the new owner, in which case it shall remain with the motor vehicle for which it was originally paid. In no event may any amount be credited against fees other than those for the registration year from which the credit was obtained nor is any amount subject to refund.

Sec. 4. RCW 46.87.050 and 1987 c 244 s 20 are each amended to read as follows:

Each day the department shall forward to the state treasurer the fees collected under this chapter, and within ten days of the end of each registration quarter, a detailed report identifying the amount to be deposited to each account for which fees are required for the licensing of proportionally registered vehicles. Such fees shall be deposited pursuant to RCW 46.68.035(~~;~~ 82.44.110,)) and 82.44.170.

Sec. 5. RCW 46.87.070 and 1993 c 123 s 1 are each amended to read as follows:

~~((1) Washington-based trailers, semitrailers, or pole trailers shall be licensed in this state under the provisions of chapter 46.16 RCW except as herein provided. If these vehicles are being operated in jurisdictions that require the registration of such vehicles, the applicable vehicles may be considered as apportionable or commercial vehicles for the purpose of registration in those jurisdictions and this state. This provision does not apply to trailers, semitrailers, or pole trailers which have been issued permanent plates.~~

~~((2))~~ Trailers, semitrailers, and pole trailers (~~which~~) that are properly based in jurisdictions other than Washington, and (~~which~~) that display currently registered license plates from such jurisdictions will be granted vehicle license reciprocity in this state without the need of further vehicle license registration. If pole trailers are not required to be licensed separately by a member jurisdiction, such vehicles may be operated in this state without displaying a current base license plate.

Sec. 6. RCW 46.87.080 and 1998 c 115 s 1 are each amended to read as follows:

(1) Upon making satisfactory application and payment of applicable fees and taxes for proportional registration under this chapter, the department shall

issue a cab card and validation tab for each vehicle, and to vehicles of Washington-based fleets, two distinctive apportionable license plates for each motor vehicle (~~and one such plate for each trailer, semitrailer, pole trailer, or converter gear listed on the application~~). License plates shall be displayed on vehicles as required by RCW 46.16.240. The number and plate shall be of a design, size, and color determined by the department. The plates shall be treated with reflectorized material and clearly marked with the words "WASHINGTON" and "APPORTIONED," both words to appear in full and without abbreviation.

(2) The cab card serves as the certificate of registration for a proportionally registered vehicle. The face of the cab card shall contain the name and address of the registrant as contained in the records of the department, the license plate number assigned to the vehicle by the base jurisdiction, the vehicle identification number, and such other description of the vehicle and data as the department may require. The cab card shall be signed by the registrant, or a designated person if the registrant is a business firm, and shall at all times be carried in or on the vehicle to which it was issued. (~~In the case of nonpowered vehicles, the cab card may be carried in or on the vehicle supplying the motive power instead of in or on the nonpowered vehicle.~~)

(3) The apportioned license plates are not transferrable from vehicle to vehicle unless otherwise determined by rule and shall be used only on the vehicle to which they are assigned by the department for as long as they are legible or until such time as the department requires them to be removed and returned to the department.

(4) Distinctive validation tab(s) of a design, size, and color determined by the department shall be affixed to the apportioned license plate(s) as prescribed by the department to indicate the month, if necessary, and year for which the vehicle is registered. (~~Foreign based vehicles proportionally registered in this state under the provisions of the Western Compact shall display the validation tab on a backing plate or as otherwise prescribed by the department.~~)

(5) Renewals shall be effected by the issuance and display of such tab(s) after making satisfactory application and payment of applicable fees and taxes.

(6) Fleet vehicles so registered and identified shall be deemed to be fully licensed and registered in this state for any type of movement or operation. However, in those instances in which a grant of authority is required for interstate or intrastate movement or operation, no such vehicle may be operated in interstate or intrastate commerce in this state unless the owner has been granted interstate operating authority (~~by the interstate commerce commission~~) in the case of interstate operations or intrastate operating authority by the Washington utility and transportation commission in the case of intrastate operations and unless the vehicle is being operated in conformity with that authority.

(7) The department may issue temporary authorization permits (TAPs) to qualifying operators for the operation of vehicles pending issuance of license identification. A fee of one dollar plus a one dollar filing fee shall be collected for each permit issued. The permit fee shall be deposited in the motor vehicle fund, and the filing fee shall be deposited in the highway safety fund. The department may adopt rules for use and issuance of the permits.

(8) The department may refuse to issue any license or permit authorized by subsection (1) or (7) of this section to any person: (a) Who formerly held any

type of license or permit issued by the department pursuant to chapter 46.16, 46.85, 46.87, 82.36, or 82.38 RCW that has been revoked for cause, which cause has not been removed; or (b) who is a subterfuge for the real party in interest whose license or permit issued by the department pursuant to chapter 46.16, 46.85, 46.87, 82.36, or 82.38 RCW and has been revoked for cause, which cause has not been removed; or (c) who, as an individual licensee, or officer, director, owner, or managing employee of a nonindividual licensee, has had a license or permit issued by the department pursuant to chapter 46.16, 46.85, 46.87, 82.36, or 82.38 RCW which has been revoked for cause, which cause has not been removed; or (d) who has an unsatisfied debt to the state assessed under either chapter 46.16, 46.85, 46.87, 82.36, 82.38, or 82.44 RCW.

(9) The department may revoke the license or permit authorized by subsection (1) or (7) of this section issued to any person for any of the grounds constituting cause for denial of licenses or permits set forth in subsection (8) of this section.

(10) Before such refusal or revocation under subsection (8) or (9) of this section, the department shall grant the applicant a hearing and at least ten days written notice of the time and place of the hearing.

Sec. 7. RCW 46.87.120 and 1997 c 183 s 4 are each amended to read as follows:

(1) The initial application for proportional registration of a fleet shall state the mileage data with respect to the fleet for the preceding year in this and other jurisdictions. If no operations were conducted with the fleet during the preceding year, the application shall contain a full statement of the proposed method of operation and estimates of annual mileage in each of the jurisdictions in which operation is contemplated. The registrant shall determine the in-jurisdiction and total miles to be used in computing the fees and taxes due for the fleet. The department may evaluate and adjust the estimate in the application if it is not satisfied as to its correctness. ~~((The department shall require a minimum estimated mileage of one trip state-line to state-line in each jurisdiction the carrier registers for operations.~~

~~(2) Fleets will consist of either motor vehicles or nonmotor vehicles, but not a mixture of both.~~

~~(3) In instances where the use of mileage accumulated by a nonmotor vehicle fleet is impractical, for the purpose of calculating prorate percentages, the registrant may request another method and/or unit of measure to be used in determining the prorate percentages. Upon receiving such request, the department may prescribe another method and/or unit of measure to be used in lieu of mileage that will ensure each jurisdiction that requires the registration of nonmotor vehicles its fair share of vehicle licensing fees and taxes.~~

~~(4))~~ (2) When operations of a Washington-based fleet is materially changed through merger, acquisition, or extended authority, the registrant shall notify the department, which shall then require the filing of an amended application setting forth the proposed operation by use of estimated mileage for all jurisdictions. The department may adjust the estimated mileage by audit or otherwise to an actual travel basis to insure proper fee payment. The actual travel basis may be used for determination of fee payments until such time as a normal mileage year is available under the new operation. ~~((Under the provisions of the Western~~

~~Compact, this subsection applies to any fleet proportionally registered in Washington irrespective of the fleet's base jurisdiction.))~~

Sec. 8. RCW 46.87.130 and 1987 c 244 s 26 are each amended to read as follows:

In addition to all other fees prescribed for the proportional registration of vehicles under this chapter, the department shall collect a vehicle transaction fee each time a vehicle is added to a Washington-based fleet, and each time the proportional registration of a Washington-based vehicle is renewed. ~~((The transaction fee is also applicable to all foreign based vehicles for which this state calculates and assesses fees/taxes for the state of Washington.))~~ The exact amount of the vehicle transaction fee shall be fixed by rule but shall not exceed ten dollars. This fee shall be deposited in the motor vehicle fund.

Sec. 9. RCW 46.87.140 and 2003 c 85 s 2 are each amended to read as follows:

(1) Any owner engaged in interstate operations of one or more fleets of apportionable ~~((or commercial))~~ vehicles may, in lieu of registration of the vehicles under chapter 46.16 RCW, register and license the vehicles of each fleet under this chapter by filing a proportional registration application for each fleet with the department. ~~((The nonmotor vehicles of Washington-based fleets which are operated in IRP jurisdictions that require registration of such vehicles may be proportionally registered for operation in those jurisdictions as herein provided.))~~ The application shall contain the following information and such other information pertinent to vehicle registration as the department may require:

(a) A description and identification of each vehicle of the fleet. ~~((Motor vehicles and nonpower units shall be placed in separate fleets.))~~

(b) ~~((If registering under the provisions of the IRP, the registrant shall also indicate))~~ The member jurisdictions in which registration is desired and ~~((furnish))~~ such other information as ~~((those))~~ member jurisdictions require.

(c) An original or renewal application shall also be accompanied by a mileage schedule for each fleet.

(d) The USDOT number issued to the registrant and the USDOT number of the motor carrier responsible for the safety of the vehicle, if different.

(e) A completed Motor Carrier Identification Report (MCS-150) at the time of fleet renewal or at the time of vehicle registration, if required by the department.

(f) The Taxpayer Identification Number of the registrant and the motor carrier responsible for the safety of the vehicle, if different.

(2) Each application shall, at the time and in the manner required by the department, be supported by payment of a fee computed as follows:

(a) Divide the in-jurisdiction miles by the total miles and carry the answer to the nearest thousandth of a percent (three places beyond the decimal, e.g. 10.543%). This factor is known as the prorate percentage.

(b) Determine the total proratable fees and taxes required for each vehicle in the fleet for which registration is requested, based on the regular annual fees and taxes or applicable fees and taxes for the unexpired portion of the registration year under the laws of each jurisdiction for which fees or taxes are to be calculated.

~~((Washington-based nonmotor vehicles shall normally be fully licensed under the provisions of chapter 46.16 RCW. If these vehicles are being operated in jurisdictions that require the registration of such vehicles, the applicable vehicles may be considered as apportionable vehicles for the purpose of registration in those jurisdictions and this state. The prorate percentage for which registration fees and taxes were paid to such jurisdictions may be credited toward the one hundred percent of registration fees and taxes due this state for full licensing.))~~ Applicable fees and taxes for vehicles of Washington-based fleets are those prescribed under RCW 46.16.070, 46.16.085, and 82.38.075, as applicable. If, during the registration period, the lessor of an apportioned vehicle changes and the vehicle remains in the fleet of the registrant, the department shall only charge those fees prescribed for the issuance of new apportioned license plates, validation tabs, and cab card.

(c) Multiply the total, proratable fees or taxes for each motor vehicle by the prorate percentage applicable to the desired jurisdiction and round the results to the nearest cent. ~~((Fees and taxes for nonmotor vehicles being prorated will be calculated as indicated in (b) of this subsection.))~~

(d) Add the total fees and taxes determined in (c) of this subsection for each vehicle to the nonproratable fees required under the laws of the jurisdiction for which fees are being calculated. Nonproratable fees required for vehicles of Washington-based fleets are the administrative fee required by RCW 82.38.075, if applicable, and the vehicle transaction fee pursuant to the provisions of RCW 46.87.130.

~~((Add the total fees and taxes determined in (d) of this subsection for each vehicle listed on the application. Assuming the fees and taxes calculated were for Washington, this would be the amount due and payable for the application under the provisions of the Western Compact. Under the provisions of the IRP;))~~ The amount due and payable for the application ~~((would be))~~ is the sum of the fees and taxes ~~((referred to in (d) of this subsection;))~~ calculated for each member jurisdiction in which registration of the fleet is desired.

(3) All assessments for proportional registration fees are due and payable in United States funds on the date presented or mailed to the registrant at the address listed in the proportional registration records of the department. The registrant may petition for reassessment of the fees or taxes due under this section within thirty days of the date of original service as provided for in this chapter.

Sec. 10. RCW 46.87.190 and 1987 c 244 s 32 are each amended to read as follows:

The department may suspend or cancel the exemptions, benefits, or privileges granted under chapter 46.85 RCW or this chapter to any person or business firm who violates any of the conditions or terms of the IRP~~((Western Compact, or declarations;))~~ or who violates the laws of this state relating to the operation or registration of vehicles or rules lawfully adopted thereunder.

NEW SECTION. **Sec. 11.** The following acts or parts of acts are each repealed:

- (1) RCW 46.87.085 (Staggered renewal periods) and 1993 c 307 s 17;
- (2) RCW 46.87.170 (Recalculation of prorate percentage—Additional fees and taxes) and 1987 c 244 s 30;

(3) RCW 46.87.180 (Conditions on fleet vehicles) and 1987 c 244 s 31; and
(4) RCW 46.87.901 (Effective date—1986 c 18; 1985 c 380) and 1986 c 18
s 27 & 1985 c 380 s 25.

Passed by the House March 8, 2005.

Passed by the Senate April 12, 2005.

Approved by the Governor April 26, 2005.

Filed in Office of Secretary of State April 26, 2005.

CHAPTER 195

[House Bill 1287]

HEALTH CARE AUTHORITY—DRUG BENEFIT—RETIRED EMPLOYEES

AN ACT Relating to authorizing the health care authority to receive a federal employer subsidy for continuing to provide a pharmacy benefit to retirees; amending RCW 41.05.065 and 41.05.085; adding a new section to chapter 41.05 RCW; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 41.05.065 and 2003 c 158 s 2 are each amended to read as follows:

(1) The board shall study all matters connected with the provision of health care coverage, life insurance, liability insurance, accidental death and dismemberment insurance, and disability income insurance or any of, or a combination of, the enumerated types of insurance for employees and their dependents on the best basis possible with relation both to the welfare of the employees and to the state. However, liability insurance shall not be made available to dependents.

(2) The board shall develop employee benefit plans that include comprehensive health care benefits for all employees. In developing these plans, the board shall consider the following elements:

(a) Methods of maximizing cost containment while ensuring access to quality health care;

(b) Development of provider arrangements that encourage cost containment and ensure access to quality care, including but not limited to prepaid delivery systems and prospective payment methods;

(c) Wellness incentives that focus on proven strategies, such as smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education;

(d) Utilization review procedures including, but not limited to a cost-efficient method for prior authorization of services, hospital inpatient length of stay review, requirements for use of outpatient surgeries and second opinions for surgeries, review of invoices or claims submitted by service providers, and performance audit of providers;

(e) Effective coordination of benefits;

(f) Minimum standards for insuring entities; and

(g) Minimum scope and content of public employee benefit plans to be offered to enrollees participating in the employee health benefit plans. To maintain the comprehensive nature of employee health care benefits, employee eligibility criteria related to the number of hours worked and the benefits

provided to employees shall be substantially equivalent to the state employees' health benefits plan and eligibility criteria in effect on January 1, 1993. Nothing in this subsection (2)(g) shall prohibit changes or increases in employee point-of-service payments or employee premium payments for benefits.

(3) The board shall design benefits and determine the terms and conditions of employee and retired employee participation and coverage, including establishment of eligibility criteria. The same terms and conditions of participation and coverage, including eligibility criteria, shall apply to state employees and to school district employees and educational service district employees.

(4) The board may authorize premium contributions for an employee and the employee's dependents in a manner that encourages the use of cost-efficient managed health care systems. The board shall require participating school district and educational service district employees to pay at least the same employee premiums by plan and family size as state employees pay.

(5) Employees shall choose participation in one of the health care benefit plans developed by the board and may be permitted to waive coverage under terms and conditions established by the board.

(6) The board shall review plans proposed by insuring entities that desire to offer property insurance and/or accident and casualty insurance to state employees through payroll deduction. The board may approve any such plan for payroll deduction by insuring entities holding a valid certificate of authority in the state of Washington and which the board determines to be in the best interests of employees and the state. The board shall promulgate rules setting forth criteria by which it shall evaluate the plans.

(7) Before January 1, 1998, the public employees' benefits board shall make available one or more fully insured long-term care insurance plans that comply with the requirements of chapter 48.84 RCW. Such programs shall be made available to eligible employees, retired employees, and retired school employees as well as eligible dependents which, for the purpose of this section, includes the parents of the employee or retiree and the parents of the spouse of the employee or retiree. Employees of local governments and employees of political subdivisions not otherwise enrolled in the public employees' benefits board sponsored medical programs may enroll under terms and conditions established by the administrator, if it does not jeopardize the financial viability of the public employees' benefits board's long-term care offering.

(a) Participation of eligible employees or retired employees and retired school employees in any long-term care insurance plan made available by the public employees' benefits board is voluntary and shall not be subject to binding arbitration under chapter 41.56 RCW. Participation is subject to reasonable underwriting guidelines and eligibility rules established by the public employees' benefits board and the health care authority.

(b) The employee, retired employee, and retired school employee are solely responsible for the payment of the premium rates developed by the health care authority. The health care authority is authorized to charge a reasonable administrative fee in addition to the premium charged by the long-term care insurer, which shall include the health care authority's cost of administration, marketing, and consumer education materials prepared by the health care authority and the office of the insurance commissioner.

(c) To the extent administratively possible, the state shall establish an automatic payroll or pension deduction system for the payment of the long-term care insurance premiums.

(d) The public employees' benefits board and the health care authority shall establish a technical advisory committee to provide advice in the development of the benefit design and establishment of underwriting guidelines and eligibility rules. The committee shall also advise the board and authority on effective and cost-effective ways to market and distribute the long-term care product. The technical advisory committee shall be comprised, at a minimum, of representatives of the office of the insurance commissioner, providers of long-term care services, licensed insurance agents with expertise in long-term care insurance, employees, retired employees, retired school employees, and other interested parties determined to be appropriate by the board.

(e) The health care authority shall offer employees, retired employees, and retired school employees the option of purchasing long-term care insurance through licensed agents or brokers appointed by the long-term care insurer. The authority, in consultation with the public employees' benefits board, shall establish marketing procedures and may consider all premium components as a part of the contract negotiations with the long-term care insurer.

(f) In developing the long-term care insurance benefit designs, the public employees' benefits board shall include an alternative plan of care benefit, including adult day services, as approved by the office of the insurance commissioner.

(g) The health care authority, with the cooperation of the office of the insurance commissioner, shall develop a consumer education program for the eligible employees, retired employees, and retired school employees designed to provide education on the potential need for long-term care, methods of financing long-term care, and the availability of long-term care insurance products including the products offered by the board.

(h) By December 1998, the health care authority, in consultation with the public employees' benefits board, shall submit a report to the appropriate committees of the legislature, including an analysis of the marketing and distribution of the long-term care insurance provided under this section.

NEW SECTION, Sec. 2. A new section is added to chapter 41.05 RCW to read as follows:

The authority may participate as an employer-sponsored program established in section 1860D-22 of the medicare prescription drug, improvement, and modernization act of 2003, P.L. 108-173 et seq., to receive federal employer subsidy funds for continuing to provide retired employee health coverage, including a pharmacy benefit. The administrator, in consultation with the office of financial management, shall evaluate participation in the employer incentive program, including but not limited to any necessary program changes to meet the eligibility requirements that employer-sponsored retiree health coverage provide prescription drug coverage at least equal to the actuarial value of standard prescription drug coverage under medicare part D. Any employer subsidy moneys received from participation in the federal employer incentive program shall be deposited in the health services account established in RCW 43.72.900.

Sec. 3. RCW 41.05.085 and 1994 c 153 s 8 are each amended to read as follows:

(1) Beginning with the appropriations act for the (~~1995-1997~~) 2005-2007 biennium, the legislature shall establish as part of both the state employees' and the school and educational service district employees' insurance benefit allocation the portion of the allocation to be used to provide a prescription drug subsidy to reduce the health care insurance premiums charged to retired or disabled school district and educational service district employees, or retired state employees, who are eligible for parts A and B of medicare. The legislature may also establish a separate health care subsidy to reduce insurance premiums charged to individuals who select a medicare supplemental insurance policy option established in RCW 41.05.195.

(2) The amount of any premium reduction shall be established by the board(~~, but~~). The amount established shall not result in a premium reduction of more than fifty percent, except as provided in subsection (3) of this section. The board may also determine the amount of any subsidy to be available to spouses and dependents.

(3) The amount of the premium reduction in subsection (2) of this section may exceed fifty percent, if the administrator, in consultation with the office of financial management, determines that it is necessary in order to meet eligibility requirements to participate in the federal employer incentive program as provided in section 2 of this act.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005.

Passed by the House March 7, 2005.

Passed by the Senate April 15, 2005.

Approved by the Governor April 26, 2005.

Filed in Office of Secretary of State April 26, 2005.

CHAPTER 196

[House Bill 1296]

HARASSMENT—PROTECTION ORDERS—JURISDICTION

AN ACT Relating to jurisdiction for antiharassment protection orders; and amending RCW 10.14.150 and 10.14.160.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 10.14.150 and 1999 c 170 s 1 are each amended to read as follows:

(1) The district courts shall have jurisdiction and cognizance of any civil actions and proceedings brought under this chapter, except the district court shall transfer such actions and proceedings to the superior court when it is shown that the respondent to the petition is under eighteen years of age.

(2) Municipal courts may exercise jurisdiction and cognizance of any civil actions and proceedings brought under this chapter by adoption of local court rule, except the municipal court shall transfer such actions and proceedings to the superior court when it is shown that the respondent to the petition is under eighteen years of age.

(3) Superior courts shall have concurrent jurisdiction to receive transfer of antiharassment petitions in cases where a district or municipal court judge makes findings of fact and conclusions of law showing that meritorious reasons exist for the transfer. The municipal and district courts shall have jurisdiction and cognizance of any criminal actions brought under RCW 10.14.120 and 10.14.170.

Sec. 2. RCW 10.14.160 and 1992 c 127 s 1 are each amended to read as follows:

For the purposes of this chapter an action may be brought in:

(1) The judicial district of the county in which the alleged acts of unlawful harassment occurred;

(2) The judicial district of the county where any respondent resides at the time the petition is filed; (~~(3)~~)

(3) The judicial district of the county where a respondent may be served if it is the same county or judicial district where a respondent resides;

(4) The municipality in which the alleged acts of unlawful harassment occurred;

(5) The municipality where any respondent resides at the time the petition is filed; or

(6) The municipality where a respondent may be served if it is the same county or judicial district where a respondent resides.

Passed by the House February 25, 2005.

Passed by the Senate April 12, 2005.

Approved by the Governor April 26, 2005.

Filed in Office of Secretary of State April 26, 2005.

CHAPTER 197

[Engrossed Substitute House Bill 1302]

BURN BANS

AN ACT Relating to burn ban triggers; and amending RCW 70.94.473 and 70.94.030.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 70.94.473 and 1998 c 342 s 8 are each amended to read as follows:

(1) Any person in a residence or commercial establishment which has an adequate source of heat without burning wood shall:

(a) Not burn wood in any solid fuel burning device whenever the department has determined under RCW 70.94.715 that any air pollution episode exists in that area;

(b) Not burn wood in any solid fuel burning device except those which are either Oregon department of environmental quality phase II or United States environmental protection agency certified or certified by the department under RCW 70.94.457(1) or a pellet stove either certified or issued an exemption by the United States environmental protection agency in accordance with Title 40, Part 60 of the code of federal regulations, in the geographical area and for the period of time that a first stage of impaired air quality has been determined, by the department or any authority, for that area. A first stage of impaired air quality is reached when:

(i) Fine particulates ((ten microns and smaller in diameter)) are at an ambient level of ((sixty)) ~~thirty-five~~ micrograms per cubic meter measured on a twenty-four hour average ((or when carbon monoxide is at an ambient level of eight parts of contaminant per million parts of air by volume measured on an eight hour average)); and

(ii) Forecasted meteorological conditions are not expected to allow levels of fine particulates to decline below thirty-five micrograms per cubic meter for a period of forty-eight hours or more from the time that the fine particulates are measured at the trigger level; and

(c) Not burn wood in any solid fuel burning device in a geographical area and for the period of time that a second stage of impaired air quality has been determined by the department or any authority, for that area. A second stage of impaired air quality is reached when ~~((particulates ten microns and smaller in diameter are at an ambient level of one hundred five micrograms per cubic meter measured on a twenty-four hour average));~~

(i) A first stage of impaired air quality has been in force and not been sufficient to reduce the increasing fine particle pollution trend;

(ii) Fine particulates are at an ambient level of sixty micrograms per cubic meter measured on a twenty-four hour average; and

(iii) Forecasted meteorological conditions are not expected to allow levels of fine particulates to decline below sixty micrograms per cubic meter for a period of forty-eight hours or more from the time that the fine particulates are measured at the trigger level.

(2) Actions of the department and local air pollution control authorities under this section shall preempt actions of other state agencies and local governments for the purposes of controlling air pollution from solid fuel burning devices, except where authorized by chapter 199, Laws of 1991.

Sec. 2. RCW 70.94.030 and 1993 c 252 s 2 are each amended to read as follows:

~~((Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof.

(2) "Air pollution" is presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interfere with enjoyment of life and property. For the purpose of this chapter, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW.

(3) "Air quality standard" means an established concentration, exposure time, and frequency of occurrence of an air contaminant or multiple contaminants in the ambient air which shall not be exceeded.

(4) "Ambient air" means the surrounding outside air.

(5) "Authority" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(6) "Best available control technology" (BACT) means an emission limitation based on the maximum degree of reduction for each air pollutant

subject to regulation under this chapter emitted from or that results from any new or modified stationary source, that the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such a source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of "best available control technology" result in emissions of any pollutants that will exceed the emissions allowed by any applicable standard under 40 C.F.R. Part 60 and Part 61, as they exist on July 25, 1993, or their later enactments as adopted by reference by the director by rule. Emissions from any source utilizing clean fuels, or any other means, to comply with this subsection shall not be allowed to increase above levels that would have been required under the definition of BACT as it existed prior to enactment of the (~~federal~~) federal clean air act amendments of 1990.

(7) "Best available retrofit technology" (BART) means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant that is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility that might reasonably be anticipated to result from the use of the technology.

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

(9) "Control officer" means the air pollution control officer of any authority.

(10) "Department" or "ecology" means the department of ecology.

(11) "Emission" means a release of air contaminants into the ambient air.

(12) "Emission standard" and "emission limitation" mean a requirement established under the federal clean air act or this chapter that limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice, or operational standard adopted under the federal clean air act or this chapter.

(13) "Fine particulate" means particulates with a diameter of two and one-half microns and smaller.

(14) "Lowest achievable emission rate" (LAER) means for any source that rate of emissions that reflects:

(a) The most stringent emission limitation that is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation that is achieved in practice by such class or category of source, whichever is more stringent.

In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source performance standards.

~~((14))~~ (15) "Modification" means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted. The term modification shall be construed consistent with the definition of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

~~((15))~~ (16) "Multicounty authority" means an authority which consists of two or more counties.

~~((16))~~ (17) "New source" means (a) the construction or modification of a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted, and (b) any other project that constitutes a new source under the federal clean air act.

~~((17))~~ (18) "Permit program source" means a source required to apply for or to maintain an operating permit under RCW 70.94.161.

~~((18))~~ (19) "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision of the state, municipality, or governmental agency.

~~((19))~~ (20) "Reasonably available control technology" (RACT) means the lowest emission limit that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for a source or source category shall be adopted only after notice and opportunity for comment are afforded.

~~((20))~~ (21) "Silvicultural burning" means burning of wood fiber on forest land consistent with the provisions of RCW 70.94.660.

~~((21))~~ (22) "Source" means all of the emissions units including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person, or persons under common control, whose activities are ancillary to the production of a single product or functionally related group of products.

~~((22))~~ (23) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air contaminant.

(24) "Trigger level" means the ambient level of fine particulates, measured in micrograms per cubic meter, that must be detected prior to initiating a first or second stage of impaired air quality under RCW 70.94.473.

Passed by the House March 10, 2005.

Passed by the Senate April 15, 2005.

Approved by the Governor April 26, 2005.

Filed in Office of Secretary of State April 26, 2005.

CHAPTER 198

[Substitute House Bill 1732]

INDUSTRIAL INSURANCE—SOCIAL SECURITY BENEFITS

AN ACT Relating to allowing additional industrial insurance benefits when social security benefits are reduced; and amending RCW 51.32.220.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 51.32.220 and 2004 c 92 s 1 are each amended to read as follows:

(1) For persons receiving compensation for temporary or permanent total disability pursuant to the provisions of this chapter, such compensation shall be reduced by an amount equal to the benefits payable under the federal old-age, survivors, and disability insurance act as now or hereafter amended not to exceed the amount of the reduction established pursuant to 42 U.S.C. Sec. 424a. However, such reduction shall not apply when the combined compensation provided pursuant to this chapter and the federal old-age, survivors, and disability insurance act is less than the total benefits to which the federal reduction would apply, pursuant to 42 U.S.C. 424a. Where any person described in this section refuses to authorize the release of information concerning the amount of benefits payable under said federal act the department's estimate of said amount shall be deemed to be correct unless and until the actual amount is established and no adjustment shall be made for any period of time covered by any such refusal.

(2) Any reduction under subsection (1) of this section shall be effective the month following the month in which the department or self-insurer is notified by the federal social security administration that the person is receiving disability benefits under the federal old-age, survivors, and disability insurance act: PROVIDED, That in the event of an overpayment of benefits the department or self-insurer may not recover more than the overpayments for the six months immediately preceding the date the department or self-insurer notifies the worker that an overpayment has occurred: PROVIDED FURTHER, That upon determining that there has been an overpayment, the department or self-insurer shall immediately notify the person who received the overpayment that he or she shall be required to make repayment pursuant to this section and RCW 51.32.230.

(3) Recovery of any overpayment must be taken from future temporary or permanent total disability benefits or permanent partial disability benefits provided by this title. In the case of temporary or permanent total disability benefits, the recovery shall not exceed twenty-five percent of the monthly amount due from the department or self-insurer or one-sixth of the total overpayment, whichever is the lesser.

(4) No reduction may be made unless the worker receives notice of the reduction prior to the month in which the reduction is made.

(5) In no event shall the reduction reduce total benefits to less than the greater amount the worker may be entitled to under this title or the federal old-age, survivors, and disability insurance act.

(6) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his or her discretion to waive, in whole or in part, the amount of

any overpayment where the recovery would be against equity and good conscience.

(7) Subsection (1) of this section applies to:

(a) Workers under the age of sixty-two whose effective entitlement to total disability compensation begins before January 2, 1983;

(b) Workers under the age of sixty-five whose effective entitlement to total disability compensation begins after January 1, 1983; and

(c) Workers who will become sixty-five years of age on or after June 10, 2004.

(8)(a) If the federal social security administration makes a retroactive reduction in the federal social security disability benefit entitlement of a worker for periods of temporary total, temporary partial, or total permanent disability for which the department or self-insurer also reduced the worker's benefit amounts under this section, the department or self-insurer, as the case may be, shall make adjustments in the calculation of benefits and pay the additional benefits to the worker as appropriate. However, the department or self-insurer shall not make changes in the calculation or pay additional benefits unless the worker submits a written request, along with documentation satisfactory to the director of an overpayment assessment by the social security administration, to the department or self-insurer, as the case may be.

(b) Additional benefits paid under this subsection:

(i) Are paid without interest and without regard to whether the worker's claim under this title is closed; and

(ii) Do not affect the status or the date of the claim's closure.

(c) This subsection applies only to requests for adjustments that are submitted before July 1, 2007, and does not apply to requests on claims for which a determination on the request has been made and is not subject to further appeal.

(d) By December 1, 2006, the department must report to the appropriate committees of the legislature concerning the benefit adjustments authorized in this subsection and must include information about similar benefit adjustments, if any, authorized in other states with social security disability benefit offset requirements. The report must include recommendations on whether additional statutory changes might be warranted in light of the actions of the federal social security administration.

Passed by the House March 10, 2005.

Passed by the Senate April 13, 2005.

Approved by the Governor April 26, 2005.

Filed in Office of Secretary of State April 26, 2005.

CHAPTER 199

[House Bill 1769]

JURY ASSIGNMENT AREAS

AN ACT Relating to jury source lists in counties with more than one superior court facility; amending RCW 2.36.055; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. **Sec. 1.** The legislature finds that superior courts with more than one superior court facility are asking some jurors to travel excessively long distances to attend court proceedings. In these cases, the legislature further finds that consideration of a juror's proximity to a particular courthouse can be accommodated while continuing to provide proportionate jury source list representation from distinctive groups within the community. The legislature intends to lessen the burdens borne by jurors fulfilling their civic duties by providing a mechanism that narrows the geographic area from which the jurors are drawn while maintaining a random and proportionate jury pool.

Sec. 2. RCW 2.36.055 and 1993 c 408 s 5 are each amended to read as follows:

The superior court at least annually shall cause a jury source list to be compiled from a list of all registered voters and a list of licensed drivers and identicard holders residing in the county.

In a county with more than one superior court facility and a separate case assignment area for each court facility, the jury source list may be divided into jury assignment areas that consist of registered voters and licensed drivers and identicard holders residing in each jury assignment area. Jury assignment area boundaries may be designated and adjusted by the administrative office of the courts based on the most current United States census data at the request of the majority of the judges of the superior court when required for the efficient and fair administration of justice.

The superior court upon receipt of the jury source list shall compile a master jury list. The master jury list shall be certified by the superior court and filed with the county clerk. All previous jury source lists and master jury lists shall be superseded. In the event that, for any reason, a county's jury source list is not timely created and available for use at least annually, the most recent previously compiled jury source list for that county shall be used by the courts of that county on an emergency basis only for the shortest period of time until a current jury source list is created and available for use.

Upon receipt of amendments to the list of registered voters and licensed drivers and identicard holders residing in the county the superior court may update the jury source list and master jury list as maintained by the county clerk accordingly.

Passed by the House March 8, 2005.

Passed by the Senate April 15, 2005.

Approved by the Governor April 26, 2005.

Filed in Office of Secretary of State April 26, 2005.

CHAPTER 200

[House Bill 1872]

IGNITION INTERLOCK DEVICES

AN ACT Relating to ignition interlock devices; amending RCW 46.04.215 and 46.20.750; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.04.215 and 1997 c 229 s 9 are each amended to read as follows:

"Ignition interlock device" means breath alcohol analyzing ignition equipment~~((:))~~ or other biological or technical device certified by the state patrol~~((:))~~ and designed to prevent a motor vehicle from being operated by a person who has consumed an alcoholic beverage~~((, and "other biological or technical device" means any device meeting the standards of the National Highway Traffic Safety Administration or the state patrol, designed to prevent the operation of a motor vehicle by a person who is impaired by alcohol or drugs))~~. The state patrol shall by rule provide standards for the certification, installation, repair, and removal of the devices.

Sec. 2. RCW 46.20.750 and 1994 c 275 s 25 are each amended to read as follows:

(1) A person who is restricted to the use of a vehicle equipped with an ignition interlock device and who tampers with the device or directs, authorizes, or requests another to tamper with the device, in order to circumvent the device by modifying, detaching, disconnecting, or otherwise disabling it, is guilty of a gross misdemeanor.

(2) A person who knowingly assists another person who is restricted to the use of a vehicle equipped with an ignition interlock ~~((or other biological or technical))~~ device to circumvent the device or to start and operate that vehicle in violation of a court order is guilty of a gross misdemeanor. The provisions of this ~~((section))~~ subsection do not apply if the starting of a motor vehicle, or the request to start a motor vehicle, equipped with an ignition interlock ~~((or other biological or technical))~~ device is done for the purpose of safety or mechanical repair of the device or the vehicle and the person subject to the court order does not operate the vehicle.

Passed by the House March 8, 2005.

Passed by the Senate April 15, 2005.

Approved by the Governor April 26, 2005.

Filed in Office of Secretary of State April 26, 2005.

CHAPTER 201

[House Bill 2131]

MASTER LICENSING SERVICES—GRANTS

AN ACT Relating to the master licensing service; and adding a new section to chapter 19.02 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 19.02 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the department shall administer a performance-based grant program that provides funding assistance to public agencies that issue business licenses and that wish to join with the department's master licensing service.

(2) The department may determine among interested grant applicants the order and the amount of the grant. In making grant determinations, consideration must be given, but not limited to, the following criteria: Readiness of the public agency to participate; the number of renewable licenses; and the

reduced regulatory impact to businesses subject to licensure relative to the overall investment required by the department.

(3) The department shall invite and encourage participation by all Washington city and county governments having interests or responsibilities relating to business licensing.

(4) The total amount of grants provided under this section may not exceed seven hundred fifty thousand dollars in any one fiscal year.

(5) The source of funds for this grant program is the master license account.

Passed by the House March 15, 2005.

Passed by the Senate April 14, 2005.

Approved by the Governor April 26, 2005.

Filed in Office of Secretary of State April 26, 2005.

CHAPTER 202

[Substitute House Bill 2223]

SEX OFFENDER RECORDS—FEE WAIVER

AN ACT Relating to fees charged to law enforcement agencies for certified copies of records concerning sex offenders; and amending RCW 36.18.016.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 36.18.016 and 2002 c 338 s 2 are each amended to read as follows:

(1) Revenue collected under this section is not subject to division under RCW 36.18.025 or 27.24.070.

(2) For the filing of a petition for modification of a decree of dissolution or paternity, within the same case as the original action, a fee of twenty dollars must be paid.

(3)(a) The party making a demand for a jury of six in a civil action shall pay, at the time, a fee of one hundred twenty-five dollars; if the demand is for a jury of twelve, a fee of two hundred fifty dollars. If, after the party demands a jury of six and pays the required fee, any other party to the action requests a jury of twelve, an additional one hundred twenty-five dollar fee will be required of the party demanding the increased number of jurors.

(b) Upon conviction in criminal cases a jury demand charge of fifty dollars for a jury of six, or one hundred dollars for a jury of twelve may be imposed as costs under RCW 10.46.190.

(4) For preparing, transcribing, or certifying an instrument on file or of record in the clerk's office, with or without seal, for the first page or portion of the first page, a fee of two dollars, and for each additional page or portion of a page, a fee of one dollar must be charged. For authenticating or exemplifying an instrument, a fee of one dollar for each additional seal affixed must be charged.

(5) For executing a certificate, with or without a seal, a fee of two dollars must be charged.

(6) For a garnishee defendant named in an affidavit for garnishment and for a writ of attachment, a fee of twenty dollars must be charged.

(7) For approving a bond, including justification on the bond, in other than civil actions and probate proceedings, a fee of two dollars must be charged.

(8) For the issuance of a certificate of qualification and a certified copy of letters of administration, letters testamentary, or letters of guardianship, there must be a fee of two dollars.

(9) For the preparation of a passport application, the clerk may collect an execution fee as authorized by the federal government.

(10) For clerk's services such as processing ex parte orders, performing historical searches, compiling statistical reports, and conducting exceptional record searches, the clerk may collect a fee not to exceed twenty dollars per hour or portion of an hour.

(11) For duplicated recordings of court's proceedings there must be a fee of ten dollars for each audio tape and twenty-five dollars for each video tape.

(12) For the filing of oaths and affirmations under chapter 5.28 RCW, a fee of twenty dollars must be charged.

(13) For filing a disclaimer of interest under RCW 11.86.031(4), a fee of two dollars must be charged.

(14) For registration of land titles, Torrens Act, under RCW 65.12.780, a fee of five dollars must be charged.

(15) For the issuance of extension of judgment under RCW 6.17.020 and chapter 9.94A RCW, a fee of one hundred ten dollars must be charged.

(16) A facilitator surcharge of ten dollars must be charged as authorized under RCW 26.12.240.

(17) For filing a water rights statement under RCW 90.03.180, a fee of twenty-five dollars must be charged.

(18) A service fee of three dollars for the first page and one dollar for each additional page must be charged for receiving faxed documents, pursuant to Washington state rules of court, general rule 17.

(19) For preparation of clerk's papers under RAP 9.7, a fee of fifty cents per page must be charged.

(20) For copies and reports produced at the local level as permitted by RCW 2.68.020 and supreme court policy, a variable fee must be charged.

(21) Investment service charge and earnings under RCW 36.48.090 must be charged.

(22) Costs for nonstatutory services rendered by clerk by authority of local ordinance or policy must be charged.

(23) For filing a request for mandatory arbitration, a filing fee may be assessed against the party filing a statement of arbitrability not to exceed two hundred twenty dollars as established by authority of local ordinance. This charge shall be used solely to offset the cost of the mandatory arbitration program.

(24) For filing a request for trial de novo of an arbitration award, a fee not to exceed two hundred fifty dollars as established by authority of local ordinance must be charged.

(25) A public agency may not charge a fee to a law enforcement agency, for preparation, copying, or mailing of certified copies of the judgment and sentence, information, affidavit of probable cause, and/or the notice of requirement to register, of a sex offender convicted in a Washington court, when such records are necessary for risk assessment, preparation of a case for failure to register, or maintenance of a sex offender's registration file.

Passed by the House March 9, 2005.

Passed by the Senate April 14, 2005.

Approved by the Governor April 26, 2005.

Filed in Office of Secretary of State April 26, 2005.

CHAPTER 203

[Substitute House Bill 2225]

HIGHER EDUCATION ENDOWMENT FUNDS—OUT OF STATE DEPOSIT

AN ACT Relating to allowing certain higher education endowment grant funds to be deposited outside the state; and amending RCW 39.58.080 and 39.58.085.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 39.58.080 and 1996 c 256 s 8 are each amended to read as follows:

(1) Except for funds deposited pursuant to a fiscal agency contract with the state fiscal agent or its correspondent bank, funds deposited pursuant to a custodial bank contract with the state's custodial bank, and funds deposited pursuant to a local government multistate joint self-insurance program as provided in RCW 48.62.081, no public funds shall be deposited in demand or investment deposits except in a public depository located in this state or as otherwise expressly permitted by statute: PROVIDED, That the commission, or the chair upon delegation by the commission, upon good cause shown, may authorize, for such time and upon such terms and conditions as the commission or chair deem appropriate, a treasurer to maintain a demand deposit account with a banking institution located outside the state of Washington solely for the purpose of transmitting money received to public depositories in the state of Washington for deposit.

(2) Notwithstanding subsection (1) of this section, the commission, or the chair upon delegation by the commission, upon good cause shown, may authorize, for that time and upon the terms and conditions as the commission or chair deems appropriate, a treasurer to maintain a demand deposit account with a banking institution located outside the state of Washington for deposit of certain higher education endowment funds, for a specified instructional program or research project being performed outside the state of Washington.

Sec. 2. RCW 39.58.085 and 1996 c 256 s 9 are each amended to read as follows:

(1)(a) The commission, or the chair upon delegation by the commission, may authorize state and local governmental entities to establish demand accounts in out-of-state and alien banks in an aggregate amount not to exceed one million dollars. No single governmental entity shall be authorized to hold more than fifty thousand dollars in one demand account.

(b) The governmental entities establishing such demand accounts shall be solely responsible for their proper and prudent management and shall bear total responsibility for any losses incurred by such accounts. Accounts established under the provisions of this section shall not be considered insured by the commission.

(c) The state auditor shall annually monitor compliance with this section and the financial status of such demand accounts.

(2) Subsection (1)(a) of this section does not apply to RCW 39.58.080(2).

Passed by the House March 15, 2005.

Passed by the Senate April 13, 2005.

Approved by the Governor April 26, 2005.

Filed in Office of Secretary of State April 26, 2005.

CHAPTER 204

[House Bill 2271]

EMPLOYMENT OPPORTUNITIES—PEOPLE WITH DISABILITIES

AN ACT Relating to employment opportunities for people with disabilities; amending RCW 43.19.520, 43.19.530, 43.19.531, 43.19.533, 43.19.1911, 50.40.065, and 50.40.066; and providing expiration dates.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 43.19.520 and 2003 c 136 s 1 are each amended to read as follows:

It is the intent of the legislature to encourage state agencies and departments to purchase products and/or services manufactured or provided by:

(1) Community rehabilitation programs of the department of social and health services which operate facilities serving disadvantaged persons and persons with disabilities and have achieved or consistently make progress towards the goal of enhancing opportunities for disadvantaged persons and persons with disabilities to maximize their opportunities for employment and career advancement, and increase the number employed and their wages; and

(2) Until December 31, ~~((2007))~~ 2009, businesses owned and operated by persons with disabilities that have achieved or consistently make progress towards the goal of enhancing opportunities for disadvantaged persons and persons with disabilities to maximize their opportunities for employment and career advancement, and increase the number employed and their wages.

Sec. 2. RCW 43.19.530 and 2003 c 136 s 3 are each amended to read as follows:

The state agencies and departments are hereby authorized to purchase products and/or services manufactured or provided by:

(1) Community rehabilitation programs of the department of social and health services; and

(2) Until December 31, ~~((2007))~~ 2009, businesses owned and operated by persons with disabilities.

Such purchases shall be at the fair market price of such products and services as determined by the division of purchasing of the department of general administration. To determine the fair market price the division shall use the last comparable bid on the products and/or services or in the alternative the last price paid for the products and/or services. The increased cost of labor, materials, and other documented costs since the last comparable bid or the last price paid are additional cost factors which shall be considered in determining fair market price. Upon the establishment of the fair market price as provided for in this section the division is hereby empowered to negotiate directly for the purchase of products or services with officials in charge of the community

rehabilitation programs of the department of social and health services and, until December 31, 2007, businesses owned and operated by persons with disabilities.

Sec. 3. RCW 43.19.531 and 2003 c 136 s 4 are each amended to read as follows:

(1) The department of general administration shall identify in the department's vendor registry all vendors in good standing, as defined in RCW 43.19.525.

(2) The department of general administration shall annually, but no less often than once every fifteen months:

(a) Request that vendors in good standing update their information in the department's vendor registry including but not limited to the Washington state commodity codes for products and services that the vendors propose to offer to state agencies during at least the subsequent fifteen-month period;

(b) Disseminate the information obtained in response to the request made pursuant to (a) of this subsection to at least one purchasing official in each state agency; and

(c) Notify each vendor in good standing of all contracts for the purchase of goods and services by state agencies with respect to which the department of general administration anticipates either renewing or requesting bids or proposals within at least twelve months of the date of the notice.

(3) The department of general administration and the governor's committee on disability issues and employment shall jointly prepare and, on or before December 31, (~~2006~~) 2008, issue a report to the governor and the legislature. The report shall describe the activities authorized or required by chapter 136, Laws of 2003, and their effect on enhancing opportunities for disadvantaged persons and persons with disabilities to maximize their opportunities for employment and career advancement, and increase the number employed and their wages.

(4) This section expires December 31, (~~2007~~) 2009.

Sec. 4. RCW 43.19.533 and 2003 c 136 s 5 are each amended to read as follows:

(1) Nothing in chapter 136, Laws of 2003 requires any state agency to take any action that interferes with or impairs an existing contract between any state agency and any other party, including but not limited to any other state agency.

(2) Until December 31, (~~2007~~) 2009, except as provided under RCW 43.19.1906(2) for purchases up to three thousand dollars, RCW 43.19.534, and subsection (1) of this section, a state agency shall not purchase any product or service identified in the notice most recently disseminated by the department of general administration, as provided under RCW 43.19.531(2)(b), from other than a vendor in good standing until the state agency has included in the solicitation process at least one vendor in good standing supplying the goods or service needed by the agency, unless no vendor in good standing supplying the goods or service needed by the agency is available.

Sec. 5. RCW 43.19.1911 and 2003 c 136 s 6 are each amended to read as follows:

(1) Preservation of the integrity of the competitive bid system dictates that after competitive bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid pursuant to subsections (7) and

(9) of this section, unless there is a compelling reason to reject all bids and cancel the solicitation.

(2) Every effort shall be made to anticipate changes in a requirement before the date of opening and to provide reasonable notice to all prospective bidders of any resulting modification or cancellation. If, in the opinion of the purchasing agency, division, or department head, it is not possible to provide reasonable notice, the published date for receipt of bids may be postponed and all known bidders notified. This will permit bidders to change their bids and prevent unnecessary exposure of bid prices. In addition, every effort shall be made to include realistic, achievable requirements in a solicitation.

(3) After the opening of bids, a solicitation may not be canceled and resolicited solely because of an increase in requirements for the items being acquired. Award may be made on the initial solicitation and an increase in requirements may be treated as a new acquisition.

(4) A solicitation may be canceled and all bids rejected before award but after bid opening only when, consistent with subsection (1) of this section, the purchasing agency, division, or department head determines in writing that:

(a) Unavailable, inadequate, ambiguous specifications, terms, conditions, or requirements were cited in the solicitation;

(b) Specifications, terms, conditions, or requirements have been revised;

(c) The supplies or services being contracted for are no longer required;

(d) The solicitation did not provide for consideration of all factors of cost to the agency;

(e) Bids received indicate that the needs of the agency can be satisfied by a less expensive article differing from that for which the bids were invited;

(f) All otherwise acceptable bids received are at unreasonable prices or only one bid is received and the agency cannot determine the reasonableness of the bid price;

(g) No responsive bid has been received from a responsible bidder; or

(h) The bid process was not fair or equitable.

(5) The agency, division, or department head may not delegate his or her authority under this section.

(6) After the opening of bids, an agency may not reject all bids and enter into direct negotiations to complete the planned acquisition. However, the agency can enter into negotiations exclusively with the lowest responsible bidder in order to determine if the lowest responsible bid may be improved. Until December 31, ((2007)) 2009, for purchases requiring a formal bid process the agency shall also enter into negotiations with and may consider for award the lowest responsible bidder that is a vendor in good standing, as defined in RCW 43.19.525. An agency shall not use this negotiation opportunity to permit a bidder to change a nonresponsive bid into a responsive bid.

(7) In determining the lowest responsible bidder, the agency shall consider any preferences provided by law to Washington products and vendors and to RCW 43.19.704, and further, may take into consideration the quality of the articles proposed to be supplied, their conformity with specifications, the purposes for which required, and the times of delivery.

(8) Each bid with the name of the bidder shall be entered of record and each record, with the successful bid indicated, shall, after letting of the contract, be open to public inspection.

(9) In determining "lowest responsible bidder", in addition to price, the following elements shall be given consideration:

(a) The ability, capacity, and skill of the bidder to perform the contract or provide the service required;

(b) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;

(c) Whether the bidder can perform the contract within the time specified;

(d) The quality of performance of previous contracts or services;

(e) The previous and existing compliance by the bidder with laws relating to the contract or services;

(f) Such other information as may be secured having a bearing on the decision to award the contract: PROVIDED, That in considering bids for purchase, manufacture, or lease, and in determining the "lowest responsible bidder," whenever there is reason to believe that applying the "life cycle costing" technique to bid evaluation would result in lowest total cost to the state, first consideration shall be given by state purchasing activities to the bid with the lowest life cycle cost which complies with specifications. "Life cycle cost" means the total cost of an item to the state over its estimated useful life, including costs of selection, acquisition, operation, maintenance, and where applicable, disposal, as far as these costs can reasonably be determined, minus the salvage value at the end of its estimated useful life. The "estimated useful life" of an item means the estimated time from the date of acquisition to the date of replacement or disposal, determined in any reasonable manner. Nothing in this section shall prohibit any state agency, department, board, commission, committee, or other state-level entity from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

Sec. 6. RCW 50.40.065 and 2003 c 136 s 7 are each amended to read as follows:

(1) No less frequently than once each year, the governor's committee on disability issues and employment shall determine whether entities seeking to qualify as vendors in good standing, pursuant to this section and RCW 43.19.531, have achieved, or continue to work towards, the goal of enhancing opportunities for persons of disabilities to maximize their employment and career advancement, and increase the number employed and their wages.

(2) In making the determination provided for in subsection (1) of this section, the governor's committee on disability issues and employment shall appoint and, except in the case of malfeasance or misfeasance, shall rely upon the conclusions of an advisory subcommittee consisting of: (a) Three members chosen from among those current or former clients of a community rehabilitation program who have nominated themselves, at least one of whom must be a person with a developmental disability; (b) one member chosen from among those guardians, parents, or other relatives of a current client or employee of a community rehabilitation program who have nominated themselves; (c) one member chosen from among those who have been nominated by a community rehabilitation program; (d) one member chosen from among those owners of a business owned and operated by persons with disabilities who have nominated themselves; (e) one member who is designated by the developmental disabilities council; (f) one member who is a member of and selected by the governor's

committee on disability issues and employment; (g) one member who is designated by the secretary of the department of social and health services; and (h) one member who is designated by the director of the department of services for the blind.

(3) The advisory subcommittee appointed by the governor's committee on disability issues and employment shall conclude that entities seeking to qualify, pursuant to this section and RCW 43.19.531, as vendors in good standing, have achieved, or continue to work towards, the goal of enhancing opportunities for persons of disabilities to maximize their employment and career advancement, and increase the number employed and their wages if, and only if, the entity provides reasonably conclusive evidence that, during the twelve-month period immediately preceding the entity's application, at least one-half of the following measurement categories applicable to the entity have been either achieved, pursuant to rules established under subsection (4) of this section, or have been improved as compared to the entity's condition with respect to that measurement category one year ago:

(a) The number of people with disabilities in the entity's total work force who are working in integrated settings;

(b) The percentage of the people with disabilities in the entity's total work force who are working in integrated settings;

(c) The number of people with disabilities in the entity's total work force who are working in individual supported employment settings;

(d) The percentage of the people with disabilities in the entity's total work force who are working in individual supported employment settings;

(e) The number of people with disabilities in the entity's total work force who, during the last twelve months, have transitioned to less restrictive employment settings either within the entity or with other community employers;

(f) The number of people with disabilities in the entity's total work force who are earning at least the state minimum wage;

(g) The percentage of the people with disabilities in the entity's total work force who are earning at least the state minimum wage;

(h) The number of people with disabilities serving in supervisory capacities within the entity;

(i) The percentage of supervisory positions within the entity that are occupied by people with disabilities;

(j) The number of people with disabilities serving in an ownership capacity or on the governing board of the entity;

(k) The ratio of the total amount paid by the entity in wages, salaries, and related employment benefits to people with disabilities, as compared to the amount paid by the entity in wages, salaries, and related employment benefits paid by the entity to persons without disabilities during the previous year; and

(l) The percentage of people with disabilities in the entity's total work force for whom the entity has developed a reasonable, achievable, and written career plan.

(4) The commissioner shall consult with the advisory subcommittee established in subsection (2) of this section to develop and adopt rules establishing the measurement at which it is deemed that the measurement

categories identified in subsection (3)(b), (d), (e), (g), (h), (j), (k), and (l) of this section have been achieved.

(5) This section expires December 31, (~~2007~~) 2009.

Sec. 7. RCW 50.40.066 and 2003 c 136 s 8 are each amended to read as follows:

(1) The commissioner is authorized to adopt rules to implement RCW 50.40.065, including but not limited to authority to establish (a) a nonrefundable application fee of not more than five hundred dollars to be paid by each entity seeking to establish or renew qualification as a vendor in good standing, pursuant to RCW 43.19.531 and 50.40.065; (b) a fee of not more than two percent of the face amount of any contract awarded under chapter 136, Laws of 2003; or (c) both fees identified in (a) and (b) of this subsection.

(2) The fee or fees established pursuant to subsection (1) of this section must set a level of revenue sufficient to recover costs incurred by the department of general administration in fulfilling the duties identified in RCW 43.19.531 and the governor's committee on disability issues and employment in fulfilling the duties identified in RCW 50.40.065.

(3) The vendors in good standing account is created in the custody of the state treasurer. All receipts from the fee or fees established pursuant to subsection (1) of this section must be deposited into the account. Expenditures from the account may be used only for the purpose described in subsection (2) of this section. Expenditures from the account may be authorized only upon the approval of both the director of the department of general administration and the commissioner, or their respective designees. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(4) This section expires December 31, (~~2007~~) 2009, and any unencumbered funds remaining in the vendors in good standing account on that date shall revert to the general fund.

Passed by the House March 9, 2005.

Passed by the Senate April 15, 2005.

Approved by the Governor April 26, 2005.

Filed in Office of Secretary of State April 26, 2005.

CHAPTER 205

[Substitute House Bill 1495]

TRIBAL HISTORY—COMMON SCHOOLS

AN ACT Relating to teaching Washington's tribal history, culture, and government in the common schools; amending RCW 28A.230.090; adding a new section to chapter 28A.345 RCW; adding a new section to chapter 28A.320 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. It is the intent of the legislature to promote the full success of the centennial accord, which was signed by state and tribal government leaders in 1989. As those leaders declared in the subsequent millennial accord in 1999, this will require "educating the citizens of our state, particularly the youth who are our future leaders, about tribal history, culture, treaty rights, contemporary tribal and state government institutions and relations

and the contribution of Indian nations to the state of Washington." The legislature recognizes that this goal has yet to be achieved in most of our state's schools and districts. As a result, Indian students may not find the school curriculum, especially Washington state history curriculum, relevant to their lives or experiences. In addition, many students may remain uninformed about the experiences, contributions, and perspectives of their tribal neighbors, fellow citizens, and classmates. The legislature further finds that the lack of accurate and complete curricula may contribute to the persistent achievement gap between Indian and other students. The legislature finds there is a need to establish collaborative government-to-government relationships between elected school boards and tribal councils to create local and/or regional curricula about tribal history and culture, and to promote dialogue and cultural exchanges that can help tribal leaders and school leaders implement strategies to close the achievement gap.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.345 RCW to read as follows:

(1) Beginning in 2006, and at least once annually through 2010, the Washington state school directors' association is encouraged to convene regional meetings and invite the tribal councils from the region for the purpose of establishing government-to-government relationships and dialogue between tribal councils and school district boards of directors. Participants in these meetings should discuss issues of mutual concern, and should work to:

(a) Identify the extent and nature of the achievement gap and strategies necessary to close it;

(b) Increase mutual awareness and understanding of the importance of accurate, high-quality curriculum materials about the history, culture, and government of local tribes; and

(c) Encourage school boards to identify and adopt curriculum that includes tribal experiences and perspectives, so that Indian students are more engaged and learn more successfully, and so that all students learn about the history, culture, government, and experiences of their Indian peers and neighbors.

(2) By December 1, 2008, and every two years thereafter through 2012, the school directors' association shall report to the education committees of the legislature regarding the progress made in the development of effective government-to-government relations, the narrowing of the achievement gap, and the identification and adoption of curriculum regarding tribal history, culture, and government. The report shall include information about any obstacles encountered, and any strategies under development to overcome them.

Sec. 3. RCW 28A.230.090 and 2004 c 19 s 103 are each amended to read as follows:

(1) The state board of education shall establish high school graduation requirements or equivalencies for students.

(a) Any course in Washington state history and government used to fulfill high school graduation requirements (~~(is encouraged to include)~~) shall consider including information on the culture, history, and government of the American Indian peoples who were the first inhabitants of the state.

(b) The certificate of academic achievement requirements under RCW 28A.655.061 or the certificate of individual achievement requirements under

RCW 28A.155.045 are required for graduation from a public high school but are not the only requirements for graduation.

(c) Any decision on whether a student has met the state board's high school graduation requirements for a high school and beyond plan shall remain at the local level.

(2) In recognition of the statutory authority of the state board of education to establish and enforce minimum high school graduation requirements, the state board shall periodically reevaluate the graduation requirements and shall report such findings to the legislature in a timely manner as determined by the state board.

(3) Pursuant to any requirement for instruction in languages other than English established by the state board of education or a local school district, or both, for purposes of high school graduation, students who receive instruction in American sign language or one or more American Indian languages shall be considered to have satisfied the state or local school district graduation requirement for instruction in one or more languages other than English.

(4) If requested by the student and his or her family, a student who has completed high school courses before attending high school shall be given high school credit which shall be applied to fulfilling high school graduation requirements if:

(a) The course was taken with high school students, if the academic level of the course exceeds the requirements for seventh and eighth grade classes, and the student has successfully passed by completing the same course requirements and examinations as the high school students enrolled in the class; or

(b) The academic level of the course exceeds the requirements for seventh and eighth grade classes and the course would qualify for high school credit, because the course is similar or equivalent to a course offered at a high school in the district as determined by the school district board of directors.

(5) Students who have taken and successfully completed high school courses under the circumstances in subsection (4) of this section shall not be required to take an additional competency examination or perform any other additional assignment to receive credit.

(6) At the college or university level, five quarter or three semester hours equals one high school credit.

NEW SECTION. Sec. 4. A new section is added to chapter 28A.320 RCW to read as follows:

(1) Each school district board of directors is encouraged to incorporate curricula about the history, culture, and government of the nearest federally recognized Indian tribe or tribes, so that students learn about the unique heritage and experience of their closest neighbors. School districts near Washington's borders are encouraged to include federally recognized Indian tribes whose traditional lands and territories included parts of Washington, but who now reside in Oregon, Idaho, and British Columbia. School districts and tribes are encouraged to work together to develop such curricula.

(2) As they conduct regularly scheduled reviews and revisions of their social studies and history curricula, school districts are encouraged to collaborate with any federally recognized Indian tribe within their district, and with neighboring Indian tribes, to incorporate expanded and improved curricular

materials about Indian tribes, and to create programs of classroom and community cultural exchanges.

(3) School districts are encouraged to collaborate with the office of the superintendent of public instruction on curricular areas regarding tribal government and history that are statewide in nature, such as the concept of tribal sovereignty and the history of federal policy towards federally recognized Indian tribes. The program of Indian education within the office of the superintendent of public instruction is encouraged to help local school districts identify federally recognized Indian tribes whose reservations are in whole or in part within the boundaries of the district and/or those that are nearest to the school district.

Passed by the House April 20, 2005.

Passed by the Senate April 7, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 206

[Substitute House Bill 1496]

INDIAN TRIBES—ENROLLMENT CARDS—IDENTIFICATION

AN ACT Relating to enrollment cards issued by federally recognized Indian tribes; and amending RCW 66.16.040 and 70.155.090.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 66.16.040 and 2004 c 61 s 1 are each amended to read as follows:

Except as otherwise provided by law, an employee in a state liquor store or agency may sell liquor to any person of legal age to purchase alcoholic beverages and may also sell to holders of permits such liquor as may be purchased under such permits.

Where there may be a question of a person's right to purchase liquor by reason of age, such person shall be required to present any one of the following officially issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

(1) Liquor control authority card of identification of any state or province of Canada.

(2) Driver's license, instruction permit or identification card of any state or province of Canada, or "identocard" issued by the Washington state department of licensing pursuant to RCW 46.20.117.

(3) United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents, which may include an imbedded, digital signature in lieu of a visible signature.

(4) Passport.

(5) Merchant Marine identification card issued by the United States Coast Guard.

(6) Enrollment card issued by the governing authority of a federally recognized Indian tribe located in Washington, if the enrollment card incorporates security features comparable to those implemented by the department of licensing for Washington drivers' licenses. At least ninety days

prior to implementation of an enrollment card under this subsection, the appropriate tribal authority shall give notice to the board. The board shall publish and communicate to licensees regarding the implementation of each new enrollment card.

The board may adopt such regulations as it deems proper covering the cards of identification listed in this section.

No liquor sold under this section shall be delivered until the purchaser has paid for the liquor in cash, except as allowed under RCW 66.16.041. The use of a personal credit card does not rely upon the credit of the state as prohibited by Article VIII, section 5 of the state Constitution.

Sec. 2. RCW 70.155.090 and 1993 c 507 s 10 are each amended to read as follows:

(1) Where there may be a question of a person's right to purchase or obtain tobacco products by reason of age, the retailer, sampler, or agent thereof, shall require the purchaser to present any one of the following officially issued identification that shows the purchaser's age and bears his or her signature and photograph: (a) Liquor control authority card of identification of a state or province of Canada; (b) driver's license, instruction permit, or identification card of a state or province of Canada; (c) "identocard" issued by the Washington state department of licensing under chapter 46.20 RCW; (d) United States military identification; (e) passport; (f) enrollment card, issued by the governing authority of a federally recognized Indian tribe located in Washington, that incorporates security features comparable to those implemented by the department of licensing for Washington drivers' licenses. At least ninety days prior to implementation of an enrollment card under this subsection, the appropriate tribal authority shall give notice to the board. The board shall publish and communicate to licensees regarding the implementation of each new enrollment card; or (g) merchant marine identification card issued by the United States coast guard.

(2) It is a defense to a prosecution under RCW 26.28.080(~~(+)~~) that the person making a sale reasonably relied on any of the officially issued identification as defined in subsection (1) of this section. The liquor control board shall waive the suspension or revocation of a license if the licensee clearly establishes that he or she acted in good faith to prevent violations and a violation occurred despite the licensee's exercise of due diligence.

Passed by the House April 20, 2005.

Passed by the Senate April 13, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 207

[Substitute House Bill 1708]

DROPOUT PREVENTION

AN ACT Relating to dropout prevention; amending RCW 28A.175.010 and 28A.600.300; adding a new section to chapter 28A.175 RCW; and creating new sections.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 28A.175 RCW to read as follows:

The superintendent of public instruction shall review and evaluate promising programs and practices for dropout prevention. The superintendent may consult with education administrators and providers, parents, students, and researchers as appropriate, and shall include in the review dropout prevention programs using nonpunitive approaches to school discipline. The superintendent shall report to the legislature by December 1, 2005, and recommend:

(1) The most promising comprehensive dropout prevention programs and practices that encompass school-wide or district-wide restructuring of the delivery of educational services;

(2) The most promising targeted dropout prevention programs and practices designed to provide social and other services in coordination with educational services to students who are at risk of dropping out due to the presence of family, personal, economic, or cultural circumstances; and

(3) Policy and other changes to enhance the ability of career and technical education and skills center programs to further contribute to dropout prevention efforts.

***NEW SECTION. Sec. 2.** *(1) To the extent funds are appropriated, the office of the superintendent of public instruction in conjunction with the administrative office of the courts, shall convene a work group to evaluate the following:*

(a) Review the implementation of the Becca bill and other school attendance measures to determine their consistent application across the state and their conformance with state law;

(b) The definition of excused and unexcused absences;

(c) Creating incentives for school districts to improve student attendance; and

(d) Related data collection requirements on graduation, dropouts, student transfer, and other issues related to student attendance.

(2) The work group shall include representatives of the following groups, agencies, and organizations:

(a) The office of the superintendent of public instruction;

(b) The state board of education;

(c) Teachers;

(d) School administrators;

(e) School counselors;

(f) Truancy officers and truancy board members;

(g) The administrator for the courts;

(h) Court judges;

(i) Prosecuting attorneys;

(j) The office of attorney general;

(k) Institutions of higher education;

(l) Members of the legislature; and

(m) Other interested education organizations and personnel.

(3) The office of the superintendent of public instruction shall report the findings of the work group under this section to the governor, the state board of education, and the legislature no later than January 10, 2006.

*Sec. 2 was vetoed. See message at end of chapter.

Sec. 3. RCW 28A.175.010 and 1991 c 235 s 4 are each amended to read as follows:

Each school district shall account for the educational progress of each of its students. To achieve this, school districts shall be required to report annually to the superintendent of public instruction:

(1) For students enrolled in each of a school district's high school programs:

(a) The number of students (~~(eligible for graduation)~~) who graduate in fewer than four years;

(b) The number of students who graduate in four years;

(c) The number of students who remain in school for more than four years but who eventually graduate and the number of students who remain in school for more than four years but do not graduate;

(d) The number of students who transfer to other schools;

(e) ~~(The number of students who enter from other schools;~~

~~(f))~~ The number of students in the ninth through twelfth grade who drop out of school over a four-year period; and

~~((g))~~ (f) The number of students whose status is unknown.

(2) Dropout rates of students in each of the grades (~~(nine))~~ seven through twelve.

(3) Dropout rates for student populations in each of the grades (~~(nine))~~ seven through twelve by:

(a) Ethnicity;

(b) Gender;

(c) Socioeconomic status; and

(d) Disability status.

(4) The causes or reasons, or both, attributed to students for having dropped out of school in grades (~~(nine))~~ seven through twelve.

(5) The superintendent of public instruction shall adopt rules under chapter 34.05 RCW to assure uniformity in the information districts are required to report under subsections (1) through (4) of this section. In developing rules, the superintendent of public instruction shall consult with school districts, including administrative and counseling personnel, with regard to the methods through which information is to be collected and reported.

(6) In reporting on the causes or reasons, or both, attributed to students for having dropped out of school, school building officials shall, to the extent reasonably practical, obtain such information directly from students. In lieu of obtaining such information directly from students, building principals and counselors shall identify the causes or reasons, or both, based on their professional judgment.

(7) The superintendent of public instruction shall report annually to the legislature the information collected under subsections (1) through (4) of this section.

NEW SECTION. Sec. 4. The legislature finds that the dropout rate of the state's Native American students is the highest in the state. Approximately one-half of all Native American high school students drop out before graduating with a diploma. The legislature also finds that culturally relevant educational opportunities are important contributors to other efforts to increase the rates of high school graduation for Native American students. The legislature further

finds that the higher education participation rate for Native American students is the lowest in the state, and that more can be done to encourage Native American students to pursue higher educational opportunities. The legislature intends to authorize accredited public tribal colleges to participate in the running start program for the purposes of reducing the dropout rate of Native American students and encouraging greater participation rates in higher education.

Sec. 5. RCW 28A.600.300 and 2002 c 80 s 1 are each amended to read as follows:

For the purposes of RCW 28A.600.310 through 28A.600.400, "participating institution of higher education" or "institution of higher education" means:

(1) A community or technical college as defined in RCW 28B.50.030; ((and))

(2) A public tribal college located in Washington and accredited by the northwest commission on colleges and universities or another accrediting association recognized by the United States department of education; and

(3) Central Washington University, Eastern Washington University, Washington State University, and The Evergreen State College, if the institution's governing board decides to participate in the program in RCW 28A.600.310 through 28A.600.400.

Passed by the House April 23, 2005.

Passed by the Senate April 22, 2005.

Approved by the Governor April 28, 2005, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 28, 2005.

Note: Governor's explanation of partial veto is as follows:

"I am returning, without my approval as to Section 2, Substitute House Bill No. 1708 entitled:

"AN ACT Relating to dropout prevention"

This bill encompasses four activities related to school dropouts: a study of effective school prevention programs and practices, a study of Becca bill issues, changes in enrollment and dropout data collection, and, authorization of accredited public tribal colleges to participate in the Running Start Program.

Section 2 of this bill provides for the Office of the Superintendent of Public Instruction (OSPI), in conjunction with the administrative offices of the courts, to convene a work group to evaluate four items: (1) the implementation of the Becca bill and other school attendance measures with regard consistent implementation and conformance with state law; (2) the definition of excused and unexcused absences; (3) the creation of incentives for school districts to improve student attendance; and (4) data collection requirements related to graduation, dropouts, student transfer and school attendance issues.

Several of the items in Section 2 are included in other sections of the bill. For example, the OSPI is charged with reporting on a study of the most promising dropout prevention programs and practices in Section 1. The OSPI is also charged with making changes in enrollment and dropout data collection in Section 3. Both of these activities are key to helping all of us better understand which students are most likely to dropout and what are the most effective ways of reaching these students.

Section 2 specifically states that it should be implemented to the extent funds are appropriated. Unfortunately, funding was not appropriated in this legislation or in the 2005-07 appropriations act to carry out the provisions of Substitute House Bill No. 1708. Therefore, I must carefully weigh whether the activities of the bill should be authorized at this time, knowing that resources are scarce.

For these reasons, I have vetoed Section 2 of Substitute House Bill 1708.

With the exception of Section 2, Substitute House Bill No. 1708 is approved."

CHAPTER 208

[House Bill 1915]

INDIAN TRIBES—CIGARETTE TAX CONTRACTS

AN ACT Relating to adding additional tribes with whom the governor may contract with under RCW 43.06.460; and amending RCW 43.06.460.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 43.06.460 and 2003 c 236 s 1 are each amended to read as follows:

(1) The governor is authorized to enter into cigarette tax contracts with the Squaxin Island Tribe, the Nisqually Tribe, Tulalip Tribes, the Muckleshoot Indian Tribe, the Quinault Nation, the Jamestown S'Klallam Indian Tribe, the Port Gamble S'Klallam Tribe, the Stillaguamish Tribe, the Sauk-Suiattle Tribe, the Skokomish Indian Tribe, the Yakama Nation, the Suquamish Tribe, the Nooksack Indian Tribe, the Lummi Nation, the Chehalis Confederated Tribes, the Upper Skagit Tribe, the Snoqualmie Tribe, the Swinomish Tribe, the Samish Indian Nation, the Quileute Tribe, ~~((and))~~ the Kalispel Tribe, the Confederated Tribes of the Colville Reservation, the Cowlitz Indian Tribe, the Lower Elwha Klallam Tribe, and the Makah Tribe. Each contract adopted under this section shall provide that the tribal cigarette tax rate be one hundred percent of the state cigarette and state and local sales and use taxes within three years of enacting the tribal tax and shall be set no lower than eighty percent of the state cigarette and state and local sales and use taxes during the three-year phase-in period. The three-year phase-in period shall be shortened by three months each quarter the number of cartons of nontribal manufactured cigarettes is at least ten percent or more than the quarterly average number of cartons of nontribal manufactured cigarettes from the six-month period preceding the imposition of the tribal tax under the contract. Sales at a retailer operation not in existence as of the date a tribal tax under this section is imposed are subject to the full rate of the tribal tax under the contract. The tribal cigarette tax is in lieu of the state cigarette and state and local sales and use taxes, as provided in RCW 43.06.455(3).

(2) A cigarette tax contract under this section is subject to RCW 43.06.455.

Passed by the House March 10, 2005.

Passed by the Senate April 11, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 209

[Substitute House Bill 1236]

FAILING TO SUMMON ASSISTANCE

AN ACT Relating to failing to summon assistance; adding new sections to chapter 9A.36 RCW; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 9A.36 RCW to read as follows:

A person is guilty of the crime of failing to summon assistance if:

(1) He or she was present when a crime was committed against another person; and

(2) He or she knows that the other person has suffered substantial bodily harm as a result of the crime committed against the other person and that the other person is in need of assistance; and

(3) He or she could reasonably summon assistance for the person in need without danger to himself or herself and without interference with an important duty owed to a third party; and

(4) He or she fails to summon assistance for the person in need; and

(5) Another person is not summoning or has not summoned assistance for the person in need of such assistance.

NEW SECTION. Sec. 2. A new section is added to chapter 9A.36 RCW to read as follows:

A violation of section 1 of this act is a misdemeanor.

Passed by the House April 18, 2005.

Passed by the Senate April 11, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 210

[Engrossed Senate Bill 5423]

LICENSE PLATES—APPLICATIONS—MORATORIUM

AN ACT Relating to special license plates; amending RCW 46.16.385, 46.16.570, 46.16.600, 46.16.690, 46.16.725, and 46.16.745; reenacting and amending RCW 46.16.316; adding a new section to chapter 46.16 RCW; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 46.16 RCW to read as follows:

(1) The following special license plate series created by the legislature may be personalized: (a) RCW 46.16.301 as currently law; (b) RCW 46.16.301(1) (a), (b), or (c), as it existed before amendment by section 5, chapter 291, Laws of 1997; (c) RCW 46.16.305, except those plates issued under RCW 46.16.305 (1) and (2); (d) RCW 46.16.324; (e) RCW 46.16.385; or (f) RCW 46.16.745.

(2) Personalized special plates issued under this section may be personalized only by using numbers or letters, or any combination thereof not exceeding seven positions, and not less than one position, to the extent that there are no conflicts with existing license plate series. A personalized special license plate is subject to the same requirements as personalized license plates listed in RCW 46.16.575, 46.16.580, 46.16.590, 46.16.595, and 46.16.600.

(3) In addition to any other fees and taxes due at the time of registration, applicants for a personalized special license plate must pay both the fees to purchase and renew a special plate as set out in the statute creating the special plate and the personalized plate as required in RCW 46.16.585 and 46.16.606. The special plate fee must be distributed in accordance with the requirements set

out in the statute creating the special plate. The personalized plate fee must be distributed under RCW 46.16.605 and 46.16.606. The transfer of personalized special plates is to be administered under RCW 46.16.316.

Sec. 2. RCW 46.16.316 and 2004 c 223 s 4, 2004 c 221 s 5, 2004 c 48 s 5, and 2004 c 35 s 5 are each reenacted and amended to read as follows:

Except as provided in RCW 46.16.305:

(1) When a person who has been issued a special license plate or plates: (a) Under RCW 46.16.30901, 46.16.30903, 46.16.30905, or 46.16.301 as it existed before amendment by section 5, chapter 291, Laws of 1997, or under RCW 46.16.305(2) or 46.16.324; ~~((b))~~ (b) approved by the special license plate review board under RCW 46.16.715 through 46.16.775; or (c) under section 1 of this act sells, trades, or otherwise transfers or releases ownership of the vehicle upon which the special license plate or plates have been displayed, he or she shall immediately report the transfer of such plate or plates to an acquired vehicle or vehicle eligible for such plates pursuant to departmental rule, or he or she shall surrender such plates to the department immediately if such surrender is required by departmental rule. If a person applies for a transfer of the plate or plates to another eligible vehicle, a transfer fee of ten dollars shall be charged in addition to all other applicable fees. Such transfer fees shall be deposited in the motor vehicle fund. Failure to surrender the plates when required is a traffic infraction.

(2) If the special license plate or plates issued by the department become lost, defaced, damaged, or destroyed, application for a replacement special license plate or plates shall be made and fees paid as provided by law for the replacement of regular license plates.

Sec. 3. RCW 46.16.385 and 2004 c 222 s 1 are each amended to read as follows:

(1) The department shall design and issue disabled parking emblem versions of special license plates issued under (a) RCW 46.16.301; (b) RCW 46.16.305, except those plates issued under RCW 46.16.305 (1) and (2); (c) RCW 46.16.324; (d) RCW 46.16.745; (e) RCW 73.04.110; (f) RCW 73.04.115; ~~((g))~~ (g) RCW 46.16.301(1) (a), (b), or (c), as it existed before amendment by section 5, chapter 291, Laws of 1997; (h) RCW 46.16.565; or (i) plates issued under section 1 of this act. The disabled parking emblem version of the special plate must display the universal symbol of access that may be used in lieu of the parking placard issued to persons who qualify for special parking privileges under RCW 46.16.381. The department may not charge an additional fee for the issuance of the special disabled parking emblem license plate, except the regular motor vehicle registration fee, the fee associated with the particular special plate, and any other fees and taxes required to be paid upon registration of a motor vehicle. The emblem must be incorporated into the design of the special license plate in a manner to be determined by the department, and under existing vehicular licensing procedures and existing laws.

(2) Persons who qualify for special parking privileges under RCW 46.16.381, and who have applied and paid the appropriate fee for any of the special license plates listed in subsection (1) of this section, are entitled to receive from the department a special disabled parking emblem license plate. The special disabled parking emblem license plate may be used for one vehicle

registered in the disabled person's name. Persons who have been issued the parking privileges or who are using a vehicle displaying the special disabled parking emblem license plate may park in places reserved for mobility disabled persons.

(3) The special disabled parking emblem license plate must be administered in the same manner as the plates issued under RCW 46.16.381.

(4) The department shall adopt rules to implement this section.

Sec. 4. RCW 46.16.570 and 1986 c 108 s 1 are each amended to read as follows:

Except for personalized plates issued under section 1 of this act, the personalized license plates shall be the same design as regular license plates, and shall consist of numbers or letters, or any combination thereof not exceeding seven positions unless proposed by the department and approved by the Washington state patrol and not less than one position, to the extent that there are no conflicts with existing passenger, commercial, trailer, motorcycle, or special license plates series or with the provisions of RCW 46.16.230 or 46.16.235: PROVIDED, That the maximum number of positions on personalized license plates for motorcycles shall be designated by the department.

Sec. 5. RCW 46.16.600 and 1979 c 158 s 143 are each amended to read as follows:

(1) The director of licensing may establish such rules and regulations as may be necessary to carry out the purposes of RCW 46.16.560 through 46.16.595.

(2) Upon direction by the board, the department shall adopt a rule limiting the ability of organizations and governmental entities to apply for more than one license plate series.

Sec. 6. RCW 46.16.690 and 2003 c 361 s 502 are each amended to read as follows:

The department shall offer license plate design services to organizations that are sponsoring a new special license plate series or are seeking to redesign the appearance of an existing special license plate series that they sponsored. In providing this service, the department must work with the requesting organization in determining the specific qualities of the new plate design and must provide full design services to the organization. The department shall collect from the requesting organization a fee of (~~one thousand five~~) two hundred dollars for providing license plate design services. This fee includes one original license plate design and up to five additional renditions of the original design. If the organization requests the department to provide further renditions, in addition to the five renditions provided for under the original fee, the department shall collect an additional fee of (~~five~~) one hundred dollars per rendition. All revenue collected under this section must be deposited into the multimodal transportation account.

Sec. 7. RCW 46.16.725 and 2003 c 196 s 103 are each amended to read as follows:

(1) The creation of the board does not in any way preclude the authority of the legislature to independently propose and enact special license plate legislation.

(2) The board must review and either approve or reject special license plate applications submitted by sponsoring organizations.

(3) Duties of the board include but are not limited to the following:

(a) Review and approve the annual financial reports submitted by sponsoring organizations with active special license plate series and present those annual financial reports to the legislative transportation committee;

(b) Report annually to the legislative transportation committee on the special license plate applications that were considered by the board;

(c) Issue approval and rejection notification letters to sponsoring organizations, the department, the chairs of the senate and house of representatives transportation committees, and the legislative sponsors identified in each application. The letters must be issued within seven days of making a determination on the status of an application;

(d) Review annually the number of plates sold for each special license plate series created after January 1, 2003. The board may submit a recommendation to discontinue a special plate series to the chairs of the senate and house of representatives transportation committees;

(e) Provide policy guidance and directions to the department concerning the adoption of rules necessary to limit the number of special license plates that an organization or a governmental entity may apply for.

(4) In order to assess the effects and impact of the proliferation of special license plates, the legislature declares a temporary moratorium on the issuance of any additional plates until June 1, 2007. During this period of time, the special license plate review board created in RCW 46.16.705 and the department of licensing are prohibited from accepting, reviewing, processing, or approving any applications. Additionally, no special license plate may be enacted by the legislature during the moratorium, unless the proposed license plate has been approved by the board before February 15, 2005.

Sec. 8. RCW 46.16.745 and 2003 c 196 s 301 are each amended to read as follows:

(1) A sponsoring organization meeting the requirements of RCW 46.16.735, applying for the creation of a special license plate to the special license plate review board must, on an application supplied by the department, provide the minimum application requirements in subsection (2) of this section. ~~((If the sponsoring organization cannot meet the payment requirements of subsection (2) of this section, then the organization must meet the requirements of subsection (3) of this section.))~~

(2) The sponsoring organization shall:

(a) Submit prepayment of all start-up costs associated with the creation and implementation of the special license plate in an amount determined by the department. The department shall place this money into the special license plate applicant trust account created under RCW 46.16.755(~~((3))~~) (4);

(b) Provide a proposed license plate design;

(c) Provide a marketing strategy outlining short and long-term marketing plans for ~~((the))~~ each special license plate and a financial analysis outlining the anticipated revenue and the planned expenditures of the revenues derived from the sale of the special license plate;

(d) Provide a signature of a legislative sponsor and proposed legislation creating the special license plate; ~~((and))~~

(e) Provide proof of organizational qualifications as determined by the department as provided for in RCW 46.16.735;

(f) Provide signature sheets that include signatures from individuals who intend to purchase the special license plate and the number of plates each individual intends to purchase. The sheets must reflect a minimum of three thousand five hundred intended purchases of the special license plate.

~~(3) ((If the sponsoring organization is not able to meet the payment requirements of subsection (2)(a) of this section and can demonstrate this fact to the satisfaction of the department, the sponsoring organization shall:~~

~~(a) Submit an application and nonrefundable fee of two thousand dollars, for deposit in the motor vehicle account, to the department;~~

~~(b) Provide signature sheets that include signatures from individuals who intend to purchase the special license plate and the number of plates each individual intends to purchase. The sheets must reflect a minimum of two thousand intended purchases of the special license plate;~~

~~(c) Provide a proposed license plate design;~~

~~(d) Provide a marketing strategy outlining short and long term marketing plans for the special license plate and a financial analysis outlining the anticipated revenue and the planned expenditures of the revenues derived from the sale of the special license plate;~~

~~(e) Provide a signature of a legislative sponsor and proposed legislation creating the special license plate; and~~

~~(f) Provide proof of organizational qualifications as determined by the department as provided in RCW 46.16.735.~~

~~(4)) After an application is approved by the special license plate review board, the application need not be reviewed again by the board for a period of three years.~~

NEW SECTION. Sec. 9. Section 1 of this act takes effect March 1, 2007.

Passed by the Senate April 18, 2005.

Passed by the House April 12, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 211

[Substitute Senate Bill 5449]

DEPARTMENT OF ECOLOGY—LIEN AUTHORITY

AN ACT Relating to providing the department of ecology with lien authority to facilitate the recovery of remedial action costs; amending RCW 70.105D.050 and 70.105D.060; and adding a new section to chapter 70.105D RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 70.105D RCW to read as follows:

(1) It is in the public interest for the department to recover remedial action costs incurred in discharging its responsibility under this chapter, as these recovered funds can then be applied to the cleanup of other facilities. Thus, in addition to other cost-recovery mechanisms provided under this chapter, this section is intended to facilitate the recovery of state funds spent on remedial

actions by providing the department with lien authority. This will also prevent a facility owner or mortgagee from gaining a financial windfall from increased land value resulting from department-conducted remedial actions at the expense of the state taxpayers.

(2) If the state of Washington incurs remedial action costs relating to a remedial action of real property, and those remedial action costs are unrecovered by the state of Washington, the department may file a lien against that real property.

(a) Except as provided in (c) of this subsection, liens filed under this section shall have priority in rank over all other privileges, liens, monetary encumbrances, or other security interests affecting the real property, whenever incurred, filed, or recorded, except for the following liens:

(i) Local and special district property tax assessments; and

(ii) Mortgage liens recorded before liens or notices of intent to conduct remedial actions are recorded under this section.

(b) Liens filed pursuant to (a) and (c) of this subsection shall not exceed the remedial action costs incurred by the state.

(c)(i) If the real property for which the department has incurred remedial action costs is abandoned, the department may choose to limit the amount of the lien to the increase in the fair market value of the real property that is attributable to a remedial action conducted by the department. The increase in fair market value shall be determined by subtracting the county assessor's value of the real property for the most recent year prior to remedial action being initiated from the value of the real property after remedial action. The value of the real property after remedial action shall be determined by the bona fide purchase price of the real property or by a real estate appraiser retained by the department. Liens limited in this way have priority in rank over all other privileges, liens, monetary encumbrances, or other security interests affecting the real property, whenever incurred, filed, or recorded.

(ii) For the purposes of this subsection, "abandoned" means there has not been significant business activity on the real property for three years or property taxes owed on the real property are three years in arrears prior to the department incurring costs attributable to this lien.

(d) The department shall, when notifying potentially liable persons of their potential liability under RCW 70.105D.040, include a notice stating that if the department incurs remedial action costs relating to the remediation of real property and the costs are not recovered by the department, the department may file a lien against that real property under this section.

(e) Except for emergency remedial actions, the department must provide notice to the following persons before initiating remedial actions conducted by persons under contract to the department on real property on which a lien may be filed under this section:

(i) The real property owner;

(ii) Mortgagees;

(iii) Lienholders of record;

(iv) Persons known to the department to be conducting remedial actions at the facility at the time of such notice; and

(v) Persons known to the department to be under contract to conduct remedial actions at the facility at the time of such notice.

For emergency remedial actions, this notice shall be provided within thirty days after initiation of the emergency remedial actions.

(f) The department may record a copy of the notice in (e) of this subsection, along with a legal description of the property on which the remedial action will take place, with the county auditor in the county where the real property is located. If the department subsequently files a lien, the effective date of the lien will be the date this notice was recorded.

(3) Before filing a lien under this section, the department shall give the owner of real property on which the lien is to be filed and mortgagees and lienholders of record a notice of its intent to file a lien:

(a) The notice required under this subsection (3) must be sent by certified mail to the real property owner and mortgagees of record at the addresses listed in the recorded documents. If the real property owner is unknown or if a mailed notice is returned as undeliverable, the department shall provide notice by posting a legal notice in the newspaper of largest circulation in the county the site is located. The notice shall provide:

(i) A statement of the purpose of the lien;

(ii) A brief description of the real property to be affected by the lien;

(iii) A statement of the remedial action costs incurred by the state related to the real property affected by the lien;

(iv) A brief statement of facts showing probable cause that the real property is the subject of the remedial action costs incurred by the department; and

(v) The time period following service or other notice during which any recipient of the notice whose legal rights may be affected by the lien may comment on the notice.

(b) Any comments on the notice must be received by the department on or before thirty days following service or other provision of the notice of intent to file a lien.

(c) If no comments are received by the department, the lien may be filed on the real property immediately.

(d) If the department receives any comments on the lien, the department shall determine if there is probable cause for filing the certificate of lien. If the department determines there is probable cause, the department may file the lien. Any further challenge to the lien may only occur at the times specified under RCW 70.105D.060.

(e) If the department has reason to believe that exigent circumstances require the filing of a lien prior to giving notice under this subsection (3), or prior to the expiration of the time period for comments, the department may file the lien immediately. For the purposes of this subsection (3), exigent circumstances include, but are not limited to, an imminent bankruptcy filing by the real property owner, or the imminent transfer or sale of the real property subject to lien by the real property owner, or both.

(4) A lien filed under this section is effective when a statement of lien is filed with the county auditor in the county where the real property is located. The statement of lien must include a description of the real property subject to lien and the amount of the lien.

(5) Unless the department determines it is in the public interest to remove the lien, the lien continues until the liability for the remedial action costs have been satisfied through sale of the real property, foreclosure, or other means

agreed to by the department. Any action for foreclosure of the lien shall be brought by the attorney general in a civil action in the court having jurisdiction and in the manner prescribed for the judicial foreclosure of a mortgage.

(6)(a) This section does not apply to real property owned by a local government or special purpose district or real property used solely for residential purposes and consisting of four residential units or less at the time the lien is recorded. This limitation does not apply to illegal drug manufacturing and storage sites under chapter 64.44 RCW.

(b) If the real property owner has consented to the department filing a lien on the real property, then only subsection (3)(a)(i) through (iii) of this section requiring notice to mortgagees and lienholders of record apply.

Sec. 2. RCW 70.105D.050 and 2002 c 288 s 4 are each amended to read as follows:

(1) With respect to any release, or threatened release, for which the department does not conduct or contract for conducting remedial action and for which the department believes remedial action is in the public interest, the director shall issue orders or agreed orders requiring potentially liable persons to provide the remedial action. Any liable person who refuses, without sufficient cause, to comply with an order or agreed order of the director is liable in an action brought by the attorney general for:

(a) Up to three times the amount of any costs incurred by the state as a result of the party's refusal to comply; and

(b) A civil penalty of up to twenty-five thousand dollars for each day the party refuses to comply.

The treble damages and civil penalty under this subsection apply to all recovery actions filed on or after March 1, 1989.

(2) Any person who incurs costs complying with an order issued under subsection (1) of this section may petition the department for reimbursement of those costs. If the department refuses to grant reimbursement, the person may within thirty days thereafter file suit and recover costs by proving that he or she was not a liable person under RCW 70.105D.040 and that the costs incurred were reasonable.

(3) The attorney general shall seek, by filing an action if necessary, to recover the amounts spent by the department for investigative and remedial actions and orders, and agreed orders, including amounts spent prior to March 1, 1989.

(4) The attorney general may bring an action to secure such relief as is necessary to protect human health and the environment under this chapter.

(5)(a) Any person may commence a civil action to compel the department to perform any nondiscretionary duty under this chapter. At least thirty days before commencing the action, the person must give notice of intent to sue, unless a substantial endangerment exists. The court may award attorneys' fees and other costs to the prevailing party in the action.

(b) Civil actions under this section and RCW 70.105D.060 may be brought in the superior court of Thurston county or of the county in which the release or threatened release exists.

(6) Any person who fails to provide notification of releases consistent with RCW 70.105D.110 or who submits false information is liable in an action

brought by the attorney general for a civil penalty of up to five thousand dollars per day for each day the party refuses to comply.

(7) Any person who owns real property or lender holding a mortgage on real property that is subject to a lien filed under section 1 of this act may petition the department to have the lien removed or the amount of the lien reduced. If, after consideration of the petition and the information supporting the petition, the department decides to deny the request, the person may, within ninety days after receipt of the department's denial, file suit for removal or reduction of the lien. The person is entitled to removal of a lien filed under section 1(2)(a) of this act if they can prove by a preponderance of the evidence that the person is not a liable party under RCW 70.105D.040. The person is entitled to a reduction of the amount of the lien if they can prove by a preponderance of the evidence:

(a) For liens filed under section 1(2)(a) of this act, the amount of the lien exceeds the remedial action costs the department incurred related to cleanup of the real property; and

(b) For liens filed under section 1(2)(c) of this act, the amount of the lien exceeds the remedial action costs the department incurred related to cleanup of the real property or exceeds the increase of the fair market value of the real property solely attributable to the remedial action conducted by the department.

Sec. 3. RCW 70.105D.060 and 1994 c 257 s 13 are each amended to read as follows:

The department's investigative and remedial decisions under RCW 70.105D.030 and 70.105D.050, its decisions regarding filing a lien under section 1 of this act, and its decisions regarding liable persons under RCW 70.105D.020(~~((8) and~~) (16), 70.105D.040, 70.105D.050, and section 1 of this act shall be reviewable exclusively in superior court and only at the following times: (1) In a cost recovery suit under RCW 70.105D.050(3); (2) in a suit by the department to enforce an order or an agreed order, or seek a civil penalty under this chapter; (3) in a suit for reimbursement under RCW 70.105D.050(2); (4) in a suit by the department to compel investigative or remedial action; (~~and~~) (5) in a citizen's suit under RCW 70.105D.050(5); and (6) in a suit for removal or reduction of a lien under RCW 70.105D.050(7). Except in suits for reduction or removal of a lien under RCW 70.105D.050(7), the court shall uphold the department's actions unless they were arbitrary and capricious. In suits for reduction or removal of a lien under RCW 70.105D.050(7), the court shall review such suits pursuant to the standards set forth in RCW 70.105D.050(7).

Passed by the Senate April 18, 2005.

Passed by the House April 11, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 212

[Senate Bill 5979]

SEARCH AND RESCUE DOGS

AN ACT Relating to search and rescue dogs; amending RCW 9A.56.030; adding a new section to chapter 9.91 RCW; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 9A.20 RCW to read as follows:

(1)(a)(i) Any person who has received notice that his or her behavior is interfering with the use of an on-duty search and rescue dog who continues with reckless disregard to interfere with the use of an on-duty search and rescue dog by obstructing, intimidating, or otherwise jeopardizing the safety of the search and rescue dog user or his or her search and rescue dog is guilty of a misdemeanor punishable according to chapter 9A.20 RCW, except when (a)(ii) of this subsection applies.

(ii) A second or subsequent violation of (a)(i) of this subsection is a gross misdemeanor punishable according to chapter 9A.20 RCW.

(b)(i) Any person who, with reckless disregard, allows his or her dog to interfere with the use of an on-duty search and rescue dog by obstructing, intimidating, or otherwise jeopardizing the safety of the search and rescue dog user or his or her search and rescue dog is guilty of a misdemeanor punishable according to chapter 9A.20 RCW, except when (b)(ii) of this subsection applies.

(ii) A second or subsequent violation of (b)(i) of this subsection is a gross misdemeanor punishable according to chapter 9A.20 RCW.

(2)(a) Any person who, with reckless disregard, injures, disables, or causes the death of an on-duty search and rescue dog is guilty of a gross misdemeanor punishable according to chapter 9A.20 RCW.

(b) Any person who, with reckless disregard, allows his or her dog to injure, disable, or cause the death of an on-duty search and rescue dog is guilty of a gross misdemeanor punishable according to chapter 9A.20 RCW.

(3) Any person who intentionally injures, disables, or causes the death of an on-duty search and rescue dog is guilty of a class C felony.

(4) Any person who wrongfully obtains or exerts unauthorized control over an on-duty search and rescue dog with the intent to deprive the dog user of his or her search and rescue dog is guilty of theft in the first degree under RCW 9A.56.030.

(5)(a) In any case in which the defendant is convicted of a violation of this section, he or she shall also be ordered to make full restitution for all damages, including incidental and consequential expenses incurred by the search and rescue dog user and the dog that arise out of, or are related to, the criminal offense.

(b) Restitution for a conviction under this section shall include, but is not limited to:

(i) The value of the replacement of an incapacitated or deceased dog, the training of a replacement search and rescue dog, or retraining of the affected dog and all related veterinary and care expenses; and

(ii) Medical expenses of the search and rescue dog user, training of the dog user, and compensation for any wages or earned income lost by the search and rescue dog user as a result of a violation of subsection (1), (2), (3), or (4) of this section.

(6) Nothing in this section affects any civil remedies available for violation of this section.

(7) For purposes of this section, "search and rescue dog" means a dog that is trained for the purpose of search and rescue of persons lost or missing.

Sec. 2. RCW 9A.56.030 and 1995 c 129 s 11 are each amended to read as follows:

(1) A person is guilty of theft in the first degree if he or she commits theft of:

(a) Property or services which exceed(s) one thousand five hundred dollars in value other than a firearm as defined in RCW 9.41.010; ~~((or))~~

(b) Property of any value other than a firearm as defined in RCW 9.41.010 taken from the person of another; or

(c) A search and rescue dog, as defined in section 1 of this act, while the search and rescue dog is on duty.

(2) Theft in the first degree is a class B felony.

Passed by the Senate April 18, 2005.

Passed by the House April 7, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 213

[Engrossed House Bill 1003]

OFF-ROAD VEHICLES—NONHIGHWAY USE

AN ACT Relating to the operation of off-road vehicles on roadways; amending RCW 46.09.010, 46.09.120, and 46.37.010; reenacting and amending RCW 46.16.010; adding new sections to chapter 46.09 RCW; creating new sections; providing an effective date; providing an expiration date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that off-road recreational vehicles (ORVs) provide opportunities for a wide variety of outdoor recreation activities. The legislature further finds that the limited amount of ORV recreation areas presents a challenge for ORV recreational users, natural resource land managers, and private landowners. The legislature further finds that many nonhighway roads provide opportunities for ORV use and that these opportunities may reduce conflicts between users and facilitate responsible ORV recreation. However, restrictions intended for motor vehicles may prevent ORV use on certain roads, including forest service roads. Therefore, the legislature finds that local, state, and federal jurisdictions should be given the flexibility to allow ORV use on nonhighway roads they own and manage or for which they are authorized to allow public ORV use under an easement granted by the owner. Nothing in this act authorizes trespass on private property.

Sec. 2. RCW 46.09.010 and 1972 ex.s. c 153 s 2 are each amended to read as follows:

The provisions of this chapter shall apply to all lands in this state. Nothing in this chapter (~~((43.09 RCW)), RCW ((67.32.050, 67.32.080, 67.32.100, 67.32.130 or 67.32.140))~~ 79A.35.040, 79A.35.070, 79A.35.090, 79A.35.110, and 79A.35.120 shall be deemed to grant to any person the right or authority to enter upon private property without permission of the property owner.

Sec. 3. RCW 46.09.120 and 2003 c 377 s 1 are each amended to read as follows:

(1) It is a traffic infraction for any person to operate any nonhighway vehicle:

(a) In such a manner as to endanger the property of another;

(b) On lands not owned by the operator or owner of the nonhighway vehicle without a lighted headlight and taillight between the hours of dusk and dawn, or when otherwise required for the safety of others regardless of ownership;

(c) On lands not owned by the operator or owner of the nonhighway vehicle without an adequate braking device or when otherwise required for the safety of others regardless of ownership;

(d) Without a spark arrester approved by the department of natural resources;

(e) Without an adequate, and operating, muffling device which effectively limits vehicle noise to no more than eighty-six decibels on the "A" scale at fifty feet as measured by the Society of Automotive Engineers (SAE) test procedure J 331a, except that a maximum noise level of one hundred and five decibels on the "A" scale at a distance of twenty inches from the exhaust outlet shall be an acceptable substitute in lieu of the Society of Automotive Engineers test procedure J 331a when measured:

(i) At a forty-five degree angle at a distance of twenty inches from the exhaust outlet;

(ii) With the vehicle stationary and the engine running at a steady speed equal to one-half of the manufacturer's maximum allowable ("red line") engine speed or where the manufacturer's maximum allowable engine speed is not known the test speed in revolutions per minute calculated as sixty percent of the speed at which maximum horsepower is developed; and

(iii) With the microphone placed ten inches from the side of the vehicle, one-half way between the lowest part of the vehicle body and the ground plane, and in the same lateral plane as the rearmost exhaust outlet where the outlet of the exhaust pipe is under the vehicle;

(f) On lands not owned by the operator or owner of the nonhighway vehicle upon the shoulder or inside bank or slope of any nonhighway road or highway, or upon the median of any divided highway;

(g) On lands not owned by the operator or owner of the nonhighway vehicle in any area or in such a manner so as to unreasonably expose the underlying soil, or to create an erosion condition, or to injure, damage, or destroy trees, growing crops, or other vegetation;

(h) On lands not owned by the operator or owner of the nonhighway vehicle or on any nonhighway road or trail, when these are restricted to pedestrian or animal travel; (~~and~~)

(i) On any public lands in violation of rules and regulations of the agency administering such lands; and

(j) On a private nonhighway road in violation of section 4(3) of this act.

(2) It is a misdemeanor for any person to operate any nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance.

(3)(a) Except for an off-road vehicle equipped with seat belts and roll bars or an enclosed passenger compartment, it is a traffic infraction for any person to operate or ride an off-road vehicle on a nonhighway road without wearing upon his or her head a motorcycle helmet fastened securely while in motion. For

purposes of this section, "motorcycle helmet" has the same meaning as provided in RCW 46.37.530.

(b) Subsection (3)(a) of this section does not apply to an off-road vehicle operator operating on his or her own land.

(c) Subsection (3)(a) of this section does not apply to an off-road vehicle operator operating on agricultural lands owned or leased by the off-road vehicle operator or the operator's employer.

NEW SECTION. Sec. 4. A new section is added to chapter 46.09 RCW to read as follows:

(1) Except as otherwise provided in this section, it is lawful to operate an off-road vehicle upon a nonhighway road and in parking areas serving designated off-road vehicle areas if the state, federal, local, or private authority responsible for the management of the nonhighway road authorizes the use of off-road vehicles.

(2) Operations of an off-road vehicle on a nonhighway road under this section is exempt from licensing requirements of RCW 46.16.010 and vehicle lighting and equipment requirements of chapter 46.37 RCW.

(3) It is unlawful to operate an off-road vehicle upon a private nonhighway road if the road owner has not authorized the use of off-road vehicles.

(4) Nothing in this section authorizes trespass on private property.

NEW SECTION. Sec. 5. A new section is added to chapter 46.09 RCW to read as follows:

(1) Except as specified in subsection (2) of this section, no person under thirteen years of age may operate an off-road vehicle on or across a highway or nonhighway road in this state.

(2) Persons under thirteen years of age may operate an off-road vehicle on a nonhighway road designated for off-road vehicle use under the direct supervision of a person eighteen years of age or older possessing a valid license to operate a motor vehicle under chapter 46.20 RCW.

Sec. 6. RCW 46.16.010 and 2003 c 353 s 8 and 2003 c 53 s 238 are each reenacted and amended to read as follows:

(1) It is unlawful for a person to operate any vehicle over and along a public highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display vehicle license number plates therefor as by this chapter provided.

(2) Failure to make initial registration before operation on the highways of this state is a misdemeanor, and any person convicted thereof must be punished by a fine of no less than three hundred thirty dollars, no part of which may be suspended or deferred.

(3) Failure to renew an expired registration before operation on the highways of this state is a traffic infraction.

(4) The licensing of a vehicle in another state by a resident of this state, as defined in RCW 46.16.028, evading the payment of any tax or license fee imposed in connection with registration, is a gross misdemeanor punishable as follows:

(a) For a first offense, up to one year in the county jail and a fine equal to twice the amount of delinquent taxes and fees, no part of which may be suspended or deferred;

(b) For a second or subsequent offense, up to one year in the county jail and a fine equal to four times the amount of delinquent taxes and fees, no part of which may be suspended or deferred;

(c) For fines levied under (b) of this subsection, an amount equal to the avoided taxes and fees owed will be deposited in the vehicle licensing fraud account created in the state treasury;

(d) The avoided taxes and fees shall be deposited and distributed in the same manner as if the taxes and fees were properly paid in a timely fashion.

(5) These provisions shall not apply to the following vehicles:

(a) Motorized foot scooters;

(b) Electric-assisted bicycles;

(c) Off-road vehicles operating on nonhighway roads under section 4 of this act;

(d) Farm vehicles if operated within a radius of fifteen miles of the farm where principally used or garaged, farm tractors and farm implements including trailers designed as cook or bunk houses used exclusively for animal herding temporarily operating or drawn upon the public highways, and trailers used exclusively to transport farm implements from one farm to another during the daylight hours or at night when such equipment has lights that comply with the law;

~~((d))~~ (e) Spray or fertilizer applicator rigs designed and used exclusively for spraying or fertilization in the conduct of agricultural operations and not primarily for the purpose of transportation, and nurse rigs or equipment auxiliary to the use of and designed or modified for the fueling, repairing, or loading of spray and fertilizer applicator rigs and not used, designed, or modified primarily for the purpose of transportation;

~~((e))~~ (f) Fork lifts operated during daylight hours on public highways adjacent to and within five hundred feet of the warehouses which they serve: PROVIDED FURTHER, That these provisions shall not apply to vehicles used by the state parks and recreation commission exclusively for park maintenance and operations upon public highways within state parks;

~~((f))~~ (g) "Special highway construction equipment" defined as follows: Any vehicle which is designed and used primarily for grading of highways, paving of highways, earth moving, and other construction work on highways and which is not designed or used primarily for the transportation of persons or property on a public highway and which is only incidentally operated or moved over the highway. It includes, but is not limited to, road construction and maintenance machinery so designed and used such as portable air compressors, air drills, asphalt spreaders, bituminous mixers, bucket loaders, track laying tractors, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers, earth moving scrapers and carryalls, lighting plants, welders, pumps, power shovels and draglines, self-propelled and tractor-drawn earth moving equipment and machinery, including dump trucks and tractor-dump trailer combinations which either (i) are in excess of the legal width, or (ii) which, because of their length, height, or unladen weight, may not be moved on a public highway without the permit specified in RCW 46.44.090 and which are not operated laden except within the boundaries of the project limits as defined by the contract, and other similar types of construction equipment, or (iii) which are driven or moved upon a public highway only for

the purpose of crossing such highway from one property to another, provided such movement does not exceed five hundred feet and the vehicle is equipped with wheels or pads which will not damage the roadway surface.

Exclusions:

"Special highway construction equipment" does not include any of the following:

Dump trucks originally designed to comply with the legal size and weight provisions of this code notwithstanding any subsequent modification which would require a permit, as specified in RCW 46.44.090, to operate such vehicles on a public highway, including trailers, truck-mounted transit mixers, cranes and shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(6) The following vehicles, whether operated solo or in combination, are exempt from license registration and displaying license plates as required by this chapter:

(a) A converter gear used to convert a semitrailer into a trailer or a two-axle truck or tractor into a three or more axle truck or tractor or used in any other manner to increase the number of axles of a vehicle. Converter gear includes an auxiliary axle, booster axle, dolly, and jeep axle.

(b) A tow dolly that is used for towing a motor vehicle behind another motor vehicle. The front or rear wheels of the towed vehicle are secured to and rest on the tow dolly that is attached to the towing vehicle by a tow bar.

Sec. 7. RCW 46.37.010 and 1997 c 241 s 14 are each amended to read as follows:

(1) It is a traffic infraction for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter or in regulations issued by the chief of the Washington state patrol, or which is equipped in any manner in violation of this chapter or the state patrol's regulations, or for any person to do any act forbidden or fail to perform any act required under this chapter or the state patrol's regulations.

(2) Nothing contained in this chapter or the state patrol's regulations shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter or the state patrol's regulations.

(3) The provisions of the chapter and the state patrol's regulations with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as herein made applicable.

(4) No owner or operator of a farm tractor, self-propelled unit of farm equipment, or implement of husbandry shall be guilty of a crime or subject to penalty for violation of RCW 46.37.160 as now or hereafter amended unless such violation occurs on a public highway.

(5) It is a traffic infraction for any person to sell or offer for sale vehicle equipment which is required to be approved by the state patrol as prescribed in RCW 46.37.005 unless it has been approved by the state patrol.

(6) The provisions of this chapter with respect to equipment required on vehicles shall not apply to motorcycles or motor-driven cycles except as herein made applicable.

(7) This chapter does not apply to off-road vehicles used on nonhighway roads.

(8) This chapter does not apply to vehicles used by the state parks and recreation commission exclusively for park maintenance and operations upon public highways within state parks.

~~((8))~~ (9) Notices of traffic infraction issued to commercial drivers under the provisions of this chapter with respect to equipment required on commercial motor vehicles shall not be considered for driver improvement purposes under chapter 46.20 RCW.

~~((9))~~ (10) Whenever a traffic infraction is chargeable to the owner or lessee of a vehicle under subsection (1) of this section, the driver shall not be arrested or issued a notice of traffic infraction unless the vehicle is registered in a jurisdiction other than Washington state, or unless the infraction is for an offense that is clearly within the responsibility of the driver.

~~((10))~~ (11) Whenever the owner or lessee is issued a notice of traffic infraction under this section the court may, on the request of the owner or lessee, take appropriate steps to make the driver of the vehicle, or any other person who directs the loading, maintenance, or operation of the vehicle, a codefendant. If the codefendant is held solely responsible and is found to have committed the traffic infraction, the court may dismiss the notice against the owner or lessee.

***NEW SECTION. Sec. 8. (1)(a) A task force on off-road vehicle noise management is established. The task force consists of the following members:**

(i) Two members from each of the two largest caucuses of the house of representatives, appointed by the speaker of the house of representatives;

(ii) Two members from each of the two largest caucuses of the senate, appointed by the president of the senate; and

(iii) Participants invited by the legislative members, including but not limited to persons representing the following:

(A) Three county commissioners, one representing counties with a population of two hundred thousand or more people and two representing counties with populations of fewer than two hundred thousand people;

(B) A representative of port districts;

(C) A representative of the department of natural resources, selected by the commissioner of public lands;

(D) A representative of the department of ecology, selected by the director of ecology;

(E) A representative of the interagency committee for outdoor recreation, selected by the director of the committee;

(F) A representative of the parks and recreation commission, selected by the director of the commission;

(G) A person representing manufacturers of off-road vehicles;

(H) A representative of the United States forest service;

(I) Recreational users; and

(J) Interested citizens.

(b) The committee shall choose its chair from among its membership.

(2) The committee shall review the following issues:

(a) The appropriateness and enforceability of current decibel requirements for off-road vehicles;

(b) The appropriateness of any off-road vehicle usage requirements that would minimize nuisance noise impacts on those not operating the off-road vehicle;

(c) The applicability and consistency of local ordinances concerning noise and off-road vehicle usage; and

(d) The availability of, and barriers to, using public lands or other large ownerships to create areas where off-road vehicles can be operated with minimum noise disturbance of neighbors.

(3)(a) The committee shall be staffed by the house office of program research and senate committee services.

(b) Legislative members of the committee will be reimbursed for travel expenses in accordance with RCW 44.04.120.

(4) The committee shall report its findings and recommendations in the form of draft legislation to the legislature by December 1, 2005.

(5) This section expires July 1, 2006.

*Sec. 8 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 9. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005.

Passed by the House April 19, 2005.

Passed by the Senate April 14, 2005.

Approved by the Governor April 28, 2005, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 28, 2005.

Note: Governor's explanation of partial veto is as follows:

"I am returning, without my approval as to Section 8, Engrossed House Bill No. 1003 entitled:

"AN ACT Relating to the operation of off-road vehicles on roadways."

Sections 1 through 7 and 9 of Engrossed House Bill 1003 provide for increased flexibility and improved safety requirements when operating an off-road vehicle. Specifically, no person under the age of thirteen (13) years may operate an off-road vehicle unless directly supervised by a person over the age of eighteen (18). Any person operating an off-road vehicle must wear an approved helmet unless the vehicle is equipped with seat belts, roll bars or an enclosed passenger compartment. Engrossed House Bill 1003 provides further flexibility for off-road vehicle users by permitting, in certain circumstances, the operation of the vehicle on non-highway roads to facilitate greater access to off-road vehicle specific trails.

Section 8 of Engrossed House Bill 1003 creates a task force for the purpose of studying and making recommendations regarding off-road vehicle noise. I am vetoing Section 8 because the task force created in that section is identical to the task force created in Engrossed Substitute House Bill 5089 (Sec. 1), which I signed April 22, 2005.

For these reasons, I have vetoed Section 8 of Engrossed House Bill 1003.

With the exception of Section 8, Engrossed House Bill 1003 is approved."

CHAPTER 214

[House Bill 1008]

DEPARTMENT OF GENERAL ADMINISTRATION—MOTOR POOL

AN ACT Relating to the motor pool within the department of general administration; amending RCW 43.19.565 and 43.19.615; and repealing RCW 43.19.605.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 43.19.565 and 1998 c 111 s 3 are each amended to read as follows:

The department of general administration shall establish a motor vehicle transportation service which is hereby empowered to:

(1) Provide suitable motor vehicle transportation services to any state agency on either a temporary or permanent basis upon requisition from a state agency and upon such demonstration of need as the department may require;

(2) Provide motor pools for the use of state agencies located in the Olympia ~~((and Seattle))~~ area~~((s))~~ and such additional motor pools at other locations in the state as may be necessary to provide economic, efficient, and effective motor vehicle transportation services to state agencies. Such additional motor pools may be under either the direct control of the department or under the supervision of another state agency by agreement with the department;

(3) Establish an equitable schedule of rental and mileage charges to agencies for motor vehicle transportation services furnished which shall be designed to provide funds to cover replacement of vehicles, the purchase of additional vehicles, and to recover the actual total costs of motor pool operations including but not limited to vehicle operation expense, depreciation expense, overhead, and nonrecoverable collision or other damage to vehicles~~((Additions to capital such as the purchase of additional vehicles shall be budgeted and purchased from funds appropriated for such purposes under such procedures as may be provided by law))~~; and

(4) Establish guidelines, procedures, and standards for fleet operations that other state agencies and institutions of higher education may adopt. The guidelines, procedures, and standards shall be consistent with and carry out the objectives of any general policies adopted by the office of financial management under RCW 43.41.130.

Sec. 2. RCW 43.19.615 and 1998 c 105 s 13 are each amended to read as follows:

The director of general administration shall deposit in the general administration services account all receipts, including the initial transfer of automobile pool capital from the highway equipment fund and any other funds transferred, rentals or other fees and charges for transportation services furnished, proceeds from the sale of surplus or replaced property under the control of the supervisor of motor transport and other income, and from which shall be paid operating costs, including salaries and wages, administrative expense, overhead, the cost of replacement vehicles, additional passenger vehicles ~~((authorized pursuant to RCW 43.19.565))~~, and any other expenses. ~~((If it is necessary at any time for the department to request any appropriation from the general fund or various dedicated, revolving, or trust funds to purchase additional vehicles, any appropriation therefor may provide that such advance~~

~~shall be repaid together with reasonable interest from surpluses of the general administration services account.)~~

NEW SECTION, Sec. 3. RCW 43.19.605 (Motor vehicle transportation service—Reimbursement for property transferred—Credits—Accounting—Disputes) and 1998 c 105 s 11, 1989 c 57 s 6, & 1975 1st ex.s. c 167 s 11 are each repealed.

Passed by the House March 8, 2005.

Passed by the Senate April 21, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 215

[Second Substitute House Bill 1050]

FOSTER CARE SCHOLARSHIPS

AN ACT Relating to the creation of a foster care endowed scholarship program; reenacting and amending RCW 43.79A.040; and adding a new chapter to Title 28B RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION, Sec. 1. The legislature finds that children who grow up in the foster care system face many financial challenges. The legislature also finds that these financial challenges can discourage or prevent these children from pursuing a higher education. The legislature further finds that access to a higher education will give children who are in foster care hope for the future. Moreover, the legislature finds that financial assistance will help these children become successful, productive, contributing citizens and avoid cycles of abuse, poverty, violence, and delinquency.

NEW SECTION, Sec. 2. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Institution of higher education" means a college or university in the state of Washington that is accredited by an accrediting association recognized as such by rule of the higher education coordinating board.

(2) "Eligible student" means a student who:

- (a) Is between the ages of sixteen and twenty-three;
- (b) Has been in foster care in the state of Washington for a minimum of six months since his or her fourteenth birthday;
- (c) Is a financially needy student, as defined in RCW 28B.92.030;
- (d) Is a resident student, as defined in RCW 28B.15.012(2);
- (e) Has entered or will enter an institution of higher education in Washington state within three years of high school graduation or having successfully completed his or her GED;
- (f) Is not pursuing a degree in theology; and
- (g) Makes satisfactory progress towards the completion of a degree or certificate program.

(3) "Cost of attendance" means the cost associated with the attendance of the institution of higher education as determined by the higher education coordinating board, including but not limited to tuition, room, board, and books.

NEW SECTION. Sec. 3. (1) The foster care endowed scholarship program is created. The purpose of the program is to help students who were in foster care attend an institution of higher education in the state of Washington. The foster care endowed scholarship program shall be administered by the higher education coordinating board.

(2) In administering the program, the higher education coordinating board's powers and duties shall include but not be limited to:

(a) Adopting necessary rules and guidelines;

(b) Administering the foster care endowed scholarship trust fund and the foster care scholarship endowment fund; and

(c) Establishing and assisting the foster care endowed scholarship advisory board in its duties as described in section 5 of this act.

(3) In administering the program, the higher education coordinating board's powers and duties may include but not be limited to:

(a) Working with the department of social and health services and the superintendent of public instruction to provide information about the foster care endowed scholarship program to children in foster care in the state of Washington and to students over the age of sixteen who could be eligible for this program;

(b) Publicizing the program; and

(c) Contracting with a private agency to perform outreach to the potentially eligible students.

NEW SECTION. Sec. 4. (1) The higher education coordinating board may award scholarships to eligible students from the foster care scholarship endowment fund in section 7 of this act, from funds appropriated to the board for this purpose, from any private donations, or from any other funds given to the board for the program.

(2) The board may award scholarships to eligible students from moneys earned from the foster care scholarship endowment fund created in section 7 of this act, or from funds appropriated to the board for this purpose, or from any private donations, or from any other funds given to the board for this program. For an undergraduate student, the amount of the scholarship shall not exceed the student's demonstrated financial need. For a graduate student, the amount of the scholarship shall not exceed the student's demonstrated need; or the stipend of a teaching assistant, including tuition, at the University of Washington; whichever is higher. In calculating a student's need, the board shall consider the student's costs for tuition, fees, books, supplies, transportation, room, board, personal expenses, and child care. The student's scholarship awarded under this chapter shall not exceed the amount received by a student attending a state research university. A student is eligible to receive a scholarship for a maximum of five years. However, the length of the scholarship shall be determined at the discretion of the board.

(3) Grants under this chapter shall not affect eligibility for the state student financial aid program.

NEW SECTION. Sec. 5. (1) The foster care endowed scholarship advisory board is created.

(2) The advisory board shall be composed of not more than seven members appointed by the higher education coordinating board. The advisory board

should include representatives from the higher education coordinating board, the office of the superintendent of public instruction, the foster parent community, and community organizations serving the foster children and former foster children community. The advisory board membership shall be reflective of the cultural diversity of the state.

(3) The advisory board:

(a) Shall assist the higher education coordinating board in publicizing the foster care endowed scholarship program;

(b) Shall solicit grants and donations from public and private sources for the program;

(c) Shall assist the higher education coordinating board in the program development and the application screening process; and

(d) May assist in performing outreach to the targeted students.

NEW SECTION. Sec. 6. (1) The foster care endowed scholarship trust fund is created in the custody of the state treasurer.

(2) Funds appropriated by the legislature for the foster care endowed scholarship trust fund shall be deposited in the foster care endowed scholarship trust fund. When conditions in section 8 of this act are met, the higher education coordinating board shall deposit state matching moneys from the trust fund into the foster care scholarship endowment fund.

(3) No appropriation is required for expenditures from the trust fund.

NEW SECTION. Sec. 7. The foster care scholarship endowment fund is created in the custody of the state treasurer.

(1) Moneys received from the higher education coordinating board, private donations, state matching moneys, and funds received from any other source may be deposited into the foster care scholarship endowment fund. Private moneys received as a gift subject to conditions may be deposited into the endowment fund if the conditions do not violate state or federal law.

(2) The higher education coordinating board may disburse grants to eligible students from the foster care scholarship endowment fund. No appropriation is required for expenditures from the endowment fund.

(3) When notified by court order that a condition attached to a gift of private moneys from the foster care scholarship endowment fund has failed, the higher education coordinating board shall release those moneys to the donors according to the terms of the conditional gift.

(4) The principal of the foster care scholarship endowment fund shall not be invaded. For the purposes of this section, only the first twenty-five thousand dollars deposited into the foster care scholarship endowment fund shall be considered the principal. The release of moneys under subsection (3) of this section shall not constitute an invasion of the corpus.

(5) The foster care scholarship endowment fund shall be used solely for the purposes in this chapter, except when the conditional gift of private moneys in the endowment fund require a portion of the earnings on such moneys be reinvested in the endowment fund.

NEW SECTION. Sec. 8. (1) The higher education coordinating board may deposit twenty-five thousand dollars of state matching funds into the foster care scholarship endowment fund when the board can match state funds with an equal amount of private cash donations.

(2) After the initial match of twenty-five thousand dollars, state matching funds from the foster care endowed scholarship trust fund shall be released to the foster care scholarship endowment fund semiannually so long as there are funds available in the foster care endowed scholarship trust fund.

****NEW SECTION. Sec. 9. The administrative staff for the foster care endowed scholarship program shall not exceed one-quarter full-time equivalent.***

**Sec. 9 was vetoed. See message at end of chapter.*

Sec. 10. RCW 43.79A.040 and 2004 c 246 s 8 and 2004 c 58 s 10 are each reenacted and amended to read as follows:

(1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury.

(2) All income received from investment of the treasurer's trust fund shall be set aside in an account in the treasury trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment 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)(a) Monthly, the state treasurer shall distribute the earnings credited to the investment income account to the state general fund except under (b) and (c) of this subsection.

(b) The following accounts and funds shall receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The Washington promise scholarship account, the college savings program account, the Washington advanced college tuition payment program account, the agricultural local fund, the American Indian scholarship endowment fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the students with dependents grant account, the basic health plan self-insurance reserve account, the contract harvesting revolving account, the Washington state combined fund drive account, the Washington international exchange scholarship endowment fund, the developmental disabilities endowment trust fund, the energy account, the fair fund, the fruit and vegetable inspection account, the future teachers conditional scholarship account, the game farm alternative account, the grain inspection revolving fund, the juvenile accountability incentive account, the law enforcement officers' and fire fighters' plan 2 expense fund, the local tourism promotion account, the produce railcar pool account, the rural rehabilitation account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the sulfur dioxide abatement account, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund account, the Washington horse racing commission class C purse fund account, and the Washington horse racing commission operating account (earnings from the Washington horse racing commission operating account must be credited to the Washington horse racing commission class C purse fund account). However,

the earnings to be distributed shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(c) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advanced right of way revolving fund, the advanced environmental mitigation revolving account, the city and county advance right-of-way revolving fund, the federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

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

NEW SECTION. Sec. 11. Sections 1 through 9 of this act constitute a new chapter in Title 28B RCW.

Passed by the House March 3, 2005.

Passed by the Senate April 13, 2005.

Approved by the Governor April 28, 2005, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 28, 2005.

Note: Governor's explanation of partial veto is as follows:

"I am returning, without my approval as to Section 9, Second Substitute House Bill 1050 entitled:

"AN ACT Relating to the creation of a foster care endowed scholarship program"

This bill and the Board creates scholarships for foster youth. I am vetoing Section 9, however, as it would limit the administrative support for the foster youth scholarship program to one-quarter full-time equivalent employee (FTE). Any money allocated for the foster youth scholarship program should go directly to that purpose. But FTE targets or limitations are properly addressed through the budget process.

For these reasons, I have vetoed Section 9 of Second Substitute House Bill 1050.

With the exception of sections Section 9, Second Substitute House Bill 1050 is approved."

CHAPTER 216

[Substitute House Bill 1065]

LICENSE PLATES—ARMED FORCES

AN ACT Relating to the armed forces license plate collection; amending RCW 73.04.115 and 41.04.007; reenacting and amending RCW 46.16.313 and 73.04.110; adding new sections to chapter 46.16 RCW; and adding a new section to chapter 43.60A RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 46.16 RCW to read as follows:

(1) The legislature recognizes that the armed forces license plate collection has been reviewed and approved by the special license plate review board.

(2) The department shall issue a special license plate collection, approved by the special license plate review board and the legislature, recognizing the contribution of veterans, active duty military personnel, reservists, and members of the Washington national guard. The collection includes six separate designs, each containing a symbol representing a different branch of the armed forces to

include army, navy, air force, marine corps, coast guard, and Washington national guard.

(3) Armed forces special license plates may be used in lieu of regular or personalized license plates for vehicles required to display one and two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department.

(4) Upon request, the department must make available to the purchaser, at no additional cost, a decal indicating the purchaser's military status. The department must work with the department of veterans affairs to establish a list of the decals to be made available. The list of available decals must include, but is not limited to, "veteran," "disabled veteran," "reservist," "retiree," or "active duty." The department may specify where the decal may be placed on the license plate. Decals are required to be made available only for standard six-inch by twelve-inch license plates.

(5) Armed forces license plates and decals are available only to veterans as defined in RCW 41.04.007, active duty military personnel, reservists, members of the Washington national guard, and the spouses of deceased veterans. Upon initial application, any purchaser requesting an armed forces license plate and decal will be required to show proof of eligibility by providing: A DD-214 or discharge papers if a veteran; a military identification or retired military identification card; or a declaration of fact attesting to the purchaser's eligibility as required under this section.

(6) The department of veterans affairs must enter into an agreement with the department to reimburse the department for the costs associated with providing military status decals described in subsection (4) of this section.

(7) Armed forces license plates are not available free of charge to disabled veterans, former prisoners of war, or spouses of deceased former prisoners of war under the privileges defined in RCW 73.04.110 and 73.04.115.

NEW SECTION. Sec. 2. A new section is added to chapter 46.16 RCW to read as follows:

(1) "Armed forces license plate collection" means the collection of six separate license plate designs issued under section 1 of this act. Each license plate design displays a symbol representing one of the five branches of the armed forces, and one representing the Washington national guard.

(2) Armed forces license plates are not available free of charge to disabled veterans, former prisoners of war, or spouses of deceased former prisoners of war under the privileges defined in RCW 73.04.110 and 73.04.115.

Sec. 3. RCW 46.16.313 and 2004 c 221 s 3, 2004 c 48 s 3, and 2004 c 35 s 3 are each reenacted and amended to read as follows:

(1) The department may establish a fee of no more than forty dollars for each type of special license plates issued under RCW 46.16.301(1) (a), (b), or (c), as existing before amendment by section 5, chapter 291, Laws of 1997, in an amount calculated to offset the cost of production of the special license plates and the administration of this program. This fee is in addition to all other fees required to register and license the vehicle for which the plates have been requested. All such additional special license plate fees collected by the department shall be deposited in the state treasury and credited to the motor vehicle fund.

(2) In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a collegiate license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(3) In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a collegiate license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(4) In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a special baseball stadium license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds, minus the cost of plate production, shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(5) In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a special baseball stadium license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(6) Effective with vehicle registrations due or to become due on January 1, 2005, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a professional fire fighters and paramedics license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the professional fire fighters and paramedics license plates. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit

the proceeds to the Washington State Council of Fire Fighters benevolent fund established under RCW 46.16.30902.

(7) Effective with annual renewals due or to become due on January 1, 2006, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a professional fire fighters and paramedics license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the professional fire fighters and paramedics special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Washington State Council of Fire Fighters benevolent fund established under RCW 46.16.30902.

(8) Effective with vehicle registrations due or to become due on November 1, 2004, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Helping Kids Speak" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Helping Kids Speak" account established under RCW 46.16.30904.

(9) Effective with annual renewals due or to become due on November 1, 2005, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Helping Kids Speak" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Helping Kids Speak" account established under RCW 46.16.30904.

(10) Effective with vehicle registrations due or to become due on January 1, 2005, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "law enforcement memorial" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper

identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the law enforcement memorial special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the law enforcement memorial account established under RCW 46.16.30906.

(11) Effective with annual renewals due or to become due on January 1, 2006, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "law enforcement memorial" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the law enforcement memorial special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the law enforcement memorial account established under RCW 46.16.30906.

(12)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of an armed forces license plate shall pay an initial fee of forty dollars. The department shall retain an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the armed forces special license plate collection. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the veterans stewardship account established under section 4 of this act.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of an armed forces license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the armed forces special license plate collection. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the veterans stewardship account established in section 4 of this act.

NEW SECTION. Sec. 4. A new section is added to chapter 43.60A RCW to read as follows:

(1) The veterans stewardship account is created in the custody of the state treasurer. Disbursements of funds must be on the authorization of the director or the director's designee, and only for the purposes stated in subsection (4) of this section. In order to maintain an effective expenditure and revenue control, funds are subject in all respects to chapter 43.88 RCW, but no appropriation is required to permit expenditure of the funds.

(2) The department may request and accept nondedicated contributions, grants, or gifts in cash or otherwise, including funds generated by the issuance of the armed forces license plate collection under chapter 46.16 RCW.

(3) All receipts, except as provided in RCW 46.16.313(12) (a) and (b), from the sale of armed forces license plates must be deposited into the veterans stewardship account.

(4) All moneys deposited into the veterans stewardship account must be used by the department for activities that benefit veterans, including but not limited to, providing programs and services for homeless veterans; establishing memorials honoring veterans; and maintaining a future state veterans' cemetery. Funds from the account may not be used to supplant existing funds received by the department.

Sec. 5. RCW 73.04.115 and 1990 c 250 s 91 are each amended to read as follows:

(1) The department shall issue to the surviving spouse of any deceased former prisoner of war described in RCW 73.04.110(2), one set of regular or special license plates for use on a personal passenger vehicle registered to that person.

(2) The plates shall be issued without the payment of any license fees or excise tax on the vehicle. Whenever any person who has been issued license plates under this section applies to the department for transfer of the plates to a subsequently acquired motor vehicle, a transfer fee of five dollars shall be charged in addition to all other appropriate fees. If the surviving spouse remarries, he or she shall return the special plates to the department within fifteen days and apply for regular license plates.

(3) For purposes of this section, the term "special license plates" does not include any plate from the armed forces license plate collection established in section 1 of this act.

Sec. 6. RCW 73.04.110 and 2004 c 223 s 6 and 2004 c 125 s 1 are each reenacted and amended to read as follows:

(1) Any person who is a veteran as defined in RCW 41.04.007 who submits to the department of licensing satisfactory proof of a service-connected disability rating from the veterans administration or the military service from which the veteran was discharged and:

~~((1))~~ (a) Has lost the use of both hands or one foot;

~~((2))~~ (b) Was captured and incarcerated for more than twenty-nine days by an enemy of the United States during a period of war with the United States;

~~((3))~~ (c) Has become blind in both eyes as the result of military service; or

~~((4))~~ (d) Is rated by the veterans administration or the military service from which the veteran was discharged and is receiving service-connected compensation at the one hundred percent rate that is expected to exist for more than one year;

is entitled to regular or special license plates issued by the department of licensing. The special license plates shall bear distinguishing marks, letters, or numerals indicating that the motor vehicle is owned by a disabled veteran or former prisoner of war. This license shall be issued annually for one personal use vehicle without payment of any license fees or excise tax thereon. Whenever any person who has been issued license plates under the provisions of this section applies to the department for transfer of the plates to a subsequently acquired motor vehicle, a transfer fee of ten dollars shall be charged in addition to all other appropriate fees. The department may periodically verify the one hundred percent rate as provided in subsection (~~((4))~~) (1)(d) of this section.

(2) Any person who has been issued free motor vehicle license plates under this section prior to July 1, 1983, shall continue to be eligible for the annual free license plates.

(3) For the purposes of this section, (a): "Blind" means the definition of "blind" used by the state of Washington in determining eligibility for financial assistance to the blind under Title 74 RCW; and (b) "special license plates" does not include any plate from the armed forces license plate collection established in section 1 of this act.

Any unauthorized use of a special plate is a gross misdemeanor.

Sec. 7. RCW 41.04.007 and 2002 c 292 s 2 are each amended to read as follows:

"Veteran" includes every person, who at the time he or she seeks the benefits of section 1 of this act, RCW 72.36.030, 41.04.010, 73.04.090, 73.04.110, 73.08.010, 73.08.060, 73.08.070, or 73.08.080 has received an honorable discharge or received a discharge for medical reasons with an honorable record, where applicable, and who has served in at least one of the following capacities:

(1) As a member in any branch of the armed forces of the United States, including the national guard and armed forces reserves, and has fulfilled his or her initial military service obligation;

(2) As a member of the women's air forces service pilots;

(3) As a member of the armed forces reserves, national guard, or coast guard, and has been called into federal service by a presidential select reserve call up for at least one hundred eighty cumulative days;

(4) As a civil service crewmember with service aboard a U.S. army transport service or U.S. naval transportation service vessel in oceangoing service from December 7, 1941, through December 31, 1946; or

(5) As a member of the Philippine armed forces/scouts during the period of armed conflict from December 7, 1941, through August 15, 1945.

Passed by the House April 18, 2005.

Passed by the Senate April 12, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 217

[Engrossed House Bill 1068]

STUDENT ASSESSMENTS

AN ACT Relating to elimination of mandatory norm-referenced student assessments; amending RCW 28A.230.195; adding a new section to chapter 28A.655 RCW; and repealing RCW 28A.230.190, 28A.230.193, 28A.230.230, and 28A.230.260.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28A.230.195 and 1999 c 373 s 603 are each amended to read as follows:

(1) If students' scores on the test or assessments under RCW (~~28A.230.190, 28A.230.230, and 28A.630.885~~) 28A.655.070 indicate that students need help in identified areas, the school district shall evaluate its instructional practices and make appropriate adjustments.

(2) Each school district shall notify the parents of each student of their child's performance on the test and assessments conducted under this chapter.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.655 RCW to read as follows:

(1) The legislature finds that the mandatory norm-referenced student assessments eliminated under this act provide information that teachers and parents use to improve student learning. The legislature intends to permit school districts to offer norm-referenced assessments at the districts' own expense and make diagnostic tools available that provide information that is at least as valuable as the information eliminated under this act.

(2) School districts may, at their own expense, administer norm-referenced assessments to students.

(3) By September 1, 2005, subject to available funds, the office of the superintendent of public instruction shall post on its web site for voluntary use by school districts, a guide of diagnostic assessments. The assessments in the guide, to the extent possible, shall include the characteristics listed in subsection (4)(a) through (e) of this section.

(4) By September 1, 2006, subject to the availability of amounts appropriated for this specific purpose, the office of the superintendent of public instruction shall make available to school districts diagnostic assessments that help improve student learning. To the greatest extent possible, the assessments shall be:

(a) Aligned to the state's grade level expectations;

(b) Individualized to each student's performance level;

(c) Administered efficiently to provide results either immediately or within two weeks;

(d) Capable of measuring individual student growth over time; and

(e) Cost-effective.

(5) The office of the superintendent of public instruction is encouraged to offer at their statewide and regional staff development activities training opportunities that would assist practitioners in:

(a) The interpretation of diagnostic assessments; and

(b) Application of instructional strategies that will increase student learning based on diagnostic assessment data.

NEW SECTION. Sec. 3. The following acts or parts of acts are each repealed:

(1) RCW 28A.230.190 (Third grade achievement test) and 1999 c 373 s 201, 1998 c 319 s 202, 1997 c 262 s 5, 1990 c 101 s 6, 1985 c 403 s 1, 1984 c 278 s 8, & 1975-'76 2nd ex.s. c 98 s 1;

(2) RCW 28A.230.193 (Sixth grade achievement test) and 1999 c 373 s 301;

(3) RCW 28A.230.230 (Annual assessment of ninth grade students—Inventory for high school and beyond for use by eighth grade students) and 1999 c 373 s 401 & 1990 c 101 s 2; and

(4) RCW 28A.230.260 (Annual report to the legislature) and 1990 c 101 s 5.

Passed by the House April 19, 2005.

Passed by the Senate April 6, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 218

[House Bill 1072]

CONTROLLED SUBSTANCES—FLUNITRAZEPAM—METHAMPHETAMINE

AN ACT Relating to controlled substances; and amending RCW 69.50.401, 69.50.406, 69.50.440, and 9A.42.100.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 69.50.401 and 2003 c 53 s 331 are each amended to read as follows:

(1) Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

(2) Any person who violates this section with respect to:

(a) A controlled substance classified in Schedule I or II which is a narcotic drug or flunitrazepam, including its salts, isomers, and salts of isomers, classified in Schedule IV, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, or (i) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (ii) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine;

(b) Amphetamine, including its salts, isomers, and salts of isomers, or methamphetamine, including its salts, isomers, and salts of isomers, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, or (i) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (ii) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine. Three thousand dollars of the fine may not be suspended. As collected, the first three thousand dollars of the fine must be deposited with the law enforcement agency having responsibility for cleanup of

laboratories, sites, or substances used in the manufacture of the methamphetamine, including its salts, isomers, and salts of isomers. The fine moneys deposited with that law enforcement agency must be used for such clean-up cost;

(c) Any other controlled substance classified in Schedule I, II, or III, is guilty of a class C felony punishable according to chapter 9A.20 RCW;

(d) A substance classified in Schedule IV, except flunitrazepam, including its salts, isomers, and salts of isomers, is guilty of a class C felony punishable according to chapter 9A.20 RCW; or

(e) A substance classified in Schedule V, is guilty of a class C felony punishable according to chapter 9A.20 RCW.

Sec. 2. RCW 69.50.406 and 2003 c 53 s 340 are each amended to read as follows:

(1) Any person eighteen years of age or over who violates RCW 69.50.401 by distributing a controlled substance listed in Schedules I or II which is a narcotic drug or methamphetamine, including its salts, isomers, and salts of isomers, or flunitrazepam, including its salts, isomers, and salts of isomers, listed in Schedule IV, to a person under eighteen years of age is guilty of a class A felony punishable by the fine authorized by RCW 69.50.401(2) (a) or (b), by a term of imprisonment of up to twice that authorized by RCW 69.50.401(2) (a) or (b), or by both.

(2) Any person eighteen years of age or over who violates RCW 69.50.401 by distributing any other controlled substance listed in Schedules I, II, III, IV, and V to a person under eighteen years of age who is at least three years his or her junior is guilty of a class B felony punishable by the fine authorized by RCW 69.50.401(2) (c), (d), or (e), by a term of imprisonment up to twice that authorized by RCW 69.50.401(2) (c), (d), or (e), or both.

Sec. 3. RCW 69.50.440 and 2003 c 53 s 347 are each amended to read as follows:

(1) It is unlawful for any person to possess ephedrine or any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, pressurized ammonia gas, or pressurized ammonia gas solution with intent to manufacture methamphetamine, including its salts, isomers, and salts of isomers.

(2) Any person who violates this section is guilty of a class B felony and may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both. Three thousand dollars of the fine may not be suspended. As collected, the first three thousand dollars of the fine must be deposited with the law enforcement agency having responsibility for cleanup of laboratories, sites, or substances used in the manufacture of the methamphetamine, including its salts, isomers, and salts of isomers. The fine moneys deposited with that law enforcement agency must be used for such clean-up cost.

Sec. 4. RCW 9A.42.100 and 2002 c 229 s 1 are each amended to read as follows:

A person is guilty of the crime of endangerment with a controlled substance if the person knowingly or intentionally permits a dependent child or dependent adult to be exposed to, ingest, inhale, or have contact with methamphetamine or

ephedrine, pseudoephedrine, or anhydrous ammonia, including their salts, isomers, and salts of isomers, that are being used in the manufacture of methamphetamine, including its salts, isomers, and salts of isomers. Endangerment with a controlled substance is a class B felony.

Passed by the House February 21, 2005.

Passed by the Senate April 11, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 219

[Grossed House Bill 1074]

HOUSING ASSISTANCE PROGRAM—ADMINISTRATIVE CAP

AN ACT Relating to increasing the administrative cap on the housing assistance program and the affordable housing program; and amending RCW 43.185.050, 43.185.070, and 43.185A.030.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 43.185.050 and 2002 c 294 s 6 are each amended to read as follows:

(1) The department shall use moneys from the housing trust fund and other legislative appropriations to finance in whole or in part any loans or grant projects that will provide housing for persons and families with special housing needs and with incomes at or below fifty percent of the median family income for the county or standard metropolitan statistical area where the project is located. At least thirty percent of these moneys used in any given funding cycle shall be for the benefit of projects located in rural areas of the state as defined by the department. If the department determines that it has not received an adequate number of suitable applications for rural projects during any given funding cycle, the department may allocate unused moneys for projects in nonrural areas of the state.

(2) Activities eligible for assistance from the housing trust fund and other legislative appropriations include, but are not limited to:

(a) New construction, rehabilitation, or acquisition of low and very low-income housing units;

(b) Rent subsidies;

(c) Matching funds for social services directly related to providing housing for special-need tenants in assisted projects;

(d) Technical assistance, design and finance services and consultation, and administrative costs for eligible nonprofit community or neighborhood-based organizations;

(e) Administrative costs for housing assistance groups or organizations when such grant or loan will substantially increase the recipient's access to housing funds other than those available under this chapter;

(f) Shelters and related services for the homeless, including emergency shelters and overnight youth shelters;

(g) Mortgage subsidies, including temporary rental and mortgage payment subsidies to prevent homelessness;

(h) Mortgage insurance guarantee or payments for eligible projects;

(i) Down payment or closing cost assistance for eligible first-time home buyers;

(j) Acquisition of housing units for the purpose of preservation as low-income or very low-income housing; and

(k) Projects making housing more accessible to families with members who have disabilities.

(3) Legislative appropriations from capital bond proceeds may be used only for the costs of projects authorized under subsection (2)(a), (i), and (j) of this section, and not for the administrative costs of the department.

(4) Moneys from repayment of loans from appropriations from capital bond proceeds may be used for all activities necessary for the proper functioning of the housing assistance program except for activities authorized under subsection (2)(b) and (c) of this section.

(5) Administrative costs of the department shall not exceed (~~four~~) five percent of the annual funds available for the housing assistance program.

Sec. 2. RCW 43.185.070 and 1994 sp.s. c 3 s 9 are each amended to read as follows:

(1) During each calendar year in which funds from the housing trust fund or other legislative appropriations are available for use by the department for the housing assistance program, the department shall announce to all known interested parties, and through major media throughout the state, a grant and loan application period of at least ninety days' duration. This announcement shall be made as often as the director deems appropriate for proper utilization of resources. The department shall then promptly grant as many applications as will utilize available funds less appropriate administrative costs of the department. Administrative costs paid out of the housing trust fund may not exceed (~~four~~) five percent of annual revenues available for distribution to housing trust fund projects. In awarding funds under this chapter, the department shall provide for a geographic distribution on a statewide basis.

(2) The department shall give first priority to applications for projects and activities which utilize existing privately owned housing stock including privately owned housing stock purchased by nonprofit public development authorities and public housing authorities as created in chapter 35.82 RCW. As used in this subsection, privately owned housing stock includes housing that is acquired by a federal agency through a default on the mortgage by the private owner. Such projects and activities shall be evaluated under subsection (3) of this section. Second priority shall be given to activities and projects which utilize existing publicly owned housing stock. All projects and activities shall be evaluated by some or all of the criteria under subsection (3) of this section, and similar projects and activities shall be evaluated under the same criteria.

(3) The department shall give preference for applications based on some or all of the criteria under this subsection, and similar projects and activities shall be evaluated under the same criteria:

(a) The degree of leveraging of other funds that will occur;

(b) The degree of commitment from programs to provide necessary habilitation and support services for projects focusing on special needs populations;

(c) Recipient contributions to total project costs, including allied contributions from other sources such as professional, craft and trade services, and lender interest rate subsidies;

(d) Local government project contributions in the form of infrastructure improvements, and others;

(e) Projects that encourage ownership, management, and other project-related responsibility opportunities;

(f) Projects that demonstrate a strong probability of serving the original target group or income level for a period of at least twenty-five years;

(g) The applicant has the demonstrated ability, stability and resources to implement the project;

(h) Projects which demonstrate serving the greatest need;

(i) Projects that provide housing for persons and families with the lowest incomes;

(j) Projects serving special needs populations which are under statutory mandate to develop community housing;

(k) Project location and access to employment centers in the region or area;

(l) Projects that provide employment and training opportunities for disadvantaged youth under a youthbuild or youthbuild-type program as defined in RCW 50.72.020; and

(m) Project location and access to available public transportation services.

(4) The department shall only approve applications for projects for mentally ill persons that are consistent with a regional support network six-year capital and operating plan.

Sec. 3. RCW 43.185A.030 and 1994 c 160 s 3 are each amended to read as follows:

(1) Using moneys specifically appropriated for such purpose, the department shall finance in whole or in part projects that will provide housing for low-income households.

(2) Activities eligible for assistance include, but are not limited to:

(a) New construction, rehabilitation, or acquisition of housing for low-income households;

(b) Rent subsidies in new construction or rehabilitated multifamily units;

(c) Down payment or closing costs assistance for first-time home buyers;

(d) Mortgage subsidies for new construction or rehabilitation of eligible multifamily units; and

(e) Mortgage insurance guarantee or payments for eligible projects.

(3) Legislative appropriations from capital bond proceeds may be used only for the costs of projects authorized under subsection (2) (a), (c), (d), and (e) of this section, and not for the administrative costs of the department.

(4) Moneys from repayment of loans from appropriations from capital bond proceeds may be used for all activities necessary for the proper functioning of the affordable housing program except for activities authorized under subsection (2)(b) of this section.

(5) Administrative costs of the department shall not exceed (~~four~~) five percent of the annual funds available for the affordable housing program.

Passed by the House April 19, 2005.

Passed by the Senate April 5, 2005.

Approved by the Governor April 28, 2005.
Filed in Office of Secretary of State April 28, 2005.

CHAPTER 220

[Substitute House Bill 1116]

LICENSE PLATES—SKI AND RIDE WASHINGTON

AN ACT Relating to the "Ski & Ride Washington" special license plate; reenacting and amending RCW 46.16.313; adding new sections to chapter 46.16 RCW; and adding a new section to chapter 46.04 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 46.16 RCW to read as follows:

(1) The legislature recognizes that the "Ski & Ride Washington" license plate has been reviewed and approved by the special license plate review board under RCW 46.16.725, and found to fully comply with RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying a symbol or artwork, approved by the special license plate review board and the legislature, recognizing the Washington snowsports industry, that may be used in lieu of regular or personalized license plates for vehicles required to display vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department.

NEW SECTION. Sec. 2. A new section is added to chapter 46.04 RCW to read as follows:

"Ski & Ride Washington license plates" means license plates issued under section 1 of this act that display a symbol or artwork recognizing the efforts of the Washington snowsports industry in this state.

Sec. 3. RCW 46.16.313 and 2004 c 221 s 3, 2004 c 48 s 3, and 2004 c 35 s 3 are each reenacted and amended to read as follows:

(1) The department may establish a fee of no more than forty dollars for each type of special license plates issued under RCW 46.16.301(1) (a), (b), or (c), as existing before amendment by section 5, chapter 291, Laws of 1997, in an amount calculated to offset the cost of production of the special license plates and the administration of this program. This fee is in addition to all other fees required to register and license the vehicle for which the plates have been requested. All such additional special license plate fees collected by the department shall be deposited in the state treasury and credited to the motor vehicle fund.

(2) In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a collegiate license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(3) In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a collegiate license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(4) In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a special baseball stadium license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds, minus the cost of plate production, shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(5) In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a special baseball stadium license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(6) Effective with vehicle registrations due or to become due on January 1, 2005, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a professional fire fighters and paramedics license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the professional fire fighters and paramedics license plates. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Washington State Council of Fire Fighters benevolent fund established under RCW 46.16.30902.

(7) Effective with annual renewals due or to become due on January 1, 2006, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a professional fire fighters and paramedics license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The

remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the professional fire fighters and paramedics special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Washington State Council of Fire Fighters benevolent fund established under RCW 46.16.30902.

(8) Effective with vehicle registrations due or to become due on November 1, 2004, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Helping Kids Speak" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Helping Kids Speak" account established under RCW 46.16.30904.

(9) Effective with annual renewals due or to become due on November 1, 2005, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Helping Kids Speak" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Helping Kids Speak" account established under RCW 46.16.30904.

(10) Effective with vehicle registrations due or to become due on January 1, 2005, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "law enforcement memorial" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the law enforcement memorial special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the law enforcement memorial account established under RCW 46.16.30906.

(11) Effective with annual renewals due or to become due on January 1, 2006, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "law enforcement memorial" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the law enforcement memorial special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the law enforcement memorial account established under RCW 46.16.30906.

(12)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Ski & Ride Washington" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Ski & Ride Washington" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Ski & Ride Washington" account established under section 4 of this act.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Ski & Ride Washington" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Ski & Ride Washington" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Ski & Ride Washington" account established under section 4 of this act.

NEW SECTION. Sec. 4. A new section is added to chapter 46.16 RCW to read as follows:

(1) The "Ski & Ride Washington" account is created in the custody of the state treasurer. Upon the department's determination that the state had been reimbursed for the cost of implementing the "Ski Washington" special license plate, all receipts, except as provided in RCW 46.16.313 (12) and (13), from "Ski & Ride Washington" license plates must be deposited into the account. Only the director of the department of licensing or the director's designee may

authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Funds in the account must be disbursed subject to the following conditions and limitations:

(a) Under the requirements of RCW 46.16.765, the department must contract with a qualified nonprofit organization for the purpose of promoting winter snowsports (i.e. skiing and snowboarding) and related programs such as ski and ride safety programs, underprivileged youth "ski and ride" programs, and active, healthy lifestyle programs.

(b) The qualified nonprofit organization must meet all requirements set out in RCW 46.16.765.

Passed by the House April 18, 2005.

Passed by the Senate April 12, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 221

[Substitute House Bill 1132]

ELECTIONS—CANDIDACY FILINGS

AN ACT Relating to filing declarations of candidacy; and amending RCW 29A.24.070 and 29A.24.091.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 29A.24.070 and 2003 c 111 s 607 are each amended to read as follows:

Declarations of candidacy shall be filed with the following filing officers:

(1) The secretary of state for declarations of candidacy for statewide offices, United States senate, and United States house of representatives;

(2) The secretary of state for declarations of candidacy for the state legislature, the court of appeals, and the superior court when ~~((voters from))~~ the candidate is seeking office in a district ((comprising more than one county vote upon the candidates)) comprised of voters from two or more counties. The secretary of state and the county auditor may accept declarations of candidacy for candidates for the state legislature, the court of appeals, and the superior court when the candidate is seeking office in a district comprised of voters from one county;

(3) The county auditor for all other offices. For any nonpartisan office, other than judicial offices and school director in joint districts, where voters from a district comprising more than one county vote upon the candidates, a declaration of candidacy shall be filed with the county auditor of the county in which a majority of the registered voters of the district reside. For school directors in joint school districts, the declaration of candidacy shall be filed with the county auditor of the county designated by the state board of education as the county to which the joint school district is considered as belonging under RCW 28A.323.040;

(4) For all other purposes of this title, a declaration of candidacy for the state legislature, the court of appeals, and the superior court filed with the

secretary of state shall be deemed to have been filed with the county auditor when the candidate is seeking office in a district composed of voters from one county.

Each official with whom declarations of candidacy are filed under this section, within one business day following the closing of the applicable filing period, shall transmit to the public disclosure commission the information required in RCW ((29A.24.030)) 29A.24.031 (1) through (4) for each declaration of candidacy filed in his or her office during such filing period or a list containing the name of each candidate who files such a declaration in his or her office during such filing period together with a precise identification of the position sought by each such candidate and the date on which each such declaration was filed. Such official, within three days following his or her receipt of any letter withdrawing a person's name as a candidate, shall also forward a copy of such withdrawal letter to the public disclosure commission.

Sec. 2. RCW 29A.24.091 and 2004 c 271 s 160 are each amended to read as follows:

A filing fee of one dollar shall accompany each declaration of candidacy for precinct committee officer; a filing fee of ten dollars shall accompany the declaration of candidacy for any office with a fixed annual salary of one thousand dollars or less; a filing fee equal to one percent of the annual salary of the office at the time of filing shall accompany the declaration of candidacy for any office with a fixed annual salary of more than one thousand dollars per annum. No filing fee need accompany a declaration of candidacy for any office for which compensation is on a per diem or per meeting attended basis.

A candidate who lacks sufficient assets or income at the time of filing to pay the filing fee required by this section shall submit with his or her declaration of candidacy a nominating petition. The petition shall contain not less than a number of signatures of registered voters equal to the number of dollars of the filing fee. The signatures shall be of voters registered to vote within the jurisdiction of the office for which the candidate is filing.

When the candidacy is for:

(1) A legislative or judicial office that includes territory from more than one county, the fee shall be paid to the secretary of state for equal division between the treasuries of the counties comprising the district.

(2) A legislative or judicial office that includes territory from only one county:

(a) The fee shall be paid to the county auditor if the candidate filed his or her declaration of candidacy with the county auditor;

(b) The fee shall be paid to the secretary of state if the candidate filed his or her declaration of candidacy with the secretary of state. The secretary of state shall then promptly transmit the fee to the county auditor of the county in which the legislative or judicial office is located.

(3) A city or town office, the fee shall be paid to the county auditor who shall transmit it to the city or town clerk for deposit in the city or town treasury.

Passed by the House March 4, 2005.

Passed by the Senate April 14, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 222

[Engrossed House Bill 1146]

INSURANCE—GROUP LIFE POLICIES

AN ACT Relating to funding group life insurance; and amending RCW 48.24.020 and 48.24.030.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 48.24.020 and 1955 c 303 s 29 are each amended to read as follows:

The lives of a group of individuals may be insured under a policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustee is deemed the policyholder, insuring employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(1) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him or her, or partly from such funds and partly from funds contributed by the insured employees, or from funds contributed entirely by the insured employees. ~~((No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least seventy-five percent of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions.))~~ A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least ~~((ten))~~ two employees at date of issue.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees.

Sec. 2. RCW 48.24.030 and 1993 c 132 s 1 are each amended to read as follows:

(1) Insurance under any group life insurance policy issued pursuant to RCW 48.24.020, or 48.24.050, or 48.24.060, or 48.24.070 or 48.24.090 may ~~((if seventy-five percent of the then insured employees or labor union members or public employee association members or members of the Washington state patrol elect.))~~ be extended to insure the spouse and dependent children, or any

class or classes thereof, of each such insured employee or member who so elects, in amounts in accordance with a plan which precludes individual selection by the employees or members or by the employer or labor union or trustee, and which insurance on the life of any one family member including a spouse shall not be in excess of (~~(fifty percent of the insurance on the life of the insured employee or member)~~) the amount purchased by the insured employee.

Premiums for the insurance on such family members shall be paid by the policyholder, either from the employer's funds (~~(or)~~), funds contributed (~~(by)~~) to him or her, employee's funds, trustee's funds, or labor union funds(~~(, and/or from funds contributed by the insured employees or members, or from both)~~).

(2) Such a spouse insured pursuant to this section shall have the same conversion right as to the insurance on his or her life as is vested in the employee or member under this chapter.

Passed by the House February 11, 2005.

Passed by the Senate April 14, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 223

[Substitute House Bill 1197]

INSURANCE

AN ACT Relating to insurance; amending RCW 48.02.180, 48.05.340, 48.11.100, 48.11.140, 48.14.010, 48.14.0201, 48.17.150, 48.18.100, 48.18.103, 48.18.430, 48.21.047, 48.23.010, 48.24.030, 48.29.010, 48.29.020, 48.29.120, 48.29.130, 48.29.170, 48.30.300, 48.30A.045, 48.30A.060, 48.30A.065, 48.31.100, 48.38.030, 48.44.240, 48.66.020, 48.66.045, 48.66.055, 48.66.130, 48.92.120, 48.98.015, 48.110.030, and 48.110.040; adding a new section to chapter 48.66 RCW; and repealing RCW 48.05.360, 48.29.030, 48.29.060, 48.29.070, 48.29.090, 48.29.100, 48.29.110, and 48.34.910.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 48.02.180 and 1981 c 339 s 1 are each amended to read as follows:

(1) (~~(In addition to such publications as are otherwise authorized under this code,)~~) The commissioner may ((from time to time)) periodically prepare and publish:

(a) (~~(Booklets containing the insurance code, or supplements thereto, and such related statutes as the commissioner deems suitable and useful for inclusion in an appendix of such booklet or supplement.))~~) Title 48 RCW, Title 284 WAC, insurance bulletins and technical assistance advisories, and other laws, rules, or regulations relevant to the regulation of insurance;

(b) Manuals and other material ((relative)) relating to examinations for ((licensing as provided in chapter 48.17 RCW)) licensure; and

(c) Any other publications authorized under Title 48 RCW.

(2) The commissioner may (~~(furnish)~~) provide copies of the (~~(insurance code, supplements thereto, and related statutes))~~ publications referred to in subsection (1)(a) of this section free of charge to:

(a) Public offices and officers in this state ((concerned therewith, to));

(b) Public officials of other states and jurisdictions ((having supervision of)) that regulate insurance((, to));

~~(c) The library of congress(-); and ((tø))~~

~~(d) Officers of the armed forces of the United States of America located at military installations in this state who are concerned with insurance transactions at or involving ((such)) the military installations.~~

(3) Except as provided in subsection (2) of this section, the commissioner shall sell ~~((copies of the insurance code, supplements thereto, examination manuals, and materials as))~~ the publications referred to in subsection (1) of this section~~((, at)).~~ The commissioner may charge a reasonable price~~((, fixed by the commissioner, in amount))~~ that is not less than the cost of publication, handling, and distribution ~~((thereof)).~~ The commissioner shall promptly deposit all funds received ~~((by him pursuant to))~~ under this subsection with the state treasurer to the credit of the ~~((general fund))~~ insurance commissioner's regulatory account. For appropriation purposes, ~~((such))~~ the funds received and deposited by the commissioner ~~((shall be treated as))~~ are a recovery of a previous expenditure.

Sec. 2. RCW 48.05.340 and 1995 c 83 s 14 are each amended to read as follows:

(1) Subject to RCW 48.05.350 ~~((and 48.05.360))~~ to qualify for authority to transact any one kind of insurance as defined in chapter 48.11 RCW or combination of kinds of insurance as ~~((shown below))~~ set forth in this subsection, a foreign or alien insurer, whether stock or mutual, or a domestic insurer ~~((hereafter))~~ formed ~~((shall))~~ after the effective date of this section must possess unimpaired paid-in capital stock, if a stock insurer, or unimpaired surplus if a mutual insurer, and additional funds in surplus, as follows, and ~~((shall))~~ must thereafter maintain unimpaired a combined total of: (a) The paid-in capital stock if a stock insurer or surplus if a mutual insurer, plus (b) ~~((such))~~ additional funds in surplus equal to the total of the following initial requirements:

Kind or kinds of insurance	Paid-in capital stock or basic surplus	Additional surplus
Life	\$2,000,000	\$2,000,000
Disability	2,000,000	2,000,000
Life and disability . . .	2,400,000	2,400,000
Property	2,000,000	2,000,000
Marine & transportation . . .	2,000,000	2,000,000
General casualty	2,400,000	2,400,000
Vehicle	2,000,000	2,000,000
Surety	2,000,000	2,000,000
Any two of the following kinds of insurance: Property, marine & transportation, general casualty, vehicle, surety, disability	3,000,000	3,000,000

Multiple lines (all insurances except life and title insurance)	3,000,000	3,000,000
Title (((in accordance with the provisions of chapter 48.29 RCW)))	<u>2,000,000</u>	<u>2,000,000</u>

(2) Capital and surplus requirements are based upon all the kinds of insurance transacted by the insurer wherever it (~~may~~) operates or proposes to operate, whether or not only a portion of (~~such~~) the kinds are to be transacted in this state.

(3) Until December 31, 1996, a foreign or alien insurer holding a certificate of authority to transact insurance in this state immediately prior to June 9, 1994, may continue to be authorized to transact the same kinds of insurance as long as it is otherwise qualified for (~~such~~) that authority. A domestic insurer, except a title insurer, holding a certificate of authority to transact insurance in this state immediately prior to June 9, 1994, may continue to be authorized to transact the same kinds of insurance as long as it is otherwise qualified for such an authority and thereafter maintains unimpaired the amount of paid-in capital stock, if a stock insurer, or basic surplus, if a mutual or reciprocal insurer, and special or additional surplus as required of it under laws in force immediately prior to June 9, 1994.

Sec. 3. RCW 48.11.100 and 1947 c 79 s .11.10 are each amended to read as follows:

"Title insurance" is insurance of owners of property or others having an interest (~~therein~~) in real property, against loss by encumbrance, or defective titles, or adverse claim to title, and associated services (~~(connected therewith)~~).

Sec. 4. RCW 48.11.140 and 1993 c 462 s 53 are each amended to read as follows:

(1) (~~No~~) An insurer (~~shall~~) may not retain any risk on any one subject of insurance, whether located or to be performed in this state or elsewhere, in an amount exceeding ten percent of its surplus to policyholders.

(2) For the purposes of this section, a "subject of insurance" as to insurance against fire includes all properties insured by the same insurer (~~which~~) that are reasonably subject to loss or damage from the same fire.

(3) Reinsurance in an alien reinsurer not qualified under RCW (~~48.05.300~~) 48.12.166 may not be deducted in determining risk retained for the purposes of this section.

(4) In the case of surety insurance, the net retention shall be computed after deduction of reinsurances, the amount assumed by any co-surety, the value of any security deposited, pledged, or held subject to the consent of the surety and for the protection of the surety.

(5) This section does not apply to life insurance, disability insurance, title insurance, or insurance of marine risks or marine protection and indemnity risks.

Sec. 5. RCW 48.14.010 and 1994 c 131 s 2 are each amended to read as follows:

(1) The commissioner shall collect in advance the following fees:

- (a) **For filing charter documents:**
 - (i) Original charter documents, bylaws or record of organization of insurers, or certified copies thereof, required to be filed \$250.00
 - (ii) Amended charter documents, or certified copy thereof, other than amendments of bylaws. \$ 10.00
 - (iii) No additional charge or fee shall be required for filing any of such documents in the office of the secretary of state.
- (b) **Certificate of authority:**
 - (i) Issuance \$ 25.00
 - (ii) Renewal \$ 25.00
- (c) **Annual statement of insurer, filing \$ 20.00**
- (d) **Organization or financing of domestic insurers and affiliated corporations:**
 - (i) Application for solicitation permit, filing. \$100.00
 - (ii) Issuance of solicitation permit. \$ 25.00
- (e) **Agents' licenses:**
 - (i) Agent's qualification licenses every two years \$ 50.00
 - (ii) Filing of appointment of each such agent, every two years \$ 20.00
 - (iii) Limited license issued pursuant to RCW 48.17.190, every two years. \$ 20.00
- (f) **Reinsurance intermediary licenses:**
 - (i) Reinsurance intermediary-broker, each year \$ 50.00
 - (ii) Reinsurance intermediary-manager, each year. \$100.00
- (g) **Brokers' licenses:**
 - (i) Broker's license, every two years. \$100.00
 - (ii) Surplus line broker, every two years. \$200.00
- (h) **Solicitors' license, every two years \$ 20.00**
- (i) **Adjusters' licenses:**

- (i) Independent adjuster, every two years \$ 50.00
- (ii) Public adjuster, every two years \$ 50.00
- (j) **Resident general agent's license, every two years** \$ 50.00
- (k) **Managing general agent appointment, every two years** \$200.00
- (l) **Examination for license, each examination:**
 All examinations, except examinations administered by an independent testing service, the fees for which are to be approved by the commissioner and collected directly by and retained by such independent testing service \$ 20.00
- (m) **Miscellaneous services:**
 - (i) Filing other documents \$ 5.00
 - (ii) Commissioner's certificate under seal \$ 5.00
 - (iii) Copy of documents filed in the commissioner's office, reasonable charge therefor as determined by the commissioner.

(2) All fees so collected shall be remitted by the commissioner to the state treasurer not later than the first business day following, and shall be placed to the credit of the general fund(~~(-PROVIDED, That)~~).

(a) Fees for examinations administered by an independent testing service (~~(which)~~) that are approved by the commissioner (~~(pursuant to)~~) under subsection (1)(l) of this section shall be collected directly by (~~(such)~~) the independent testing service and retained by it.

(b) Fees for copies of documents filed in the commissioner's office shall be remitted by the commissioner to the state treasurer not later than the first business day following, and shall be placed to the credit of the insurance commissioner's regulatory account.

Sec. 6. RCW 48.14.0201 and 2004 c 260 s 24 are each amended to read as follows:

(1) As used in this section, "taxpayer" means a health maintenance organization as defined in RCW 48.46.020, a health care service contractor as defined in RCW 48.44.010, or a self-funded multiple employer welfare arrangement as defined in RCW 48.125.010.

(2) Each taxpayer shall pay a tax on or before the first day of March of each year to the state treasurer through the insurance commissioner's office. The tax shall be equal to the total amount of all premiums and prepayments for health care services received by the taxpayer during the preceding calendar year multiplied by the rate of two percent.

(3) Taxpayers shall prepay their tax obligations under this section. The minimum amount of the prepayments shall be percentages of the taxpayer's tax obligation for the preceding calendar year recomputed using the rate in effect for the current year. For the prepayment of taxes due during the first calendar year, the minimum amount of the prepayments shall be percentages of the taxpayer's tax obligation that would have been due had the tax been in effect during the previous calendar year. The tax prepayments shall be paid to the state treasurer through the commissioner's office by the due dates and in the following amounts:

- (a) On or before June 15, forty-five percent;
- (b) On or before September 15, twenty-five percent;
- (c) On or before December 15, twenty-five percent.

(4) For good cause demonstrated in writing, the commissioner may approve an amount smaller than the preceding calendar year's tax obligation as recomputed for calculating the health maintenance organization's, health care service contractor's, self-funded multiple employer welfare arrangement's, or certified health plan's prepayment obligations for the current tax year.

(5) Moneys collected under this section shall be deposited in the general fund through March 31, 1996, and in the health services account under RCW 43.72.900 after March 31, 1996.

(6) The taxes imposed in this section do not apply to:

(a) Amounts received by any taxpayer from the United States or any instrumentality thereof as prepayments for health care services provided under Title XVIII (medicare) of the federal social security act.

(b) Amounts received by any health care service contractor, as defined in RCW 48.44.010, as prepayments for health care services included within the definition of practice of dentistry under RCW 18.32.020.

(c) Participant contributions to self-funded multiple employer welfare arrangements that are not taxable in this state.

(7) Beginning January 1, 2000, the state does hereby preempt the field of imposing excise or privilege taxes upon taxpayers and no county, city, town, or other municipal subdivision shall have the right to impose any such taxes upon such taxpayers. This subsection shall be limited to premiums and payments for health benefit plans offered by health care service contractors under chapter 48.44 RCW, health maintenance organizations under chapter 48.46 RCW, and self-funded multiple employer welfare arrangements as defined in RCW 48.125.010. The preemption authorized by this subsection shall not impair the ability of a county, city, town, or other municipal subdivision to impose excise or privilege taxes upon the health care services directly delivered by the employees of a health maintenance organization under chapter 48.46 RCW.

(8) The taxes imposed by this section apply to a self-funded multiple employer welfare arrangement only in the event that they are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the commissioner shall initially request an advisory opinion from the United States department of labor or obtain a declaratory ruling from a federal court on the legality of imposing state premium taxes on these arrangements. If there has not been a final determination by the United States department of labor or a federal court that the taxes are not preempted by federal law, the taxes provided for in this section become effective

on March 1, 2005, or thirty days following the issuance of a certificate of authority, whichever is later. During the time period between March 1, 2005, or thirty days following the issuance of a certificate of authority, whichever is later, and the final determination by the United States department of labor or a federal court, any taxes shall be deposited in an interest bearing escrow account maintained by the [self-funded] multiple employer welfare arrangement. Upon a final determination that the taxes are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., all funds in the interest bearing escrow account shall be transferred to the state treasurer.

(9) The effect of transferring contracts for health care services from one taxpayer to another taxpayer is to transfer the tax prepayment obligation with respect to the contracts.

(10) On or before June 1st of each year, the commissioner shall notify each taxpayer required to make prepayments in that year of the amount of each prepayment and shall provide remittance forms to be used by the taxpayer. However, a taxpayer's responsibility to make prepayments is not affected by failure of the commissioner to send, or the taxpayer to receive, the notice or forms.

Sec. 7. RCW 48.17.150 and 1994 c 131 s 4 are each amended to read as follows:

(1) To qualify for an agent's or broker's license, an applicant must otherwise comply with this code (~~(therefor)~~) and must:

(a) Be at least eighteen years of age (~~(or over)~~), if an individual;

(b) Be a bona fide resident of and actually reside in this state, or if a corporation, be other than an insurer and maintain a lawfully established place of business in this state, except as provided in RCW 48.17.330;

(c) Be empowered to be an agent or broker(~~(, as the case may be,)~~) under its members' agreement, if a firm, or by its articles of incorporation, if a corporation;

(d) Complete (~~(such)~~) the minimum educational requirements for the issuance of an agent's license for the kinds of insurance specified in RCW 48.17.210 as may be required by regulation issued by the commissioner;

(e) Successfully pass any examination as required under RCW 48.17.110;

(f) Be a trustworthy person;

(g)(i) If for an agent's license, be appointed as its agent by one or more authorized insurers, subject to issuance of the license; (~~(and)~~)

(ii) The commissioner may by regulation establish requirements, including notification formats, in addition to or in lieu of the requirements of (g)(i) of this subsection to allow an agent to act as a representative of and place insurance with an insurer without first notifying the commissioner of the appointment for a period of time up to but not exceeding thirty days from the date the first insurance application is executed by the agent; and

(h) If for broker's license, have had at least two years experience either as an agent, solicitor, adjuster, general agent, broker, or as an employee of insurers or representatives of insurers, and special education or training of sufficient duration and extent reasonably to satisfy the commissioner that (~~(he)~~) the applicant possesses the competence necessary to fulfill the responsibilities of broker.

(2) The commissioner shall by regulation establish minimum continuing education requirements for the renewal or reissuance of a license to an agent or a broker (~~(= PROVIDED, That)~~).

(a) The commissioner shall require that continuing education courses will be made available on a statewide basis in order to ensure that persons residing in all geographical areas of this state will have a reasonable opportunity to attend such courses.

(b) The continuing education requirements (~~(shall)~~) must be appropriate to the license for the kinds of insurance specified in RCW 48.17.210 (~~(= PROVIDED FURTHER, That)~~).

(c) The continuing education requirements may be waived by the commissioner for good cause shown.

(3) If the commissioner finds that the applicant is (~~(so)~~) qualified and that the license fee has been paid, the license shall be issued. Otherwise, the commissioner shall refuse to issue the license.

Sec. 8. RCW 48.18.100 and 1997 c 428 s 3 are each amended to read as follows:

(1) No insurance policy form (~~(other than surety bond forms, forms exempt under RCW 48.18.103,))~~ or application form where written application is required and is to be attached to the policy, or printed life or disability rider or endorsement form (~~(shall)~~) may be issued, delivered, or used unless it has been filed with and approved by the commissioner. This section (~~(shall)~~) does not apply to:

(a) Surety bond forms;

(b) Forms filed under RCW 48.18.103;

(c) Forms exempted from filing requirements by the commissioner under RCW 48.18.103;

(d) Manuscript policies, riders, or endorsements of unique character designed for and used with relation to insurance upon a particular subject; or

(e) Contracts of insurance procured under the provisions of chapter 48.15 RCW.

(2) Every such filing containing a certification, in a form approved by the commissioner, by either the chief executive officer of the insurer or by an actuary who is a member of the American academy of actuaries, attesting that the filing complies with Title 48 RCW and Title 284 of the Washington Administrative Code, may be used by (~~(such)~~) the insurer immediately after filing with the commissioner. The commissioner may order an insurer to cease using a certified form upon the grounds set forth in RCW 48.18.110. This subsection (~~(shall)~~) does not apply to certain types of policy forms designated by the commissioner by rule.

(3) Except as provided in RCW 48.18.103, every filing that does not contain a certification pursuant to subsection (2) of this section (~~(shall)~~) must be made not less than thirty days in advance of (~~(any such)~~) issuance, delivery, or use. At the expiration of (~~(such)~~) the thirty days, the filed form (~~(so filed)~~) shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner. The commissioner may extend by not more than an additional fifteen days the period within which he or she may (~~(so)~~) affirmatively approve or disapprove any (~~(such)~~) form, by giving notice of (~~(such)~~) the extension before expiration of the initial thirty-day period. At the

expiration of ~~((any such))~~ the period ~~((as so))~~ that has been extended, and in the absence of ~~((such))~~ prior affirmative approval or disapproval, ~~((any such))~~ the form shall be deemed approved. The commissioner may withdraw any ~~((such))~~ approval at any time for cause. By approval of any ~~((such))~~ form for immediate use, the commissioner may waive any unexpired portion of ~~((such))~~ the initial thirty-day waiting period.

(4) The commissioner's order disapproving any ~~((such))~~ form or withdrawing a previous approval ~~((shall))~~ must state the grounds ~~((therefor))~~ for disapproval.

(5) No ~~((such))~~ form ~~((shall))~~ may knowingly be ~~((so))~~ issued or delivered as to which the commissioner's approval does not then exist.

(6) The commissioner may, by ~~((order))~~ rule, exempt from the requirements of this section ~~((for so long as he or she deems proper,))~~ any class or type of insurance ~~((document or form or type thereof as specified in such order, to which in his or her opinion this section may not practicably be applied, or the))~~ policy forms if filing and approval ~~((of which are, in his or her opinion,))~~ is not desirable or necessary for the protection of the public.

(7) Every member or subscriber to a rating organization ~~((shall))~~ must adhere to the form filings made on its behalf by the organization. Deviations from ~~((such))~~ the organization are permitted only when filed with the commissioner in accordance with this chapter.

Sec. 9. RCW 48.18.103 and 2003 c 248 s 4 are each amended to read as follows:

(1) It is the intent of the legislature to assist the purchasers of commercial property casualty insurance by allowing policies to be issued more expeditiously and provide a more competitive market for forms.

(2) Commercial property casualty policies may be issued prior to filing the forms.

(3) All commercial property casualty forms ((shall)) must be filed with the commissioner within thirty days after an insurer issues any policy using them. This subsection does not apply to:

(a) Types or classes of forms that the commissioner exempts from filing by rule; and

(b) Manuscript policies, riders, or endorsements of unique character designed for and used with relation to insurance upon a particular subject.

~~((3))~~ (4) If, within thirty days after a commercial property casualty form has been filed, the commissioner finds that the form does not meet the requirements of this chapter, the commissioner shall disapprove the form and give notice to the insurer or rating organization that made the filing, specifying how the form fails to meet the requirements and stating when, within a reasonable period thereafter, the form shall be deemed no longer effective. The commissioner may extend the time for review ~~((another))~~ an additional fifteen days by giving notice to the insurer prior to the expiration of the original thirty-day period.

~~((4))~~ (5) Upon a final determination of a disapproval of a policy form under subsection ~~((3))~~ (4) of this section, the insurer ~~((shall))~~ must amend any previously issued disapproved form by endorsement to comply with the commissioner's disapproval.

~~((5))~~ (6) For purposes of this section, "commercial property casualty" means insurance pertaining to a business, profession, occupation, nonprofit organization, or public entity for the lines of property and casualty insurance defined in RCW 48.11.040, 48.11.050, 48.11.060, or 48.11.070.

~~((6))~~ (7) Except as provided in subsection ~~((4))~~ (5) of this section, the disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice of disapproval.

~~((7))~~ (8) Every member or subscriber to a rating organization must adhere to the form filings made on its behalf by the organization. An insurer may deviate from forms filed on its behalf by an organization only if the insurer files the forms with the commissioner in accordance with this chapter.

(9) In the event a hearing is held on the actions of the commissioner under subsection ~~((3))~~ (4) of this section, the burden of proof shall be on the commissioner.

Sec. 10. RCW 48.18.430 and 1949 c 190 s 25 are each amended to read as follows:

(1) The benefits, rights, privileges, and options ~~((which))~~ under any annuity contract ~~((heretofore or hereafter issued are due or prospectively))~~ that are due to the annuitant who paid the consideration for the annuity contract~~((, shall not be))~~ are not subject to execution ~~((nor shall))~~ and the annuitant may not be compelled to exercise ~~((any such))~~ those rights, powers, or options, ~~((nor shall))~~ and creditors ~~((be))~~ are not allowed to interfere with or terminate the contract, except:

(a) As to amounts paid for or as premium on ~~((any such))~~ an annuity with intent to defraud creditors, with interest thereon, and of which the creditor has given the insurer written notice at its home office prior to ~~((the))~~ making ~~((of))~~ the payments to the annuitant out of which the creditor seeks to recover. ~~((Any such))~~ The notice ~~((shall))~~ must specify the amount claimed or ~~((such))~~ the facts ~~((as))~~ that will enable the insurer to ~~((ascertain such))~~ determine the amount, and ~~((shall))~~ must set forth ~~((such))~~ the facts ~~((as))~~ that will enable the insurer to ~~((ascertain))~~ determine the insurance or annuity contract, the person insured or annuitant and the payments sought to be avoided on the ~~((ground))~~ basis of fraud.

(b) The total exemption of benefits presently due and payable to ~~((any))~~ an annuitant periodically or at stated times under all annuity contracts ~~((under which he is an annuitant, shall))~~ may not at any time exceed two thousand five hundred ~~((and fifty))~~ dollars per month for the length of time represented by ~~((such))~~ the installments, and ~~((that such))~~ a periodic payment in excess of two thousand five hundred ~~((and fifty))~~ dollars per month ~~((shall be))~~ is subject to garnishee execution to the same extent as are wages and salaries.

(c) If the total benefits presently due and payable to ~~((any))~~ an annuitant under all annuity contracts ~~((under which he is an annuitant, shall))~~ at any time exceeds payment at the rate of two thousand five hundred ~~((and fifty))~~ dollars per month, then the court may order ~~((such))~~ the annuitant to pay to a judgment creditor or apply on the judgment, in installments, ~~((such))~~ the portion of ~~((such))~~ the excess benefits ~~((as to))~~ that the court ~~((may appear))~~ determines to be just and proper, after due regard for the reasonable requirements of the judgment debtor and ~~((his family, if dependent upon him))~~ the judgment debtor's

dependent family, as well as any payments required to be made by the annuitant to other creditors under prior court orders.

(2) The benefits, rights, privileges, or options accruing under ~~((such))~~ an annuity contract to a beneficiary or assignee ~~((shall not be))~~ are not transferable ~~((or))~~ or subject to commutation, and if the benefits are payable periodically or at stated times, the same exemptions and exceptions contained ~~((herein))~~ in this section for the annuitant~~((, shall apply with respect to such))~~ apply to the beneficiary or assignee.

(3) An annuity contract within the meaning of this section ~~((shall be))~~ is any obligation to pay certain sums at stated times, during life or lives, or for a specified term or terms, issued for a valuable consideration, regardless of whether or not ~~((such))~~ the sums are payable to one or more persons, jointly or otherwise, but does not include payments under life insurance contracts at stated times during life or lives, or for a specified term or terms.

Sec. 11. RCW 48.21.047 and 1995 c 265 s 22 are each amended to read as follows:

(1) ~~((No insurer shall))~~ An insurer may not offer any health benefit plan to any small employer without complying with ~~((the provisions of))~~ RCW 48.21.045~~((5))~~ (3).

(2) Employers purchasing health plans provided through associations or through member-governed groups formed specifically for the purpose of purchasing health care ~~((shall not be considered))~~ are not small employers and ~~((such plans shall not be subject to the provisions of RCW 48.21.045(5))~~ the plans are not subject to RCW 48.21.045(3).

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

Sec. 12. RCW 48.23.010 and 1979 c 130 s 2 are each amended to read as follows:

~~((The provisions of this chapter apply))~~ This chapter applies to contracts of life insurance and annuities other than group life insurance, group annuities, and, except for RCW 48.23.260, 48.23.270, and 48.23.340, ~~((and 48.23.350,))~~ other than industrial life insurance~~((: PROVIDED, That the provisions of))~~. However, Title 48 RCW ~~((shall))~~ does not apply to charitable gift annuities issued by a board of a state university, regional university, or a state college, nor to the issuance thereof.

Sec. 13. RCW 48.24.030 and 1993 c 132 s 1 are each amended to read as follows:

(1) Insurance under any group life insurance policy issued ~~((pursuant to))~~ under RCW 48.24.020, ~~((or))~~ 48.24.050, ~~((or))~~ 48.24.060, ~~((or))~~ 48.24.070, or 48.24.090 may, if seventy-five percent of the then insured employees or labor union members or public employee association members or members of the Washington state patrol elect, be extended to insure the spouse and dependent children, or any class or classes thereof, of each ~~((such))~~ insured employee or member who so elects, in amounts in accordance with a plan ~~((which))~~ that precludes individual selection by the employees or members or by the employer or labor union or trustee~~((, and which insurance on the life of any one family member including a spouse shall not be in excess of fifty percent of the insurance on the life of the insured employee or member))~~.

Premiums for the insurance on ~~((such))~~ the family members shall be paid by the policyholder, either from the employer's funds or funds contributed by him, trustee's funds, or labor union funds, and/or from funds contributed by the insured employees or members, or from both.

(2) ~~((Such))~~ A spouse insured ~~((pursuant to))~~ under this section ~~((shall have))~~ has the same conversion right as to the insurance on his or her life as is vested in the employee or member under this chapter.

Sec. 14. RCW 48.29.010 and 1997 c 14 s 1 are each amended to read as follows:

(1) This chapter relates only to title insurers for real property.

(2) ~~((None of the provisions of))~~ This code ~~((shall be deemed to))~~ does not apply to persons engaged in the business of preparing and issuing abstracts of title to property and certifying to ~~((the))~~ their correctness ~~((thereof))~~ so long as ~~((such))~~ the persons do not guarantee or insure ~~((such))~~ the titles.

(3) For purposes of this chapter, unless the context clearly requires otherwise:

(a) "Title policy" means any written instrument, contract, or guarantee by means of which title insurance liability is assumed.

(b) "Abstract of title" means a written representation, provided ~~((pursuant to))~~ under contract, whether written or oral, intended to be relied upon by the person who has contracted for the receipt of ~~((such))~~ this representation, listing all recorded conveyances, instruments, or documents ~~((which))~~ that, under the laws of the state of Washington, impart constructive notice with respect to the chain of title to the real property described. An abstract of title is not a title policy as defined in this subsection.

(c) "Preliminary report," "commitment," or "binder" means reports furnished in connection with an application for title insurance and are offers to issue a title policy subject to the stated exceptions ~~((set forth))~~ in the reports, the conditions and stipulations of the report and the issued policy, and ~~((such))~~ other matters as may be incorporated by reference. The reports are not abstracts of title, nor are any of the rights, duties, or responsibilities applicable to the preparation and issuance of an abstract of title applicable to the issuance of any report. ~~((Any such))~~ The report ~~((shall not be construed as, nor constitute,))~~ is not a representation as to the condition of the title to real property, but ~~((shall constitute))~~ is a statement of terms and conditions upon which the issuer is willing to issue its title policy, if ~~((such))~~ the offer is accepted.

Sec. 15. RCW 48.29.020 and 1990 c 76 s 1 are each amended to read as follows:

A title insurer ~~((shall not be))~~ is not entitled to have a certificate of authority unless ~~((it otherwise qualifies therefor, nor unless))~~:

(1) It is a stock corporation~~((:));~~

(2) It owns or leases and maintains a complete set of tract indexes of the county in this state in which its principal office ~~((within this state))~~ is located~~((:));~~ and

(3) ~~((It deposits and keeps on deposit with the commissioner a guaranty fund in amount as set forth in RCW 48.29.030 and comprised of cash or public obligations as specified in RCW 48.13.040.))~~ It has and maintains the capital and surplus requirements set forth in RCW 48.05.340.

Sec. 16. RCW 48.29.120 and 1947 c 79 s .29.12 are each amended to read as follows:

~~((1) Each title insurer shall annually apportion to a special reserve fund an amount determined by applying the rate of twenty-five cents for each one thousand dollars of net increase of insurance it has in force as at the end of such year. Such apportionment shall be continued or resumed as needed to maintain the special reserve fund at an amount equal to not less than the guaranty fund deposit required of the insurer.~~

~~(2) The special reserve fund shall be held by the insurer as an additional guaranty fund, and shall be used only for the payment of losses after the insurer's liquid resources available for the payment of losses, other than such special reserve fund or the guaranty fund deposit, have been exhausted.~~

~~(3) For the purposes of computing the special reserve fund as provided in subsection (1) of this section, net increase of insurance in force resulting from reinsurance of the risks of another title insurer shall not be included to the extent that a like special reserve fund on such insurance is maintained by the ceding insurer.)~~ In determining the financial condition of a title insurer doing business under this title, the general provisions of chapter 48.12 RCW requiring the establishment of reserves sufficient to cover all known and unknown liabilities including allocated and unallocated loss adjustment expense apply, except that a title insurer shall establish and maintain:

(1) A known claim reserve in an amount estimated to be sufficient to cover all unpaid losses, claims, and allocated loss adjustment expenses arising under title insurance policies, guaranteed certificates of title, guaranteed searches, and guaranteed abstracts of title, and all unpaid losses, claims, and allocated loss adjustment expenses for which the title insurer may be liable, and for which the insurer has received notice by or on behalf of the insured, holder of a guarantee or escrow, or security depositor;

(2)(a) A statutory or unearned premium reserve consisting of:

(i) The amount of the special reserve fund that was required prior to the effective date of this section, which balance must be released in accordance with (b) of this subsection; and

(ii) Additions to the reserve after the effective date of this section must be made out of total charges for title insurance policies and guarantees written, as set forth in the title insurer's most recent annual statement on file with the commissioner, equal to the sum of the following:

(A) For each title insurance policy on a single risk written or assumed after the effective date of this section, fifteen cents per one thousand dollars of net retained liability for policies under five hundred thousand dollars; and

(B) For each title insurance policy on a single risk written or assumed after the effective date of this section, ten cents per one thousand dollars of net retained liability for policies of five hundred thousand or greater.

(b) The aggregate of the amounts set aside in this reserve in any calendar year pursuant to (a) of this subsection must be released from the reserve and restored to net profits over a period of twenty years under the following formula:

(i) Thirty-five percent of the aggregate sum on July 1st of the year next succeeding the year of addition;

(ii) Fifteen percent of the aggregate sum on July 1st of each of the succeeding two years;

(iii) Ten percent of the aggregate sum on July 1st of the next succeeding year;

(iv) Three percent of the aggregate sum on July 1st of each of the next three succeeding years;

(v) Two percent of the aggregate sum on July 1st of each of the next three succeeding years; and

(vi) One percent of the aggregate sum on July 1st of each of the next succeeding ten years.

(c) The insurer shall calculate an adjusted statutory unearned premium reserve as of the effective date of this section. The adjusted reserve is calculated as if (a)(ii) and (b) of this subsection had been in effect for all years beginning twenty years prior to the effective date of this section. For purposes of this calculation, the balance of the reserve as of that date is deemed to be zero. If the adjusted reserve so calculated exceeds the aggregate amount set aside for statutory or unearned premiums in the insurer's annual statement on file with the commissioner on the effective date of this section, the insurer shall, out of total charges for policies of title insurance, increase its statutory or unearned premium reserve by an amount equal to one-sixth of that excess in each of the succeeding six years, commencing with the calendar year that includes the effective date of this section, until the entire excess has been added.

(d) The aggregate of the amounts set aside in this reserve in any calendar year as adjustments to the insurer's statutory or unearned premium reserve under (c) of this subsection shall be released from the reserve and restored to net profits, or equity if the additions required by (c) of this subsection reduced equity directly, over a period not exceeding ten years under the following table:

<u>Year of Addition</u>	<u>Release</u>
<u>Year 1¹</u>	<u>Equally over 10 years</u>
<u>Year 2</u>	<u>Equally over 9 years</u>
<u>Year 3</u>	<u>Equally over 8 years</u>
<u>Year 4</u>	<u>Equally over 7 years</u>
<u>Year 5</u>	<u>Equally over 6 years</u>
<u>Year 6</u>	<u>Equally over 5 years</u>

¹(The calendar year following the effective date of this section).

(3) A supplemental reserve shall be established consisting of any other reserves necessary, when taken in combination with the reserves required by subsections (1) and (2) of this section, to cover the company's liabilities with respect to all losses, claims, and loss adjustment expenses.

(4) The supplemental reserve required under subsection (3) of this section shall be phased in as follows: Twenty-five percent of the otherwise applicable supplemental reserve is required until December 31, 2006; fifty percent of the otherwise applicable supplemental reserve is required until December 31, 2007; and seventy-five percent of the otherwise applicable supplemental reserve is required until December 31, 2008.

Sec. 17. RCW 48.29.130 and 1967 c 150 s 30 are each amended to read as follows:

~~((The funds of a domestic title insurer, other than those representing its guaranty fund deposit, shall be invested))~~ A domestic title insurer shall invest its funds as follows:

(1) Funds in an amount not less than its reserve required ~~((special reserve shall))~~ by RCW 48.29.120 must be kept invested in investments eligible for domestic life insurers.

(2) Other funds may be invested in:

(a) The insurer's plant and equipment, up to a maximum of fifty percent of capital plus surplus.

(b) Stocks and bonds of abstract companies when approved by the commissioner.

(c) Investments eligible for the investment of funds of any domestic insurer.

Sec. 18. RCW 48.29.170 and 1981 c 223 s 2 are each amended to read as follows:

Title insurance agents ~~((shall be))~~ are exempt from the provisions of RCW ~~((48.17.090(2) and))~~ 48.17.180(1) ~~((which otherwise))~~ that require that each individual empowered to exercise the authority of a licensed firm or corporation must be separately licensed.

Sec. 19. RCW 48.30.300 and 1993 c 492 s 287 are each amended to read as follows:

Notwithstanding any provision contained in Title 48 RCW to the contrary:

~~((1) No))~~ A person or entity engaged in the business of insurance in this state ~~((shall))~~ may not refuse to issue any contract of insurance or cancel or decline to renew such contract because of the sex or marital status, or the presence of any sensory, mental, or physical handicap of the insured or prospective insured. The amount of benefits payable, or any term, rate, condition, or type of coverage ~~((shall))~~ may not be restricted, modified, excluded, increased, or reduced on the basis of the sex or marital status, or be restricted, modified, excluded, or reduced on the basis of the presence of any sensory, mental, or physical handicap of the insured or prospective insured. ~~((Subject to the provisions of subsection (2) of this section these provisions shall))~~ This subsection does not prohibit fair discrimination on the basis of sex, or marital status, or the presence of any sensory, mental, or physical handicap when bona fide statistical differences in risk or exposure have been substantiated.

~~((2) With respect to disability policies issued or renewed on and after July 1, 1994, that provide coverage against loss arising from medical, surgical, hospital, or emergency care services:~~

~~(a) Policies shall guarantee continuity of coverage. Such provision, which shall be included in every policy, shall provide that:~~

~~(i) The policy may be canceled or nonrenewed without the prior written approval of the commissioner only for nonpayment of premium or as permitted under RCW 48.18.090; and~~

~~(ii) The policy may be canceled or nonrenewed because of a change in the physical or mental condition or health of a covered person only with the prior written approval of the commissioner. Such approval shall be granted only~~

~~when the insurer has discharged its obligation to continue coverage for such person by obtaining coverage with another insurer, health care service contractor, or health maintenance organization, which coverage is comparable in terms of premiums and benefits as defined by rule of the commissioner.~~

~~(b) It is an unfair practice for a disability insurer to modify the coverage provided or rates applying to an in force disability insurance policy and to fail to make such modification in all such issued and outstanding policies.~~

~~(c) Subject to rules adopted by the commissioner, it is an unfair practice for a disability insurer to:~~

~~(i) Cease the sale of a policy form unless it has received prior written authorization from the commissioner and has offered all policyholders covered under such discontinued policy the opportunity to purchase comparable coverage without health screening; or~~

~~(ii) Engage in a practice that subjects policyholders to rate increases on discontinued policy forms unless such policyholders are offered the opportunity to purchase comparable coverage without health screening.~~

~~The insurer may limit an offer of comparable coverage without health screening to a period not less than thirty days from the date the offer is first made.)~~

Sec. 20. RCW 48.30A.045 and 1997 c 92 s 1 are each amended to read as follows:

(1) Each insurer licensed to write direct insurance in this state, except those exempted in subsection (2) of this section, shall institute and maintain an insurance antifraud plan. ~~((An insurer licensed on July 1, 1995, shall file its antifraud plan with the insurance commissioner no later than December 31, 1995.))~~ An insurer licensed after July 1, 1995, shall file its antifraud plan within six months of licensure. An insurer shall file any change to the antifraud plan with the insurance commissioner within thirty days after the plan has been modified.

(2) This section does not apply to:

(a) Health carriers, as defined in RCW 48.43.005(7);

(b) Life insurers(~~(7)~~);

(c) Title insurers; (~~(7)~~)

(d) Property or casualty insurers with annual gross written medical malpractice insurance premiums in this state that exceed fifty percent of their total annual gross written premiums in this state; (~~(7)~~)

(e) Credit-related insurance written in connection with a credit transaction in which the creditor is named as a beneficiary or loss payee under the policy, except vendor single-interest or collateral protection coverage as defined in RCW 48.22.110(4); or

(f) Insurers with gross written premiums of less than one thousand dollars in Washington during the reporting year.

Sec. 21. RCW 48.30A.060 and 1995 c 285 s 12 are each amended to read as follows:

By March 31st of each year, each insurer shall ((annually)) provide to the insurance commissioner a summary report on actions taken under its antifraud plan to prevent and combat insurance fraud. The report must also include, but not be limited to, measures taken to protect and ensure the integrity of electronic

data processing-generated data and manually compiled data, statistical data on the amount of resources committed to combatting fraud, and the amount of fraud identified and recovered during the reporting period. The antifraud plans and summary of the insurer's antifraud activities are not public records and are exempt from chapter 42.17 RCW, are proprietary, are not subject to public examination, and are not discoverable or admissible in civil litigation.

Sec. 22. RCW 48.30A.065 and 1995 c 285 s 13 are each amended to read as follows:

An insurer that fails to file a timely antifraud plan or ~~((who does not))~~ summary report or that fails to make a good faith attempt to file an antifraud plan that complies with RCW 48.30A.050 or a summary report that complies with RCW 48.30A.060, is subject to the penalty provisions of RCW 48.01.080, but no penalty may be imposed for the first filing made by an insurer under this chapter. An insurer that fails to follow the antifraud plan is subject to a civil penalty not to exceed ten thousand dollars for each violation, at the discretion of the commissioner after consideration of all relevant factors, including the willfulness of the violation.

Sec. 23. RCW 48.31.100 and 1947 c 79 s .31.10 are each amended to read as follows:

(1) An order to conserve the assets of a foreign or alien insurer ~~((shall))~~ must direct the commissioner ~~((forthwith))~~ immediately to take possession of the property of the insurer within this state and to conserve it, subject to the further direction of the court.

(2) Whenever a domiciliary receiver is appointed for ~~((any such))~~ a foreign or alien insurer in its domiciliary state ~~((which))~~ that is also a reciprocal state, as defined in RCW ~~((48.31.110))~~ 48.99.010, the court shall on application of the commissioner appoint the commissioner as the ancillary receiver in this state, subject to the provisions of the uniform insurers liquidation act.

Sec. 24. RCW 48.38.030 and 1979 c 130 s 8 are each amended to read as follows:

Each charitable annuity contract or policy form ~~((shall))~~ must include the following information:

- (1) The value of the property to be transferred;
- (2) The amount of the annuity to be paid to the transferor or the transferor's nominee;
- (3) The manner in which and the intervals at which payment is to be made;
- (4) The age of the person during whose life payment is to be made; and
- (5) The reasonable value as of the date of the agreement of the benefits ~~((thereby))~~ created. This value ~~((shall))~~ may not exceed by more than fifteen percent the net single premium for the benefits, determined ~~((in accordance with))~~ according to the standard of valuation set forth in RCW 48.38.020~~((+))~~ (3).

Sec. 25. RCW 48.44.240 and 1990 1st ex.s. c 3 s 12 are each amended to read as follows:

Each group contract for health care services ~~((which))~~ that is delivered or issued for delivery or renewed, on or after January 1, 1988, ~~((shall))~~ must contain provisions providing benefits for the treatment of chemical dependency

rendered to covered persons by a provider (~~(which)~~ that is an "approved treatment (~~(facility or)~~) program" under RCW 70.96A.020(3).

***NEW SECTION. Sec. 26.** *A new section is added to chapter 48.66 RCW to read as follows:*

(1) An issuer may not deny or condition the issuance or effectiveness of any medicare supplement policy or certificate available for sale in this state, or discriminate in the pricing of a policy or certificate, because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six-month period beginning with the first day of the first month in which an individual is both sixty-five years of age or older and is enrolled for benefits under medicare part B. Each medicare supplement policy and certificate currently available from an insurer must be made available to all applicants who qualify under this subsection without regard to age.

(2) If an applicant qualifies under this section and submits an application during the time period referenced in subsection (1) of this section and, as of the date of application, has had a continuous period of creditable coverage of at least three months, the issuer may not exclude benefits based on a preexisting condition.

(3) If an applicant qualified under this section submits an application during the time period referenced in subsection (1) of this section and, as of the date of application, has had a continuous period of creditable coverage that is less than three months, the issuer must reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date.

*Sec. 26 was vetoed. See message at end of chapter.

***Sec. 27.** *RCW 48.66.020 and 1996 c 269 s 1 are each amended to read as follows:*

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

(1) "Medicare supplemental insurance" or "medicare supplement insurance policy" refers to a group or individual policy of disability insurance or a subscriber contract of a health care service contractor, a health maintenance organization, or a fraternal benefit society, which relates its benefits to medicare, or which is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare. (~~(Such)~~) The term does not include:

(a) A policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations; (~~(or)~~)

(b) A policy issued pursuant to a contract under Section 1876 of the federal social security act (42 U.S.C. Sec. 1395 et seq.), or an issued policy under a demonstration specified in 42 U.S.C. Sec. 1395(g)(1); (~~(or)~~)

(c) (~~Insurance policies or health care benefit plans, including group conversion policies, provided to medicare eligible persons, that are not~~)

~~marketed or held to be medicare supplement policies or benefit plans))~~
Medicare advantage plans established under medicare part C;

(d) Outpatient prescription drug plans established under medicare part D;
or

(e) Any health care prepayment plan that provides benefits pursuant to an agreement under section 1833(a)(1)(A) of the federal social security act.

(2) "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(3) "Medicare advantage plan" means a plan of coverage for health benefits under medicare part C as defined in 42 U.S.C. Sec. 1395w-28(b), and includes:

(a) Coordinated care plans that provide health care services, including but not limited to health maintenance organization plans, with or without a point-of-service option, plans offered by provider-sponsored organizations, and preferred provider organization plans;

(b) Medical savings account plans coupled with a contribution into a medicare advantage plan medical savings account; and

(c) Medicare advantage private fee-for-service plans.

(4) "Medicare eligible expenses" means health care expenses of the kinds covered by medicare, to the extent recognized as reasonable and medically necessary by medicare.

~~((4))~~ (5) "Applicant" means:

(a) In the case of an individual medicare supplement insurance policy or subscriber contract, the person who seeks to contract for insurance benefits; and

(b) In the case of a group medicare supplement insurance policy or subscriber contract, the proposed certificate holder.

~~((5))~~ (6) "Certificate" means any certificate delivered or issued for delivery in this state under a group medicare supplement insurance policy.

~~((6))~~ (7) "Loss ratio" means the incurred claims as a percentage of the earned premium computed under rules adopted by the insurance commissioner.

~~((7))~~ (8) "Preexisting condition" means a covered person's medical condition that caused that person to have received medical advice or treatment during a specified time period immediately prior to the effective date of coverage.

~~((8))~~ (9) "Disclosure form" means the form designated by the insurance commissioner ~~((which))~~ that discloses medicare benefits, the supplemental benefits offered by the insurer, and the remaining amount for which the insured will be responsible.

~~((9))~~ (10) "Issuer" includes insurance companies, health care service contractors, health maintenance organizations, fraternal benefit societies, and any other entity delivering or issuing for delivery medicare supplement policies or certificates to a resident of this state.

(11) "Bankruptcy" means when a medicare advantage organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.

(12) "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than sixty-three days.

(13)(a) "Creditable coverage" means, with respect to an individual, coverage of the individual provided under any of the following:

(i) A group health plan;

(ii) Health insurance coverage;

(iii) Part A or part B of Title XVIII of the social security act (medicare);

(iv) Title XIX of the social security act (medicaid), other than coverage consisting solely of benefits under section 1928 of that act;

(v) Chapter 55 of Title 10 U.S.C. (CHAMPUS);

(vi) A medical care program of the Indian health service or of a tribal organization;

(vii) A state health benefits risk pool;

(viii) A health plan offered under chapter 89 of Title 5 U.S.C. (federal employees health benefits program);

(ix) A public health plan as defined in federal regulation; or

(x) A health benefit plan under section 5(e) of the peace corps act (22 U.S.C. Sec. 2504(e)).

(b) "Creditable coverage" does not include one or more, or any combination, of the following:

(i) Coverage only for accident or disability income insurance, or any combination thereof;

(ii) Coverage issued as a supplement to liability insurance;

(iii) Liability insurance, including general liability insurance and automobile liability insurance;

(iv) Worker's compensation or similar insurance;

(v) Automobile medical payment insurance;

(vi) Credit only insurance;

(vii) Coverage for on-site medical clinics; or

(viii) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

(c) "Creditable coverage" does not include the following benefits if they are provided under a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the plan:

(i) Limited scope dental or vision benefits;

(ii) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; or

(iii) Other similar, limited benefits as are specified in federal regulations.

(d) "Creditable coverage" does not include the following benefits if offered as independent, noncoordinated benefits:

(i) Coverage only for a specified disease or illness; or

(ii) Hospital indemnity or other fixed indemnity insurance.

(e) "Creditable coverage" does not include the following if it is offered as a separate policy, certificate, or contract of insurance:

(i) Medicare supplemental health insurance as defined under section 1882(g)(1) of the social security act;

(ii) Coverage supplemental to the coverage provided under chapter 55 of Title 10 U.S.C.; or

(iii) Similar supplemental coverage provided to coverage under a group health plan.

(14) "Employee welfare benefit plan" means a plan, fund, or program of employee benefits as defined in 29 U.S.C. Sec. 1002 (employee retirement income security act).

(15) "Insolvency" means when an issuer, licensed to transact the business of insurance in this state, has had a final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile.

*Sec. 27 was vetoed. See message at end of chapter.

*Sec. 28. RCW 48.66.045 and 2004 c 83 s 1 are each amended to read as follows:

Every issuer of a medicare supplement insurance policy or certificate providing coverage to a resident of this state issued on or after January 1, 1996, shall:

(1) Unless otherwise provided for in RCW 48.66.055, issue coverage under its standardized benefit plans B, C, D, E, F, (~~and~~) G, K, or L without evidence of insurability to any resident of this state who is eligible for both medicare hospital and physician services by reason of age or by reason of disability or end-stage renal disease, if the medicare supplement policy replaces another medicare supplement standardized benefit plan policy or certificate B, C, D, E, F, (~~or~~) G, K, or L or other more comprehensive coverage than the replacing policy;

(2) Unless otherwise provided for in RCW 48.66.055, issue coverage under its standardized plans A, H, I, and J without evidence of insurability to any resident of this state who is eligible for both medicare hospital and physician services by reason of age or by reason of disability or end-stage renal disease, if the medicare supplement policy replaces another medicare supplement policy or certificate which is the same standardized plan as the replaced policy. After December 31, 2005, plans H, I, and J may be replaced only by the same plan if that plan has been modified to remove outpatient prescription drug coverage; and

(3) Set rates only on a community-rated basis. Premiums shall be equal for all policyholders and certificate holders under a standardized medicare supplement benefit plan form, except that an issuer may vary premiums based on spousal discounts, frequency of payment, and method of payment including automatic deposit of premiums and may develop no more than two rating pools that distinguish between an insured's eligibility for medicare by reason of:

(a) Age; or

(b) Disability or end-stage renal disease.

*Sec. 28 was vetoed. See message at end of chapter.

*Sec. 29. RCW 48.66.055 and 2002 c 300 s 4 are each amended to read as follows:

(1) Under this section, persons eligible for a medicare supplement policy or certificate are those individuals described in subsection (3) of this section who, subject to subsection (3)(b)(ii) of this section, apply to enroll under the

policy not later than sixty-three days after the date of the termination of enrollment described in subsection (3) of this section, and who submit evidence of the date of termination or disenrollment, or medicare part D enrollment, with the application for a medicare supplement policy.

(2) With respect to eligible persons, an issuer may not deny or condition the issuance or effectiveness of a medicare supplement policy described in subsection (4) of this section that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a medicare supplement policy.

(3) "Eligible persons" means an individual that meets the requirements of (a), (b), (c), (d), (e), or (f) of this subsection, as follows:

(a) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under medicare; and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual;

(b)(i) The individual is enrolled with a (~~(medicare+choice)~~) medicare advantage organization under a (~~(medicare+choice)~~) medicare advantage plan under part C of medicare, and any of the following circumstances apply, or the individual is sixty-five years of age or older and is enrolled with a program of all inclusive care for the elderly (PACE) provider under section 1894 of the social security act, and there are circumstances similar to those described in this subsection (3)(b) that would permit discontinuance of the individual's enrollment with the provider if the individual were enrolled in a (~~(medicare+choice)~~) medicare advantage plan:

(A) The certification of the organization or plan (~~(under this subsection (3)(b))~~) has been terminated(~~(, or the organization or plan has notified the individual of an impending termination of such a certification)~~);

(B) The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides(~~(, or has notified the individual of an impending termination or discontinuance of such a plan)~~);

(C) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the secretary of the United States department of health and human services, but not including termination of the individual's enrollment on the basis described in section 1851(g)(3)(B) of the federal social security act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under section 1856 of the federal social security act), or the plan is terminated for all individuals within a residence area;

(D) The individual demonstrates, in accordance with guidelines established by the secretary of the United States department of health and human services, that:

(I) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the

failure to provide such covered care in accordance with applicable quality standards; or

(II) The organization, an agent, or other entity acting on the organization's behalf materially misrepresented the plan's provisions in marketing the plan to the individual; or

(E) The individual meets other exceptional conditions as the secretary of the United States department of health and human services may provide.

(ii)(A) An individual described in (b)(i) of this subsection may elect to apply (a) of this subsection by substituting, for the date of termination of enrollment, the date on which the individual was notified by the ~~((medicare+choice))~~ medicare advantage organization of the impending termination or discontinuance of the ~~((medicare+choice))~~ medicare advantage plan it offers in the area in which the individual resides, but only if the individual disenrolls from the plan as a result of such notification.

(B) In the case of an individual making the election under (b)(ii)(A) of this subsection, the issuer involved shall accept the application of the individual submitted before the date of termination of enrollment, but the coverage under subsection (I) of this section ~~((shall))~~ is only ~~((become))~~ effective upon termination of coverage under the ~~((medicare+choice))~~ medicare advantage plan involved;

(c)(i) The individual is enrolled with:

(A) An eligible organization under a contract under section 1876 (medicare risk or cost);

(B) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(C) An organization under an agreement under section 1833(a)(I)(A) (health care prepayment plan); or

(D) An organization under a medicare select policy; and

(ii) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under (b)(i) of this subsection;

(d) The individual is enrolled under a medicare supplement policy and the enrollment ceases because:

(i)(A) Of the insolvency of the issuer or bankruptcy of the nonissuer organization; or

(B) Of other involuntary termination of coverage or enrollment under the policy;

(ii) The issuer of the policy substantially violated a material provision of the policy; or

(iii) The issuer, an agent, or other entity acting on the issuer's behalf materially misrepresented the policy's provisions in marketing the policy to the individual;

(e)(i) The individual was enrolled under a medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any ~~((medicare+choice))~~ medicare advantage organization under a ~~((medicare+choice))~~ medicare advantage plan under part C of medicare, any eligible organization under a contract under section 1876 (medicare risk or cost), any similar organization operating under demonstration project authority, any PACE program under section 1894 of the social security act,

~~((an organization under an agreement under section 1833(a)(1)(A) (health care prepayment plan),)) or a medicare select policy; and~~

(ii) ~~The subsequent enrollment under (e)(i) of this subsection is terminated by the enrollee during any period within the first twelve months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under section 1851(e) of the federal social security act); ((or))~~

(f) ~~The individual, upon first becoming eligible for benefits under part A of medicare at age sixty-five, enrolls in a ((medicare choice)) medicare advantage plan under part C of medicare, or in a PACE program under section 1894, and disenrolls from the plan or program by not later than twelve months after the effective date of enrollment; or~~

(g) The individual enrolls in a medicare part D plan during the initial enrollment period and, at the time of enrollment in part D, was enrolled under a medicare supplement policy that covers outpatient prescription drugs, and the individual terminates enrollment in the medicare supplement policy and submits evidence of enrollment in medicare part D along with the application for a policy described in subsection (4)(d) of this section.

(4) An eligible person under subsection (3) of this section is entitled to a medicare supplement policy as follows:

(a) A person eligible under subsection (3)(a), (b), (c), and (d) of this section is entitled to a medicare supplement policy that has a benefit package classified as plan A through ~~((G))~~ F, including F with a high deductible, K, or L, offered by any issuer;

(b)(i) Subject to (b)(ii) of this subsection, a person eligible under subsection (3)(e) of this section is entitled to the same medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in (a) of this subsection; ((and))

(ii) After December 31, 2005, if the individual was most recently enrolled in a medicare supplement policy with an outpatient prescription drug benefit, a medicare supplement policy described in this subsection (4)(b)(ii) is:

(A) The policy available from the same issuer but modified to remove outpatient prescription drug coverage; or

(B) At the election of the policyholder, an A, B, C, F, including F with a high deductible, K, or L policy, that is offered by any issuer;

(c) A person eligible under subsection (3)(f) of this section is entitled to any medicare supplement policy offered by any issuer; and

(d) A person eligible under subsection (3)(g) of this section is entitled to a medicare supplement policy that has a benefit package classified as plan A, B, C, F, including F with a high deductible, K, or L and that is offered and is available for issuance to new enrollees by the same issuer that issued the individual's medicare supplement policy with outpatient prescription drug coverage.

(5)(a) At the time of an event described in subsection (3) of this section, and because of which an individual loses coverage or benefits due to the termination of a contract, agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, must notify the

individual of his or her rights under this section, and of the obligations of issuers of medicare supplement policies under subsection (1) of this section. The notice must be communicated contemporaneously with the notification of termination.

(b) At the time of an event described in subsection (3) of this section, and because of which an individual ceases enrollment under a contract, agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, must notify the individual of his or her rights under this section, and of the obligations of issuers of medicare supplement policies under subsection (1) of this section. The notice must be communicated within ten working days of the issuer receiving notification of disenrollment.

(6) Guaranteed issue time periods are as follows:

(a) In the case of an individual described in subsection (3)(a) of this section, the guaranteed issue period begins on the later of: (i) The date the individual receives a notice of termination or cessation of all supplemental health benefits or, if a notice is not received, notice that a claim has been denied because of a termination or cessation, or (ii) the date that the applicable coverage terminates or ceases, and ends sixty-three days thereafter;

(b) In the case of an individual described in subsection (3)(b), (c), (e), or (f) of this section whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends sixty-three days after the date the applicable coverage is terminated;

(c) In the case of an individual described in subsection (3)(d)(i) of this section, the guaranteed issue period begins on the earlier of: (i) The date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any, and (ii) the date that the applicable coverage is terminated, and ends on the date that is sixty-three days after the date the coverage is terminated;

(d) In the case of an individual described in subsection (3)(b), (d)(ii) and (iii), (e), or (f) of this section, who disenrolls voluntarily, the guaranteed issue period begins on the date that is sixty days before the effective date of the disenrollment and ends on the date that is sixty-three days after the effective date;

(e) In the case of an individual described in subsection (3)(g) of this section, the guaranteed issue period begins on the date the individual receives notice pursuant to section 1882(v)(2)(B) of the federal social security act from the medicare supplement issuer during the sixty-day period immediately preceding the initial part D enrollment period and ends on the date that is sixty-three days after the effective date of the individual's coverage under medicare part D; and

(f) In the case of an individual described in subsection (3) of this section but not described in the preceding provisions of this subsection, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is sixty-three days after the effective date.

(7) In the case of an individual described in subsection (3)(e) of this section whose enrollment with an organization or provider described in

subsection (3)(e)(i) of this section is involuntarily terminated within the first twelve months of enrollment, and who, without an intervening enrollment, enrolls with another organization or provider, the subsequent enrollment is an initial enrollment as described in subsection (3)(e) of this section.

(8) In the case of an individual described in subsection (3)(f) of this section whose enrollment with a plan or in a program described in subsection (3)(f) of this section is involuntarily terminated within the first twelve months of enrollment, and who, without an intervening enrollment, enrolls in another plan or program, the subsequent enrollment is an initial enrollment as described in subsection (3)(f) of this section.

(9) For purposes of subsection (3)(e) and (f) of this section, an enrollment of an individual with an organization or provider described in subsection (3)(e)(i) of this section, or with a plan or in a program described in subsection (3)(f) of this section is not an initial enrollment under this subsection after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan, or program.

*Sec. 29 was vetoed. See message at end of chapter.

*Sec. 30. RCW 48.66.130 and 2002 c 300 s 3 are each amended to read as follows:

(1) On or after January 1, 1996, and notwithstanding any other provision of Title 48 RCW, a medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than three months from the effective date of coverage because it involved a preexisting condition.

(2) On or after January 1, 1996, a medicare supplement policy or certificate shall not define a preexisting condition more restrictively than as a condition for which medical advice was given or treatment was recommended by or received from a physician, or other health care provider acting within the scope of his or her license, within three months before the effective date of coverage.

(3) If a medicare supplement insurance policy or certificate contains any limitations with respect to preexisting conditions, such limitations must appear as a separate paragraph of the policy or certificate and be labeled as "Preexisting Condition Limitations."

(4) No exclusion or limitation of preexisting conditions may be applied to policies or certificates replaced in accordance with the provisions of RCW 48.66.045 if the policy or certificate replaced had been in effect for at least three months.

(5) If a medicare supplement policy or certificate replaces another medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods in the new medicare supplement policy or certificate for similar benefits to the extent that time was spent under the original policy.

(6) If a medicare supplement policy or certificate replaces another medicare supplement policy or certificate that has been in effect for at least three months, the replacing policy must not provide any time period applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods for benefits similar to those contained in the original policy or certificate.

*Sec. 30 was vetoed. See message at end of chapter.

Sec. 31. RCW 48.92.120 and 1993 c 462 s 101 are each amended to read as follows:

(1) ~~((No))~~ A person may not act or aid in any manner in soliciting, negotiating, or procuring liability insurance in this state from a risk retention group unless the person is licensed as an insurance agent or broker for casualty insurance in accordance with chapter 48.17 RCW and pays the fees designated for the license under RCW 48.14.010.

(2)(a) ~~((No))~~ A person may not act or aid in any manner in soliciting, negotiating, or procuring liability insurance in this state for a purchasing group from an authorized insurer or a risk retention group chartered in a state unless the person is licensed as an insurance agent or broker for casualty insurance in accordance with chapter 48.17 RCW and pays the fees designated for the license under RCW 48.14.010.

(b) ~~((No))~~ A person may not act or aid in any manner in soliciting, negotiating, or procuring liability insurance coverage in this state for a member of a purchasing group under a purchasing group's policy unless the person is licensed as an insurance agent or broker for casualty insurance in accordance with chapter 48.17 RCW and pays the fees designated for the license under RCW 48.14.010.

(c) ~~((No))~~ A person may not act or aid in any manner in soliciting, negotiating, or procuring liability insurance from an insurer not authorized to do business in this state on behalf of a purchasing group located in this state unless the person is licensed as a surplus lines broker in accordance with chapter 48.15 RCW and pays the fees designated for the license under RCW 48.14.010.

(3) For purposes of acting as an agent or broker for a risk retention group or purchasing group under subsections (1) and (2) of this section, the requirement of residence in this state does not apply.

(4) Every person licensed under chapters 48.15 and 48.17 RCW, on business placed with risk retention groups or written through a purchasing group, ~~((shall))~~ must inform each prospective insured of the provisions of the notice required under RCW 48.92.040(7) in the case of a risk retention group and RCW 48.92.090~~((3))~~ (2) in the case of a purchasing group.

Sec. 32. RCW 48.98.015 and 1993 c 462 s 37 are each amended to read as follows:

~~((No))~~ A managing general agent may not place business with an insurer unless there is in force a written contract between the managing general agent and the insurer that sets forth the responsibilities of each party and, where both parties share responsibility for a particular function, that specifies the division of the responsibilities, and that contains the following minimum provisions:

(1) The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of a dispute regarding the cause for termination.

(2) The managing general agent shall render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.

(3) The managing general agent shall hold funds collected for the account of an insurer in a fiduciary capacity in ~~((a))~~ an FDIC insured financial institution

~~((located in this state that is a member of the federal reserve system))~~. This account must be used for all payments on behalf of the insurer. The managing general agent may retain no more than three months' estimated claims payments and allocated loss adjustment expenses.

(4) The managing general agent shall maintain separate records of business written for each insurer. The insurer has access to and the right to copy all accounts and records related to its business in a form usable by the insurer, and the commissioner has access to all books, bank accounts, and records of the managing general agent in a form usable to the commissioner. Those records ~~((shall))~~ must be retained according to the requirements of this title and rules adopted under it.

(5) The managing general agent may not assign the contract in whole or part.

(6)(a) Appropriate underwriting guidelines must include at least the following: The maximum annual premium volume; the basis of the rates to be charged; the types of risks that may be written; maximum limits of liability; applicable exclusions; territorial limitations; policy cancellation provisions; and the maximum policy period.

(b) The insurer has the right to cancel or not renew any policy of insurance, subject to the applicable laws and rules, including those in chapter 48.18 RCW.

(7) If the contract permits the managing general agent to settle claims on behalf of the insurer:

(a) All claims must be reported to the insurer in a timely manner~~((-))~~;

(b) A copy of the claim file must be sent to the insurer at its request or as soon as it becomes known that the claim:

(i) Has the potential to exceed an amount determined by the commissioner, or exceeds the limit set by the insurer, whichever is less;

(ii) Involves a coverage dispute;

(iii) May exceed the managing general agent's claims settlement authority;

(iv) Is open for more than six months; or

(v) Is closed by payment in excess of an amount set by the commissioner or an amount set by the insurer, whichever is less~~((-))~~;

(c) All claim files are the joint property of the insurer and the managing general agent. However, upon an order of liquidation of the insurer, those files become the sole property of the insurer or its liquidator or successor. The managing general agent has reasonable access to and the right to copy the files on a timely basis~~((-))~~; and

(d) Settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the managing general agent's settlement authority during the pendency of a dispute regarding the cause for termination.

(8) ~~((Where))~~ When electronic claims files are in existence, the contract must address the timely transmission of the data.

(9) If the contract provides for a sharing of interim profits by the managing general agent, and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments or in any other manner, interim profits ~~((shall))~~ may not be paid to the managing general agent until one year after they are earned for property

insurance business and five years after they are earned on casualty business and not until the profits have been verified under RCW 48.98.020.

(10) The managing general agent may not:

(a) Bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind automatic reinsurance contracts under obligatory automatic agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules;

(b) Commit the insurer to participate in insurance or reinsurance syndicates;

(c) Use an agent that is not appointed to represent the insurer in accordance with the requirements of chapter 48.17 RCW;

(d) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, that ~~((shall))~~ may not exceed one percent of the insurer's policyholder surplus as of December 31st of the last-completed calendar year;

(e) Collect a payment from a reinsurer or commit the insurer to a claim settlement with a reinsurer, without prior approval of the insurer. If prior approval is given, a report ~~((shall))~~ must be promptly forwarded to the insurer;

(f) Permit an agent appointed by it to serve on the insurer's board of directors;

(g) Jointly employ an individual who is employed by the insurer; or

(h) Appoint a submanaging general agent.

Sec. 33. RCW 48.110.030 and 1999 c 112 s 4 are each amended to read as follows:

(1) A person ~~((shall))~~ may not act as, or offer to act as, or hold himself or herself out to be a service contract provider in this state, nor may a service contract be sold to a consumer in this state, unless the service contract provider has a valid registration as a service contract provider issued by the commissioner.

(2) Applicants to be a service contract provider ~~((shall))~~ must make an application to the commissioner upon a form to be furnished by the commissioner. The application ~~((shall))~~ must include or be accompanied by the following information and documents:

(a) All basic organizational documents of the service contract provider, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement, bylaws, and other applicable documents, and all amendments to those documents;

(b) The identities of the service contract provider's executive officer or officers directly responsible for the service contract provider's service contract business, and, if more than fifty percent of the service contract provider's gross revenue is derived from the sale of service contracts, the identities of the service contract provider's directors and stockholders having beneficial ownership of ten percent or more of any class of securities;

(c) Audited annual financial statements or other financial reports acceptable to the commissioner for the two most recent years which prove that the applicant is solvent and any information the commissioner may require in order to review

the current financial condition of the applicant. If the service contract provider is relying on RCW 48.110.050(2) (a) or (c) to assure the faithful performance of its obligations to service contract holders, then the audited financial statements of the service contract provider's parent company may be substituted for the audited financial statements of the service contract provider;

(d) An application fee of two hundred fifty dollars, which shall be deposited into the ~~((insurance commissioner's regulatory account under RCW 48.02.190))~~ general fund; and

(e) Any other pertinent information required by the commissioner.

(3) The applicant shall appoint the commissioner as its attorney to receive service of legal process in any action, suit, or proceeding in any court. This appointment is irrevocable and shall bind the service contract provider or any successor in interest, shall remain in effect as long as there is in force in this state any contract or any obligation arising therefrom related to residents of this state, and shall be processed in accordance with RCW 48.05.210.

(4) The commissioner may refuse to issue a registration if the commissioner determines that the service contract provider, or any individual responsible for the conduct of the affairs of the service contract provider under subsection (2)(b) of this section, is not competent, trustworthy, financially responsible, or has had a license as a service contract provider or similar license denied or revoked for cause by any state.

(5) A registration issued under this section is valid, unless surrendered, suspended, or revoked by the commissioner, or not renewed for so long as the service contract provider continues in business in this state and remains in compliance with this chapter. A registration is subject to renewal annually on the first day of July upon application of the service contract provider and payment of a fee of two hundred dollars, which shall be deposited into the ~~((insurance commissioner's regulatory account under RCW 48.02.190))~~ general fund. If not so renewed, the registration expires on the June 30th next preceding.

(6) A service contract provider shall keep current the information required to be disclosed in its registration under this section by reporting all material changes or additions within thirty days after the end of the month in which the change or addition occurs.

Sec. 34. RCW 48.110.040 and 1999 c 112 s 5 are each amended to read as follows:

(1) Every registered service contract provider that is assuring its faithful performance of its obligations to its service contract holders by complying with RCW 48.110.050(2)(b) ~~((shall))~~ must file an annual report for the preceding calendar year with the commissioner on or before March 1st of each year, or within any extension of time the commissioner for good cause may grant. The report ~~((shall))~~ must be in the form and contain those matters as the commissioner prescribes and shall be verified by at least two officers of the service contract provider.

(2) At the time of filing the report, the service contract provider ~~((shall))~~ must pay a filing fee of twenty dollars which shall be deposited into the ~~((insurance commissioner's regulatory account under RCW 48.02.190))~~ general fund.

(3) As part of any investigation by the commissioner, the commissioner may require a service contract provider to file monthly financial reports whenever, in

the commissioner's discretion, there is a need to more closely monitor the financial activities of the service contract provider. Monthly financial statements (~~(shall)~~) must be filed in the commissioner's office no later than the twenty-fifth day of the month following the month for which the financial report is being filed. These monthly financial reports (~~(shall be)~~) are the internal financial statements of the service contract provider. The monthly financial reports that are filed with the commissioner constitute information that might be damaging to the service contract provider if made available to its competitors, and therefore shall be kept confidential by the commissioner. This information (~~(shall)~~) may not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner.

NEW SECTION. Sec. 35. The following acts or parts of acts are each repealed:

- (1) RCW 48.05.360 (Special surplus requirements for certain combinations) and 1963 c 195 s 9;
- (2) RCW 48.29.030 (Amount of deposit) and 1957 c 193 s 16 & 1947 c 79 s .29.03;
- (3) RCW 48.29.060 (Impairment of deposit) and 1947 c 79 s .29.06;
- (4) RCW 48.29.070 (Levy of execution against deposit) and 1955 c 86 s 14 & 1947 c 79 s .29.07;
- (5) RCW 48.29.090 (Purpose of deposit) and 1955 c 86 s 16 & 1947 c 79 s .29.09;
- (6) RCW 48.29.100 (Termination of deposit) and 1947 c 79 s .29.10;
- (7) RCW 48.29.110 (Release of securities) and 1955 c 86 s 17 & 1947 c 79 s .29.11; and
- (8) RCW 48.34.910 (Small loan act [Consumer finance act] not affected) and 1961 c 219 s 14.

Passed by the House March 3, 2005.

Passed by the Senate April 13, 2005.

Approved by the Governor April 28, 2005, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 28, 2005.

Note: Governor's explanation of partial veto is as follows:

"I am returning, without my approval as to Sections 26-30, Substitute House Bill No. 1197 entitled:

"AN ACT Relating to insurance."

Sections 26-30 of Substitute House Bill No. 1197, which concern Medicare supplemental insurance, are redundant and already covered in Senate Bill 5198 (Implementing changes to Medicare supplemental insurance requirements as mandated by the Medicare Modernization Act of 2003 and other federal requirements). I signed Senate Bill 5198 on April 13, 2005.

For these reasons, I have vetoed Sections 26-30 of Substitute House Bill No. 1197.

With the exception of Sections 26-30, Substitute House Bill No. 1197 is approved."

CHAPTER 224

[Substitute House Bill 1216]

LICENSE PLATES—WILD ON WASHINGTON

AN ACT Relating to Wild On Washington license plates; amending RCW 77.12.170; reenacting and amending RCW 46.16.313; and adding new sections to chapter 46.16 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 46.16 RCW to read as follows:

(1) The legislature recognizes that the Wild On Washington license plate has been reviewed by the special license plate review board under RCW 46.16.725 and was found to fully comply with all provisions of RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying a symbol or artwork, approved by the special license plate review board and the legislature, referred to as "Wild On Washington license plates," that may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department.

NEW SECTION. Sec. 2. A new section is added to chapter 46.16 RCW to read as follows:

For the purposes of RCW 46.16.313 and section 1 of this act, the term "Wild On Washington license plates" means license plates issued under section 1 of this act that display a symbol or artwork symbolizing wildlife viewing in Washington state.

Sec. 3. RCW 46.16.313 and 2004 c 221 s 3, 2004 c 48 s 3, and 2004 c 35 s 3 are each reenacted and amended to read as follows:

(1) The department may establish a fee of no more than forty dollars for each type of special license plates issued under RCW 46.16.301(1) (a), (b), or (c), as existing before amendment by section 5, chapter 291, Laws of 1997, in an amount calculated to offset the cost of production of the special license plates and the administration of this program. This fee is in addition to all other fees required to register and license the vehicle for which the plates have been requested. All such additional special license plate fees collected by the department shall be deposited in the state treasury and credited to the motor vehicle fund.

(2) In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a collegiate license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(3) In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a collegiate license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to

the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(4) In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a special baseball stadium license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds, minus the cost of plate production, shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(5) In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a special baseball stadium license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(6) Effective with vehicle registrations due or to become due on January 1, 2005, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a professional fire fighters and paramedics license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the professional fire fighters and paramedics license plates. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Washington State Council of Fire Fighters benevolent fund established under RCW 46.16.30902.

(7) Effective with annual renewals due or to become due on January 1, 2006, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a professional fire fighters and paramedics license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the professional fire fighters and paramedics special license plate. Upon the

determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Washington State Council of Fire Fighters benevolent fund established under RCW 46.16.30902.

(8) Effective with vehicle registrations due or to become due on November 1, 2004, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Helping Kids Speak" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Helping Kids Speak" account established under RCW 46.16.30904.

(9) Effective with annual renewals due or to become due on November 1, 2005, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Helping Kids Speak" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Helping Kids Speak" account established under RCW 46.16.30904.

(10) Effective with vehicle registrations due or to become due on January 1, 2005, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "law enforcement memorial" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the law enforcement memorial special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the law enforcement memorial account established under RCW 46.16.30906.

(11) Effective with annual renewals due or to become due on January 1, 2006, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "law enforcement memorial" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining

proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the law enforcement memorial special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the law enforcement memorial account established under RCW 46.16.30906.

(12)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a Wild On Washington license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the Wild On Washington license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the state wildlife account. Proceeds credited to the state wildlife account from the sale of the Wild On Washington license plates must be dedicated to the department of fish and wildlife's watchable wildlife activities defined in RCW 77.32.560(2).

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a Wild On Washington license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the Wild On Washington license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the state wildlife account. Proceeds credited to the state wildlife account from the sale of the Wild On Washington license plates must be dedicated to the department of fish and wildlife's watchable wildlife activities defined in RCW 77.32.560(2).

Sec. 4. RCW 77.12.170 and 2004 c 248 s 4 are each amended to read as follows:

(1) There is established in the state treasury the state wildlife ~~((fund))~~ account which consists of moneys received from:

- (a) Rentals or concessions of the department;
- (b) The sale of real or personal property held for department purposes;
- (c) The sale of licenses, permits, tags, and stamps required by chapter 77.32 RCW and RCW 77.65.490, except annual resident adult saltwater and all annual razor clam and shellfish licenses, which shall be deposited into the state general fund;
- (d) Fees for informational materials published by the department;

(e) Fees for personalized vehicle and Wild On Washington license plates as provided in chapter 46.16 RCW;

(f) Articles or wildlife sold by the director under this title;

(g) Compensation for damage to department property or wildlife losses or contributions, gifts, or grants received under RCW 77.12.320;

(h) Excise tax on anadromous game fish collected under chapter 82.27 RCW;

(i) The sale of personal property seized by the department for fish, shellfish, or wildlife violations;

(j) The department's share of revenues from auctions and raffles authorized by the commission; and

(k) The sale of watchable wildlife decals under RCW 77.32.560.

(2) State and county officers receiving any moneys listed in subsection (1) of this section shall deposit them in the state treasury to be credited to the state wildlife (~~fund~~) account.

Passed by the House April 19, 2005.

Passed by the Senate April 12, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 225

[Substitute House Bill 1218]

LICENSE PLATES—ENDANGERED WILDLIFE

AN ACT Relating to endangered wildlife license plates; amending RCW 77.12.170; reenacting and amending RCW 46.16.313; and adding new sections to chapter 46.16 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. **Sec. 1.** A new section is added to chapter 46.16 RCW to read as follows:

(1) The legislature recognizes that the Endangered Wildlife license plate has been reviewed by the special license plate review board under RCW 46.16.725 and was found to fully comply with all provisions of RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying a symbol or artwork, approved by the special license plate review board and the legislature, referred to as "Endangered Wildlife license plates," that may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department.

NEW SECTION. **Sec. 2.** A new section is added to chapter 46.16 RCW to read as follows:

For the purposes of RCW 46.16.313 and section 1 of this act, the term "Endangered Wildlife license plates" means license plates issued under section 1 of this act that display a symbol or artwork symbolizing endangered wildlife in Washington state.

Sec. 3. RCW 46.16.313 and 2004 c 221 s 3, 2004 c 48 s 3, and 2004 c 35 s 3 are each reenacted and amended to read as follows:

(1) The department may establish a fee of no more than forty dollars for each type of special license plates issued under RCW 46.16.301(1) (a), (b), or (c), as existing before amendment by section 5, chapter 291, Laws of 1997, in an amount calculated to offset the cost of production of the special license plates and the administration of this program. This fee is in addition to all other fees required to register and license the vehicle for which the plates have been requested. All such additional special license plate fees collected by the department shall be deposited in the state treasury and credited to the motor vehicle fund.

(2) In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a collegiate license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(3) In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a collegiate license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(4) In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a special baseball stadium license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds, minus the cost of plate production, shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(5) In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a special baseball stadium license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(6) Effective with vehicle registrations due or to become due on January 1, 2005, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a professional fire fighters and paramedics

license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the professional fire fighters and paramedics license plates. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Washington State Council of Fire Fighters benevolent fund established under RCW 46.16.30902.

(7) Effective with annual renewals due or to become due on January 1, 2006, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a professional fire fighters and paramedics license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the professional fire fighters and paramedics special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Washington State Council of Fire Fighters benevolent fund established under RCW 46.16.30902.

(8) Effective with vehicle registrations due or to become due on November 1, 2004, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Helping Kids Speak" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Helping Kids Speak" account established under RCW 46.16.30904.

(9) Effective with annual renewals due or to become due on November 1, 2005, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Helping Kids Speak" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" special license plate. Upon the determination by the department that the

state has been reimbursed, the treasurer shall credit the proceeds to the "Helping Kids Speak" account established under RCW 46.16.30904.

(10) Effective with vehicle registrations due or to become due on January 1, 2005, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "law enforcement memorial" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the law enforcement memorial special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the law enforcement memorial account established under RCW 46.16.30906.

(11) Effective with annual renewals due or to become due on January 1, 2006, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "law enforcement memorial" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the law enforcement memorial special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the law enforcement memorial account established under RCW 46.16.30906.

(12)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of an Endangered Wildlife license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the Endangered Wildlife license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the state wildlife account. Proceeds credited to the state wildlife account from the sale of the Endangered Wildlife license plates must be used only for the department of fish and wildlife's endangered wildlife program activities.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of an Endangered Wildlife license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an

amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the Endangered Wildlife license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the state wildlife account. Proceeds credited to the state wildlife account from the sale of the Endangered Wildlife license plates must be used only for the department of fish and wildlife's endangered wildlife program activities.

Sec. 4. RCW 77.12.170 and 2004 c 248 s 4 are each amended to read as follows:

(1) There is established in the state treasury the state wildlife (~~fund~~) account which consists of moneys received from:

- (a) Rentals or concessions of the department;
 - (b) The sale of real or personal property held for department purposes;
 - (c) The sale of licenses, permits, tags, and stamps required by chapter 77.32 RCW and RCW 77.65.490, except annual resident adult saltwater and all annual razor clam and shellfish licenses, which shall be deposited into the state general fund;
 - (d) Fees for informational materials published by the department;
 - (e) Fees for personalized vehicle and Endangered Wildlife license plates as provided in chapter 46.16 RCW;
 - (f) Articles or wildlife sold by the director under this title;
 - (g) Compensation for damage to department property or wildlife losses or contributions, gifts, or grants received under RCW 77.12.320;
 - (h) Excise tax on anadromous game fish collected under chapter 82.27 RCW;
 - (i) The sale of personal property seized by the department for fish, shellfish, or wildlife violations;
 - (j) The department's share of revenues from auctions and raffles authorized by the commission; and
 - (k) The sale of watchable wildlife decals under RCW 77.32.560.
- (2) State and county officers receiving any moneys listed in subsection (1) of this section shall deposit them in the state treasury to be credited to the state wildlife (~~fund~~) account.

Passed by the House April 18, 2005.

Passed by the Senate April 13, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 226

[House Bill 1303]

METROPOLITAN PARK DISTRICTS

AN ACT Relating to metropolitan park districts; amending RCW 35.61.290, 35.61.300, and 36.69.310; creating a new section; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 35.61.290 and 1985 c 416 s 5 are each amended to read as follows:

(1) Any city within or comprising any metropolitan park district may turn over to the park district any lands which it may own, or any street, avenue, or public place within the city for playground, park or parkway purposes, and thereafter its control and management shall vest in the board of park commissioners: PROVIDED, That the police regulations of such city shall apply to all such premises.

At any time that any such metropolitan park district is unable, through lack of sufficient funds, to provide for the continuous operation, maintenance and improvement of the parks and playgrounds and other properties or facilities owned by it or under its control, and the legislative body of any city within or comprising such metropolitan park district shall determine that an emergency exists requiring the financial aid of such city to be extended in order to provide for such continuous operation, maintenance and/or improvement of parks, playgrounds facilities, other properties, and programs of such park district within its limits, such city may grant or loan to such metropolitan park district such of its available funds, or such funds which it may lawfully procure and make available, as it shall find necessary to provide for such continuous operation and maintenance and, pursuant thereto, any such city and the board of park commissioners of such district are authorized and empowered to enter into an agreement embodying such terms and conditions of any such grant or loan as may be mutually agreed upon.

The board of metropolitan park commissioners may accept public streets of the city and grounds for public purposes when donated for park, playground, boulevard and park purposes.

(2) Counties (~~may turn over to the park district any park and recreation lands and equipment that they own,~~) and other municipal corporations, including but not limited to park and recreation districts operating under chapter 36.69 RCW, may transfer to the metropolitan park district, with or without consideration therefor, any lands, facilities, equipment, other interests in real or personal property, or interests under contracts, leases, or similar agreements. The board of metropolitan park commissioners may accept (~~such lands and equipment~~), for metropolitan park district purposes, such transfer of lands, facilities, equipment, other interests in real or personal property, and interests under contracts, leases, or similar agreements.

Sec. 2. RCW 35.61.300 and 1985 c 416 s 6 are each amended to read as follows:

(1) When any metropolitan park district (~~shall be~~) is formed pursuant to this chapter and (~~shall~~) assumes control of the parks, parkways, boulevards, and park property of the city in which said park district is created, or the metropolitan park district accepts (~~county park and recreation lands~~), pursuant to RCW 35.61.290, any lands, facilities, equipment, other interests in real or personal property, or interests under contracts, leases, or similar agreements from a county or other municipal corporation (including but not limited to a park and recreation district operating under chapter 36.69 RCW), such metropolitan park district (~~shall~~) may assume all existing indebtedness, bonded or otherwise,

~~((against such park property, and))~~ incurred in relation to the transferred property or interest, in which case it shall arrange by taxation or issuing bonds, as herein provided, for the payment of such indebtedness, and shall relieve such city ((or), county, or municipal corporation from such payment.

~~(Said)~~ (2) A metropolitan park district is hereby given authority to issue refunding bonds when necessary, subject to chapters 39.36 and 39.53 RCW, in order to enable it to comply with this section.

(3)(a) In addition, refunding bonds issued under subsection (2) of this section for the purpose of assuming existing voter-approved indebtedness may be issued, by majority vote of the commissioners, as voter-approved indebtedness, if:

(i) The boundaries of the metropolitan park district are identical to the boundaries of the taxing district in which voter approval was originally obtained;

(ii) The governing body of the original taxing district has adopted a resolution declaring its intent to dissolve its operations and has named the metropolitan park district as its successor; and

(iii) The requisite number of voters of the original taxing district approved issuance of the indebtedness and the levy of excess taxes to pay and retire that indebtedness.

(b) A metropolitan park district acting under this subsection (3) is deemed the successor to the original taxing district and any refunding bonds issued under this subsection (3) constitute voter-approved indebtedness. The metropolitan park district shall levy and collect annual property taxes in excess of the district's regular property tax levy, in an amount sufficient to pay and retire the principal of and interest on those refunding bonds.

Sec. 3. RCW 36.69.310 and 1963 c 4 s 36.69.310 are each amended to read as follows:

Any park and recreation district formed under the provisions of this chapter may be dissolved in the manner provided in chapter 53.48 RCW, relating to port districts.

In order to facilitate the dissolution of a park and recreation district, such a district may declare its intent to dissolve and may name a successor taxing district. It may transfer any lands, facilities, equipment, other interests in real or personal property, or interests under contracts, leases, or similar agreements to the successor district, and may take all action necessary to enable the successor district to assume any indebtedness of the park and recreation district relating to the transferred property and interests.

NEW SECTION. Sec. 4. Sections 1 through 3 of this act apply retroactively to metropolitan park district elections occurring on or after May 1, 2004.

NEW SECTION. Sec. 5. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House April 18, 2005.

Passed by the Senate April 4, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 227

[Substitute House Bill 1337]

SEX OFFENDERS—ELECTRONIC RECORDS

AN ACT Relating to storage of sex offender records; and amending RCW 40.14.070.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 40.14.070 and 2003 c 240 s 1 are each amended to read as follows:

(1)(a) County, municipal, and other local government agencies may request authority to destroy noncurrent public records having no further administrative or legal value by submitting to the division of archives and records management lists of such records on forms prepared by the division. The archivist, a representative appointed by the state auditor, and a representative appointed by the attorney general shall constitute a committee, known as the local records committee, which shall review such lists and which may veto the destruction of any or all items contained therein.

(b) A local government agency, as an alternative to submitting lists, may elect to establish a records control program based on recurring disposition schedules recommended by the agency to the local records committee. The schedules are to be submitted on forms provided by the division of archives and records management to the local records committee, which may either veto, approve, or amend the schedule. Approval of such schedule or amended schedule shall be by unanimous vote of the local records committee. Upon such approval, the schedule shall constitute authority for the local government agency to destroy the records listed thereon, after the required retention period, on a recurring basis until the schedule is either amended or revised by the committee.

(2)(a) Except as otherwise provided by law, no public records shall be destroyed until approved for destruction by the local records committee. Official public records shall not be destroyed unless:

(i) The records are six or more years old;

(ii) The department of origin of the records has made a satisfactory showing to the state records committee that the retention of the records for a minimum of six years is both unnecessary and uneconomical, particularly where lesser federal retention periods for records generated by the state under federal programs have been established; or

(iii) The originals of official public records less than six years old have been copied or reproduced by any photographic, photostatic, microfilm, miniature photographic, or other process approved by the state archivist which accurately reproduces or forms a durable medium for so reproducing the original.

An automatic reduction of retention periods from seven to six years for official public records on record retention schedules existing on June 10, 1982, shall not be made, but the same shall be reviewed individually by the local records committee for approval or disapproval of the change to a retention period of six years.

The state archivist may furnish appropriate information, suggestions, and guidelines to local government agencies for their assistance in the preparation of lists and schedules or any other matter relating to the retention, preservation, or destruction of records under this chapter. The local records committee may

adopt appropriate regulations establishing procedures to be followed in such matters.

Records of county, municipal, or other local government agencies, designated by the archivist as of primarily historical interest, may be transferred to a recognized depository agency.

(b)(i) Records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenders contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020 that are not required in the current operation of the law enforcement agency or for pending judicial proceedings shall, following the expiration of the applicable schedule of the law enforcement agency's retention of the records, be transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval. Upon electronic retention of any document, the association shall be permitted to destroy the paper copy of the document.

(ii) Any sealed record transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval, including records sealed after transfer, shall be electronically retained in such a way that the record is clearly marked as sealed.

(iii) The Washington association of sheriffs and police chiefs shall be permitted to destroy both the paper copy and electronic record of any offender verified as deceased.

(c) Any record transferred to the Washington association of sheriffs and police chiefs pursuant to (b) of this subsection shall be deemed to no longer constitute a public record pursuant to RCW 42.17.020 and shall be exempt from public disclosure. Such records shall be disseminated only to criminal justice agencies as defined in RCW 10.97.030 for the purpose of determining if a sex offender met the criteria of a sexually violent predator as defined in chapter 71.09 RCW and the end-of-sentence review committee as defined by RCW 72.09.345 for the purpose of fulfilling its duties under RCW 71.09.025 and 9.95.420.

Electronic records marked as sealed shall only be accessible by criminal justice agencies as defined in RCW 10.97.030 who would otherwise have access to a sealed paper copy of the document, the end-of-sentence review committee as defined by RCW 72.09.345 for the purpose of fulfilling its duties under RCW 71.09.025 and 9.95.420, and the system administrator for the purposes of system administration and maintenance.

(3) Except as otherwise provided by law, county, municipal, and other local government agencies may, as an alternative to destroying noncurrent public records having no further administrative or legal value, donate the public records to the state library, local library, historical society, genealogical society, or similar society or organization.

Public records may not be donated under this subsection unless:

- (a) The records are seventy years old or more;
- (b) The local records committee has approved the destruction of the public records; and
- (c) The state archivist has determined that the public records have no historic interest.

Passed by the House February 28, 2005.

Passed by the Senate April 12, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 228

[House Bill 1338]

SEX OFFENDER WEB SITE—KIDNAPPING

AN ACT Relating to adding kidnapping to the statewide registered sex offender web site; and amending RCW 4.24.550.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 4.24.550 and 2003 c 217 s 1 are each amended to read as follows:

(1) In addition to the disclosure under subsection (5) of this section, public agencies are authorized to release information to the public regarding sex offenders and kidnapping offenders when the agency determines that disclosure of the information is relevant and necessary to protect the public and counteract the danger created by the particular offender. This authorization applies to information regarding: (a) Any person adjudicated or convicted of a sex offense as defined in RCW 9A.44.130 or a kidnapping offense as defined by RCW 9A.44.130; (b) any person under the jurisdiction of the indeterminate sentence review board as the result of a sex offense or kidnapping offense; (c) any person committed as a sexually violent predator under chapter 71.09 RCW or as a sexual psychopath under chapter 71.06 RCW; (d) any person found not guilty of a sex offense or kidnapping offense by reason of insanity under chapter 10.77 RCW; and (e) any person found incompetent to stand trial for a sex offense or kidnapping offense and subsequently committed under chapter 71.05 or 71.34 RCW.

(2) Except for the information specifically required under subsection (5) of this section, the extent of the public disclosure of relevant and necessary information shall be rationally related to: (a) The level of risk posed by the offender to the community; (b) the locations where the offender resides, expects to reside, or is regularly found; and (c) the needs of the affected community members for information to enhance their individual and collective safety.

(3) Except for the information specifically required under subsection (5) of this section, local law enforcement agencies shall consider the following guidelines in determining the extent of a public disclosure made under this section: (a) For offenders classified as risk level I, the agency shall share information with other appropriate law enforcement agencies and may disclose, upon request, relevant, necessary, and accurate information to any victim or witness to the offense and to any individual community member who lives near the residence where the offender resides, expects to reside, or is regularly found; (b) for offenders classified as risk level II, the agency may also disclose relevant, necessary, and accurate information to public and private schools, child day care centers, family day care providers, businesses and organizations that serve primarily children, women, or vulnerable adults, and neighbors and community groups near the residence where the offender resides, expects to reside, or is regularly found; (c) for offenders classified as risk level III, the agency may also

disclose relevant, necessary, and accurate information to the public at large; and (d) because more localized notification is not feasible and homeless and transient offenders may present unique risks to the community, the agency may also disclose relevant, necessary, and accurate information to the public at large for offenders registered as homeless or transient.

(4) The county sheriff with whom an offender classified as risk level III is registered shall cause to be published by legal notice, advertising, or news release a sex offender community notification that conforms to the guidelines established under RCW 4.24.5501 in at least one legal newspaper with general circulation in the area of the sex offender's registered address or location. The county sheriff shall also cause to be published consistent with this subsection a current list of level III registered sex offenders, twice yearly. Unless the information is posted on the web site described in subsection (5) of this section, this list shall be maintained by the county sheriff on a publicly accessible web site and shall be updated at least once per month.

(5)(a) When funded by federal grants or other sources, the Washington association of sheriffs and police chiefs shall create and maintain a statewide registered kidnapping and sex offender web site, which shall be available to the public. The web site shall post all level III and level II registered sex offenders and all registered kidnapping offenders in the state of Washington.

(i) For level III offenders, the web site shall contain, but is not limited to, the registered sex offender's name, relevant criminal convictions, address by hundred block, physical description, and photograph. The web site shall provide mapping capabilities that display the sex offender's address by hundred block on a map. The web site shall allow citizens to search for registered sex offenders within the state of Washington by county, city, zip code, last name, type of conviction, and address by hundred block.

(ii) For level II offenders, the web site shall contain, but is not limited to, the same information and functionality as described in (a)(i) of this subsection, provided that it is permissible under state and federal law. If it is not permissible, the web site shall be limited to the information and functionality that is permissible under state and federal law.

(iii) For kidnapping offenders, the web site shall contain, but is not limited to, the same information and functionality as described in (a)(i) of this subsection, provided that it is permissible under state and federal law. If it is not permissible, the web site shall be limited to the information and functionality that is permissible under state and federal law.

(b) Until the implementation of (a) of this subsection, the Washington association of sheriffs and police chiefs shall create a web site available to the public that provides electronic links to county-operated web sites that offer sex offender registration information.

(6) Local law enforcement agencies that disseminate information pursuant to this section shall: (a) Review available risk level classifications made by the department of corrections, the department of social and health services, and the indeterminate sentence review board; (b) assign risk level classifications to all offenders about whom information will be disseminated; and (c) make a good faith effort to notify the public and residents at least fourteen days before the offender is released from confinement or, where an offender moves from another jurisdiction, as soon as possible after the agency learns of the offender's move,

except that in no case may this notification provision be construed to require an extension of an offender's release date. The juvenile court shall provide local law enforcement officials with all relevant information on offenders allowed to remain in the community in a timely manner.

(7) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470, or units of local government and its employees, as provided in RCW 36.28A.010, are immune from civil liability for damages for any discretionary risk level classification decisions or release of relevant and necessary information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The immunity in this section applies to risk level classification decisions and the release of relevant and necessary information regarding any individual for whom disclosure is authorized. The decision of a local law enforcement agency or official to classify an offender to a risk level other than the one assigned by the department of corrections, the department of social and health services, or the indeterminate sentence review board, or the release of any relevant and necessary information based on that different classification shall not, by itself, be considered gross negligence or bad faith. The immunity provided under this section applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the general public.

(8) Except as may otherwise be provided by law, nothing in this section shall impose any liability upon a public official, public employee, or public agency for failing to release information authorized under this section.

(9) Nothing in this section implies that information regarding persons designated in subsection (1) of this section is confidential except as may otherwise be provided by law.

(10) When a local law enforcement agency or official classifies an offender differently than the offender is classified by the end of sentence review committee or the department of social and health services at the time of the offender's release from confinement, the law enforcement agency or official shall notify the end of sentence review committee or the department of social and health services and submit its reasons supporting the change in classification. Upon implementation of subsection (5)(a) of this section, notification of the change shall also be sent to the Washington association of sheriffs and police chiefs.

Passed by the House March 8, 2005.

Passed by the Senate April 12, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 229

[Substitute House Bill 1345]

HIGHER EDUCATION COORDINATING BOARD—PILOT PROJECT

AN ACT Relating to eligibility for state financial aid for part-time students; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) The higher education coordinating board shall develop a pilot project for the 2005-2007 biennium to assess the need for and funding requirements that would be necessary to expand student eligibility for the state need grant program to include students enrolled in four or five quarter hours or equivalent enrollment. Under the pilot project, students attending participating higher education institutions and enrolled in four or five quarter hours or equivalent enrollment shall be eligible for the state need grant as long as they also meet the other eligibility criteria for the program.

(2) The higher education coordinating board shall select up to ten colleges and universities to participate in the pilot project developed under subsection (1) of this section. The higher education coordinating board shall require, at a minimum, that eligible institutions are participants as of the 2005-06 academic year in the state need grant program. Colleges, including both community and technical colleges, and universities may apply to participate based on the criteria developed by the board.

(3) The higher education coordinating board shall report to the higher education committees of the legislature by December 2006, on the results of the pilot project. The report shall include, at a minimum, the dollar amounts disbursed through the pilot project according to which institutions the students attended, geographic and demographic analysis of the participating students, an assessment of need for the program, including the number of students served, the number of students unserved, and estimates of costs for a permanent statewide program.

(4) The pilot project shall begin in the fall 2005 academic term and expire June 30, 2007.

Passed by the House April 18, 2005.

Passed by the Senate April 13, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 230

[Substitute House Bill 1366]

VIDEO GAMES—RATING INFORMATION

AN ACT Relating to video games; and adding a new section to chapter 19.188 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 19.188 RCW to read as follows:

(1) The definitions in this subsection apply throughout this section.

(a) "Video game" means an object or device that stores recorded data or instructions, receives data or instructions generated by a person who uses it, and, by processing the data or instructions, creates an interactive game capable of being played, viewed, or experienced on or through a computer, gaming system, console, or other technology.

(b) "Video game retailer" means a person who sells or rents video games to the public.

(c) "Point of sale" means the location in the retail establishment at which a transaction occurs resulting in the sale or rental of a video game.

(2) Every video game retailer shall post signs providing information to consumers about the existence of a nationally recognized video game rating system, or notifying consumers that a rating system is available, to aid in the selection of a game if such a rating system is in existence.

(3) The signs shall be posted within the retail establishment in prominent areas near the video game displays and points of sale. The signs and lettering shall be clearly visible to consumers at these locations.

(4) A video game retailer shall make available to consumers, upon request, information that explains the video game rating system.

Passed by the House March 8, 2005.

Passed by the Senate April 20, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 231

[Substitute House Bill 1379]

LIQUOR CONTROL BOARD—SUNDAY SALES

AN ACT Relating to the liquor control board fully implementing a retail business plan; amending RCW 66.08.060; adding new sections to chapter 66.08 RCW; adding a new section to chapter 66.16 RCW; and repealing RCW 66.16.080.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 66.08 RCW to read as follows:

The board shall, consistent with, and in addition to, the existing retail business plan, implement strategies to improve the efficiency of retail sales operations and maximize revenue-generating opportunities. Strategies to be implemented shall include, but are not limited to:

(1) Expanding store operations to include Sunday sales in selected liquor stores. Sunday sales are optional for liquor vendors operating agency stores;

(2) Implementing a plan of in-store liquor merchandising, including point-of-sale advertising, and product specific point-of-sale promotional displays and carousels, including displays designed and provided by vendors; and

(3) Implementing a plan for in-store liquor merchandising of brands. The plan may not include provisions for selling liquor-related items other than those items previously authorized.

NEW SECTION. Sec. 2. A new section is added to chapter 66.08 RCW to read as follows:

By September 1, 2005, the board shall expand operations in at least twenty state-operated retail stores to include Sundays. The board shall select the stores that are expected to gross the most revenues on Sunday by considering factors including, but not limited to, population density, proximity to shopping centers, and proximity to other businesses that are open on Sunday. The selected stores shall be open for retail business a minimum of five hours on Sunday. In implementing this program, if the board determines it would be beneficial to retain a consultant to assist the board in determining appropriate stores for the program and monitoring the results of the program, the agency is authorized to do so. The board shall track gross sales and expenses of the selected stores and

compare them to previous years' sales and projected sales and expenses before opening on Sunday. The board shall also examine the sales of state and contract liquor stores in proximity to those stores opened on Sundays to determine whether Sunday openings has reduced the sales of other state and contract liquor stores that are not open on Sundays. The board shall present this information to the appropriate policy and fiscal committees of the legislature by January 31, 2007.

Sec. 3. RCW 66.08.060 and 1933 ex.s. c 62 s 43 are each amended to read as follows:

(1) The board shall not advertise liquor in any form or through any medium whatsoever.

(2) In-store liquor merchandising is not advertising for the purposes of this section.

(3) The board shall have power to adopt any and all reasonable ~~((regulations))~~ rules as to the kind, character, and location of advertising of liquor.

NEW SECTION. Sec. 4. A new section is added to chapter 66.08 RCW to read as follows:

(1) Before the board determines which state liquor stores will be open on Sundays, it shall give: (a) Due consideration to the location of the liquor store with respect to the proximity of places of worship, schools, and public institutions; (b) due consideration to motor vehicle accident data in the proximity of the liquor store; and (c) written notice by certified mail of the proposed Sunday opening, including proposed Sunday opening hours, to places of worship, schools, and public institutions within five hundred feet of the liquor store proposed to be open on Sunday.

(2) Before permitting an agency vendor liquor store to open for business on Sunday, the board must meet the due consideration and written notice requirements established in subsection (1) of this section.

(3) For the purpose of this section, "place of worship" means a building erected for and used exclusively for religious worship and schooling or other related religious activity.

NEW SECTION. Sec. 5. A new section is added to chapter 66.16 RCW to read as follows:

Employees in state liquor stores, including agency vendor liquor stores, may not be required to work on their Sabbath for the purpose of selling liquor if doing so would violate their religious beliefs.

NEW SECTION. Sec. 6. RCW 66.16.080 (Sunday closing) and 1988 c 101 s 1 & 1933 ex.s. c 62 s 11 are each repealed.

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

Passed by the House April 19, 2005.

Passed by the Senate April 6, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 232

[House Bill 1432]

SCHOOL EMPLOYEES—BARGAINING UNITS

AN ACT Relating to avoiding fragmentation in bargaining units for classified school employees; and amending RCW 41.56.060.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 41.56.060 and 1975 1st ex.s. c 296 s 17 are each amended to read as follows:

(1) The commission, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, the unit appropriate for the purpose of collective bargaining. In determining, modifying, or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees. The commission shall determine the bargaining representative by ~~((+))~~: (a) Examination of organization membership rolls(~~(-)~~ ~~(2))~~); (b) comparison of signatures on organization bargaining authorization cards(~~(- or (3) by)~~); or (c) conducting an election specifically therefor.

(2) For classified employees of school districts and educational service districts:

(a) Appropriate bargaining units existing on the effective date of this section may not be divided into more than one unit without the agreement of the public employer and the certified bargaining representative of the unit; and

(b) In making bargaining unit determinations under this section, the commission must consider, in addition to the factors listed in subsection (1) of this section, the avoidance of excessive fragmentation.

Passed by the House March 9, 2005.

Passed by the Senate April 13, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 233

[House Bill 1598]

COUNTY ROAD ADMINISTRATION BOARD—MEMBERSHIP

AN ACT Relating to the population thresholds for membership of the county road administration board; and amending RCW 36.78.040.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 36.78.040 and 1991 c 363 s 83 are each amended to read as follows:

Six members of the county road administration board shall be county legislative authority members and three members shall be county engineers. If any member, during the term for which he or she is appointed ceases to be either a member of a county legislative authority or a county engineer, as the case may be, his or her membership on the county road administration board is likewise terminated. Three members of the board shall be from counties with a population of one hundred twenty-five thousand or more. Four members shall

be from counties with a population of from ~~((twelve))~~ twenty thousand to less than one hundred twenty-five thousand. Two members shall be from counties with a population of less than ~~((twelve))~~ twenty thousand. Not more than one member of the board shall be from any one county.

Passed by the House March 8, 2005.

Passed by the Senate April 13, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 234

[House Bill 1722]

FRUITS AND VEGETABLES—STANDARDS AND GRADES

AN ACT Relating to standards and grades for fruits and vegetables; and amending 2004 c 211 s 2 (uncodified).

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. 2004 c 211 s 2 (uncodified) is amended to read as follows:

Section 1 of this act expires December 31, ~~((2005))~~ 2007.

Passed by the House March 8, 2005.

Passed by the Senate April 11, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 235

[House Bill 1739]

VINTAGE SNOWMOBILES—REGISTRATION

AN ACT Relating to registration of vintage snowmobiles; amending RCW 46.10.010, 46.10.020, and 46.10.040; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.10.010 and 1979 ex.s. c 182 s 1 are each amended to read as follows:

As used in this chapter the words and phrases in this section shall have the designated meanings unless a different meaning is expressly provided or the context otherwise clearly indicated.

(1) "Person" shall mean any individual, firm, partnership, association, or corporation.

(2) "Snowmobile" shall mean any self-propelled vehicle capable of traveling over snow or ice, which utilizes as its means of propulsion an endless belt tread, or cleats, or any combination of these or other similar means of contact with the surface upon which it is operated, and which is steered wholly or in part by skis or sled type runners, and which is not otherwise registered as, or subject to the motor vehicle excise tax in the state of Washington.

(3) "Vintage snowmobile" means a snowmobile manufactured at least thirty years ago.

(4) "All terrain vehicle" shall mean any self-propelled vehicle other than a snowmobile, capable of cross-country travel on or immediately over land, water,

snow, ice, marsh, swampland, and other natural terrain, including, but not limited to, four-wheel vehicles, amphibious vehicles, ground effect or air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind; except any vehicle designed primarily for travel on, over, or in the water, farm vehicles, or any military or law enforcement vehicles.

~~((4))~~ (5) "Owner" shall mean the person, other than a lienholder, having the property in or title to a snowmobile or all terrain vehicle, and entitled to the use or possession thereof.

~~((5))~~ (6) "Operator" means each person who operates, or is in physical control of, any snowmobile or all terrain vehicle.

~~((6))~~ (7) "Public roadway" shall mean the entire width of the right of way of any road or street designed and ordinarily used for travel or parking of motor vehicles, which is controlled by a public authority other than the Washington state department of transportation, and which is open as a matter of right to the general public for ordinary vehicular traffic.

~~((7))~~ (8) "Highways" shall mean the entire width of the right of way of all primary and secondary state highways, including all portions of the interstate highway system.

~~((8))~~ (9) "Dealer" means a person, partnership, association, or corporation engaged in the business of selling snowmobiles or all terrain vehicles at wholesale or retail in this state.

~~((9))~~ (10) "Department" shall mean the department of licensing.

~~((10))~~ (11) "Director" shall mean the director of the department of licensing.

~~((11))~~ (12) "Commission" shall mean the Washington state parks and recreation commission.

~~((12))~~ (13) "Hunt" shall mean any effort to kill, injure, capture, or disturb a wild animal or wild bird.

~~((13))~~ (14) "Committee" means the Washington state parks and recreation commission snowmobile advisory committee.

Sec. 2. RCW 46.10.020 and 1982 c 17 s 1 are each amended to read as follows:

(1) Except as provided in this chapter, no person shall own, transport, or operate any snowmobile within this state unless such snowmobile has been registered in accordance with the provisions of this chapter. However, a vintage snowmobile only requires registration if operated within this state.

(2) A registration number shall be assigned, without payment of a fee, to snowmobiles owned by the state of Washington or its political subdivisions, and the assigned registration number shall be displayed upon each snowmobile in such manner as provided by rules adopted by the department.

Sec. 3. RCW 46.10.040 and 2002 c 352 s 2 are each amended to read as follows:

(1) Application for registration shall be made to the department in the manner and upon forms the department prescribes, and shall state the name and address of each owner of the snowmobile to be registered, and shall be signed by at least one such owner, and shall be accompanied by an annual registration fee to be established by the commission, after consultation with the committee and

any statewide snowmobile user groups. (~~The commission shall increase the current fee of twenty dollars by five dollars effective September 30, 2001, and the commission shall increase the fee by another five dollars effective September 30, 2002. After the fee increase effective September 30, 2002, the commission shall not increase the fee.~~)

(a) The annual registration fee for snowmobiles newer than thirty years is thirty dollars. The annual registration fee for vintage snowmobiles is twelve dollars. The department shall design, in cooperation with the commission, a distinct registration decal which shall be issued to vintage snowmobiles upon payment of the annual registration fee.

(b) Upon receipt of the application and the application fee, the snowmobile shall be registered and a registration number assigned, which shall be affixed to the snowmobile in a manner provided in RCW 46.10.070.

(2) The registration provided in this section shall be valid for a period of one year. At the end of the period of registration, every owner of a snowmobile in this state shall renew his or her registration in the manner the department prescribes, for an additional period of one year, upon payment of the annual registration fee as determined by the commission.

(3) Any person acquiring a snowmobile already validly registered under the provisions of this chapter must, within ten days of the acquisition or purchase of the snowmobile, make application to the department for transfer of the registration, and the application shall be accompanied by a transfer fee of five dollars.

(4) A snowmobile owned by a resident of another state or Canadian province where registration is not required by law may be issued a nonresident registration permit valid for not more than sixty days. Application for the permit shall state the name and address of each owner of the snowmobile to be registered and shall be signed by at least one owner and shall be accompanied by a registration fee of five dollars. The registration permit shall be carried on the vehicle at all times during its operation in this state.

(5) The registration fees provided in this section shall be in lieu of any personal property or excise tax heretofore imposed on snowmobiles by this state or any political subdivision thereof, and no city, county, or other municipality, and no state agency shall hereafter impose any other registration or license fee on any snowmobile in this state.

(6) The department shall make available a pair of uniform decals consistent with the provisions of RCW 46.10.070. In addition to the registration fee provided in this section the department shall charge each applicant for registration the actual cost of the decal. The department shall make available replacement decals for a fee equivalent to the actual cost of the decals.

NEW SECTION. Sec. 4. This act applies to registrations due or to become due on October 1, 2005, and thereafter.

Passed by the House April 20, 2005.

Passed by the Senate April 15, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 236

[Substitute House Bill 1876]

ELECTIONS—VOTING RIGHTS—PERSONS UNDER GUARDIANSHIP

AN ACT Relating to the voting rights of persons under guardianship; amending RCW 11.88.010 and 11.88.010; creating a new section; providing an effective date; and providing an expiration date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that the right to vote is a fundamental liberty and that this liberty should not be confiscated without due process. When the state chooses to use guardianship proceedings as the basis for the denial of a fundamental liberty, an individual is entitled to basic procedural protections that will ensure fundamental fairness. These basic procedural protections should include clear notice and a meaningful opportunity to be heard. The legislature further finds that the state has a compelling interest in ensuring that those who cast a ballot understand the nature and effect of voting is an individual decision, and that any restriction of voting rights imposed through guardianship proceedings should be narrowly tailored to meet this compelling interest.

Sec. 2. RCW 11.88.010 and 1991 c 289 s 1 are each amended to read as follows:

(1) The superior court of each county shall have power to appoint guardians for the persons and/or estates of incapacitated persons, and guardians for the estates of nonresidents of the state who have property in the county needing care and attention.

(a) For purposes of this chapter, a person may be deemed incapacitated as to person when the superior court determines the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety.

(b) For purposes of this chapter, a person may be deemed incapacitated as to the person's estate when the superior court determines the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs.

(c) A determination of incapacity is a legal not a medical decision, based upon a demonstration of management insufficiencies over time in the area of person or estate. Age, eccentricity, poverty, or medical diagnosis alone shall not be sufficient to justify a finding of incapacity.

(d) A person may also be determined incapacitated if he or she is under the age of majority as defined in RCW 26.28.010.

(e) For purposes of giving informed consent for health care pursuant to RCW 7.70.050 and 7.70.065, an "incompetent" person is any person who is (i) incompetent by reason of mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, of either managing his or her property or caring for himself or herself, or both, or (ii) incapacitated as defined in (a), (b), or (d) of this subsection.

(f) For purposes of the terms "incompetent," "disabled," or "not legally competent," as those terms are used in the Revised Code of Washington to apply to persons incapacitated under this chapter, those terms shall be interpreted to mean "incapacitated" persons for purposes of this chapter.

(2) The superior court for each county shall have power to appoint limited guardians for the persons and estates, or either thereof, of incapacitated persons, who by reason of their incapacity have need for protection and assistance, but who are capable of managing some of their personal and financial affairs. After considering all evidence presented as a result of such investigation, the court shall impose, by order, only such specific limitations and restrictions on an incapacitated person to be placed under a limited guardianship as the court finds necessary for such person's protection and assistance. A person shall not be presumed to be incapacitated nor shall a person lose any legal rights or suffer any legal disabilities as the result of being placed under a limited guardianship, except as to those rights and disabilities specifically set forth in the court order establishing such a limited guardianship. In addition, the court order shall state the period of time for which it shall be applicable.

(3) Venue for petitions for guardianship or limited guardianship shall lie in the county wherein the alleged incapacitated person is domiciled, or if such person resides in a facility supported in whole or in part by local, state, or federal funding sources, in either the county where the facility is located, the county of domicile prior to residence in the supported facility, or the county where a parent or spouse of the alleged incapacitated person is domiciled.

If the alleged incapacitated person's residency has changed within one year of the filing of the petition, any interested person may move for a change of venue for any proceedings seeking the appointment of a guardian or a limited guardian under this chapter to the county of the alleged incapacitated person's last place of residence of one year or more. The motion shall be granted when it appears to the court that such venue would be in the best interests of the alleged incapacitated person and would promote more complete consideration of all relevant matters.

(4) Under RCW 11.94.010, a principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if guardianship proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

(5) ~~((When a court imposes a full guardianship for an incapacitated person, the person shall be considered incompetent for purposes of rationally exercising the right to vote and shall lose the right to vote, unless the court specifically finds that the person is rationally capable of exercising the franchise.))~~ Imposition of a ~~((limited))~~ guardianship for an incapacitated person shall not result in the loss of the right to vote unless the court determines that the person is incompetent for purposes of rationally exercising the franchise in that the individual lacks the capacity to understand the nature and effect of voting such that she or he cannot make an individual choice. The court order establishing guardianship shall specify whether or not the individual retains voting rights.

Sec. 3. RCW 11.88.010 and 2004 c 267 s 139 are each amended to read as follows:

(1) The superior court of each county shall have power to appoint guardians for the persons and/or estates of incapacitated persons, and guardians for the estates of nonresidents of the state who have property in the county needing care and attention.

(a) For purposes of this chapter, a person may be deemed incapacitated as to person when the superior court determines the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety.

(b) For purposes of this chapter, a person may be deemed incapacitated as to the person's estate when the superior court determines the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs.

(c) A determination of incapacity is a legal not a medical decision, based upon a demonstration of management insufficiencies over time in the area of person or estate. Age, eccentricity, poverty, or medical diagnosis alone shall not be sufficient to justify a finding of incapacity.

(d) A person may also be determined incapacitated if he or she is under the age of majority as defined in RCW 26.28.010.

(e) For purposes of giving informed consent for health care pursuant to RCW 7.70.050 and 7.70.065, an "incompetent" person is any person who is (i) incompetent by reason of mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, of either managing his or her property or caring for himself or herself, or both, or (ii) incapacitated as defined in (a), (b), or (d) of this subsection.

(f) For purposes of the terms "incompetent," "disabled," or "not legally competent," as those terms are used in the Revised Code of Washington to apply to persons incapacitated under this chapter, those terms shall be interpreted to mean "incapacitated" persons for purposes of this chapter.

(2) The superior court for each county shall have power to appoint limited guardians for the persons and estates, or either thereof, of incapacitated persons, who by reason of their incapacity have need for protection and assistance, but who are capable of managing some of their personal and financial affairs. After considering all evidence presented as a result of such investigation, the court shall impose, by order, only such specific limitations and restrictions on an incapacitated person to be placed under a limited guardianship as the court finds necessary for such person's protection and assistance. A person shall not be presumed to be incapacitated nor shall a person lose any legal rights or suffer any legal disabilities as the result of being placed under a limited guardianship, except as to those rights and disabilities specifically set forth in the court order establishing such a limited guardianship. In addition, the court order shall state the period of time for which it shall be applicable.

(3) Venue for petitions for guardianship or limited guardianship shall lie in the county wherein the alleged incapacitated person is domiciled, or if such person resides in a facility supported in whole or in part by local, state, or federal funding sources, in either the county where the facility is located, the county of domicile prior to residence in the supported facility, or the county where a parent or spouse of the alleged incapacitated person is domiciled.

If the alleged incapacitated person's residency has changed within one year of the filing of the petition, any interested person may move for a change of venue for any proceedings seeking the appointment of a guardian or a limited guardian under this chapter to the county of the alleged incapacitated person's last place of residence of one year or more. The motion shall be granted when it appears to the court that such venue would be in the best interests of the alleged

incapacitated person and would promote more complete consideration of all relevant matters.

(4) Under RCW 11.94.010, a principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if guardianship proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

(5) ~~((When a court imposes a full guardianship for an incapacitated person, the person shall be considered incompetent for purposes of rationally exercising the right to vote and shall lose the right to vote, unless the court specifically finds that the person is rationally capable of exercising the franchise.))~~ Imposition of a ~~((limited))~~ guardianship for an incapacitated person shall not result in the loss of the right to vote unless the court determines that the person is incompetent for purposes of rationally exercising the franchise in that the individual lacks the capacity to understand the nature and effect of voting such that she or he cannot make an individual choice. The court order establishing guardianship shall specify whether or not the individual retains voting rights. When a court determines that the person is incompetent for the purpose of rationally exercising the right to vote, the court shall notify the appropriate county auditor.

NEW SECTION. Sec. 4. Section 2 of this act expires January 1, 2006.

NEW SECTION. Sec. 5. Section 3 of this act takes effect January 1, 2006.

Passed by the House March 9, 2005.

Passed by the Senate April 15, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 237

[House Bill 2058]

SCHOOL EMPLOYEES—SEX CRIMES

AN ACT Relating to school employees convicted of or pleading guilty to sex crimes; and amending RCW 43.43.845.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 43.43.845 and 1990 c 33 s 577 are each amended to read as follows:

(1) Upon a guilty plea or conviction of a person of any felony crime involving the physical neglect of a child under chapter 9A.42 RCW, the physical injury or death of a child under chapter 9A.32 or 9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW ~~((where a minor is the victim))~~, promoting prostitution of a minor under chapter 9A.88 RCW, or the sale or purchase of a minor child under RCW 9A.64.030, the prosecuting attorney shall determine whether the person holds a certificate or permit issued under chapters 28A.405 and 28A.410 RCW or is employed by a school district. If the person is employed by a school district or holds a certificate or permit issued under chapters 28A.405 and 28A.410 RCW, the

prosecuting attorney shall notify the state patrol of such guilty pleas or convictions.

(2) When the state patrol receives information that a person who has a certificate or permit issued under chapters 28A.405 and 28A.410 RCW or is employed by a school district has pled guilty to or been convicted of one of the felony crimes under subsection (1) of this section, the state patrol shall immediately transmit that information to the superintendent of public instruction. It shall be the duty of the superintendent of public instruction to provide this information to the state board of education and the school district employing the individual who pled guilty or was convicted of the crimes identified in subsection (1) of this section.

Passed by the House March 10, 2005.

Passed by the Senate April 12, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 238

[Substitute House Bill 2061]

JUVENILE COURTS—JURISDICTION

AN ACT Relating to requiring disposition to be held in juvenile court in certain circumstances when a case is automatically transferred to adult court; and amending RCW 13.04.030 and 13.40.300.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 13.04.030 and 2000 c 135 s 2 are each amended to read as follows:

(1) Except as provided in this section, the juvenile courts in this state shall have exclusive original jurisdiction over all proceedings:

(a) Under the interstate compact on placement of children as provided in chapter 26.34 RCW;

(b) Relating to children alleged or found to be dependent as provided in chapter 26.44 RCW and in RCW 13.34.030 through 13.34.170;

(c) Relating to the termination of a parent and child relationship as provided in RCW 13.34.180 through 13.34.210;

(d) To approve or disapprove out-of-home placement as provided in RCW 13.32A.170;

(e) Relating to juveniles alleged or found to have committed offenses, traffic or civil infractions, or violations as provided in RCW 13.40.020 through 13.40.230, unless:

(i) The juvenile court transfers jurisdiction of a particular juvenile to adult criminal court pursuant to RCW 13.40.110;

(ii) The statute of limitations applicable to adult prosecution for the offense, traffic or civil infraction, or violation has expired;

(iii) The alleged offense or infraction is a traffic, fish, boating, or game offense, or traffic or civil infraction committed by a juvenile sixteen years of age or older and would, if committed by an adult, be tried or heard in a court of limited jurisdiction, in which instance the appropriate court of limited jurisdiction shall have jurisdiction over the alleged offense or infraction, and no guardian ad litem is required in any such proceeding due to the juvenile's age:

PROVIDED, That if such an alleged offense or infraction and an alleged offense or infraction subject to juvenile court jurisdiction arise out of the same event or incident, the juvenile court may have jurisdiction of both matters: PROVIDED FURTHER, That the jurisdiction under this subsection does not constitute "transfer" or a "decline" for purposes of RCW 13.40.110(1) or (e)(i) of this subsection: PROVIDED FURTHER, That courts of limited jurisdiction which confine juveniles for an alleged offense or infraction may place juveniles in juvenile detention facilities under an agreement with the officials responsible for the administration of the juvenile detention facility in RCW 13.04.035 and 13.20.060;

(iv) The alleged offense is a traffic or civil infraction, a violation of compulsory school attendance provisions under chapter 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction has assumed concurrent jurisdiction over those offenses as provided in RCW 13.04.0301; or

(v) The juvenile is sixteen or seventeen years old and the alleged offense is:

(A) A serious violent offense as defined in RCW 9.94A.030;

(B) A violent offense as defined in RCW 9.94A.030 and the juvenile has a criminal history consisting of: (I) One or more prior serious violent offenses; (II) two or more prior violent offenses; or (III) three or more of any combination of the following offenses: Any class A felony, any class B felony, vehicular assault, or manslaughter in the second degree, all of which must have been committed after the juvenile's thirteenth birthday and prosecuted separately;

(C) Robbery in the first degree, rape of a child in the first degree, or drive-by shooting, committed on or after July 1, 1997;

(D) Burglary in the first degree committed on or after July 1, 1997, and the juvenile has a criminal history consisting of one or more prior felony or misdemeanor offenses; or

(E) Any violent offense as defined in RCW 9.94A.030 committed on or after July 1, 1997, and the juvenile is alleged to have been armed with a firearm.

(I) In such a case the adult criminal court shall have exclusive original jurisdiction, except as provided in (e)(v)(E)(II) of this subsection.

(II) The juvenile court shall have exclusive jurisdiction over the disposition of any remaining charges in any case in which the juvenile is found not guilty in the adult criminal court of the charge or charges for which he or she was transferred, or is convicted in the adult criminal court of a lesser included offense that is not also an offense listed in (e)(v) of this subsection. The juvenile court shall enter an order extending juvenile court jurisdiction if the juvenile has turned eighteen years of age during the adult criminal court proceedings pursuant to RCW 13.40.300. However, once the case is returned to juvenile court, the court may hold a decline hearing pursuant to RCW 13.40.110 to determine whether to retain the case in juvenile court for the purpose of disposition or return the case to adult criminal court for sentencing.

If the juvenile challenges the state's determination of the juvenile's criminal history under (e)(v) of this subsection, the state may establish the offender's criminal history by a preponderance of the evidence. If the criminal history consists of adjudications entered upon a plea of guilty, the state shall not bear a burden of establishing the knowing and voluntariness of the plea;

(f) Under the interstate compact on juveniles as provided in chapter 13.24 RCW;

(g) Relating to termination of a diversion agreement under RCW 13.40.080, including a proceeding in which the divertee has attained eighteen years of age;

(h) Relating to court validation of a voluntary consent to an out-of-home placement under chapter 13.34 RCW, by the parent or Indian custodian of an Indian child, except if the parent or Indian custodian and child are residents of or domiciled within the boundaries of a federally recognized Indian reservation over which the tribe exercises exclusive jurisdiction;

(i) Relating to petitions to compel disclosure of information filed by the department of social and health services pursuant to RCW 74.13.042; and

(j) Relating to judicial determinations and permanency planning hearings involving developmentally disabled children who have been placed in out-of-home care pursuant to a voluntary placement agreement between the child's parent, guardian, or legal custodian and the department of social and health services.

(2) The family court shall have concurrent original jurisdiction with the juvenile court over all proceedings under this section if the superior court judges of a county authorize concurrent jurisdiction as provided in RCW 26.12.010.

(3) The juvenile court shall have concurrent original jurisdiction with the family court over child custody proceedings under chapter 26.10 RCW as provided for in RCW 13.34.155.

(4) A juvenile subject to adult superior court jurisdiction under subsection (1)(e)(i) through (v) of this section, who is detained pending trial, may be detained in a detention facility as defined in RCW 13.40.020 pending sentencing or a dismissal.

Sec. 2. RCW 13.40.300 and 2000 c 71 s 2 are each amended to read as follows:

(1) In no case may a juvenile offender be committed by the juvenile court to the department of social and health services for placement in a juvenile correctional institution beyond the juvenile offender's twenty-first birthday. A juvenile may be under the jurisdiction of the juvenile court or the authority of the department of social and health services beyond the juvenile's eighteenth birthday only if prior to the juvenile's eighteenth birthday:

(a) Proceedings are pending seeking the adjudication of a juvenile offense and the court by written order setting forth its reasons extends jurisdiction of juvenile court over the juvenile beyond his or her eighteenth birthday;

(b) The juvenile has been found guilty after a fact finding or after a plea of guilty and an automatic extension is necessary to allow for the imposition of disposition; (~~(e)~~)

(c) Disposition has been held and an automatic extension is necessary to allow for the execution and enforcement of the court's order of disposition. If an order of disposition imposes commitment to the department, then jurisdiction is automatically extended to include a period of up to twelve months of parole, in no case extending beyond the offender's twenty-first birthday; or

(d) While proceedings are pending in a case in which jurisdiction has been transferred to the adult criminal court pursuant to RCW 13.04.030, the juvenile turns eighteen years of age and is subsequently found not guilty of the charge for which he or she was transferred, or is convicted in the adult criminal court of a lesser included offense, and an automatic extension is necessary to impose the disposition as required by RCW 13.04.030(1)(e)(v)(E).

(2) If the juvenile court previously has extended jurisdiction beyond the juvenile offender's eighteenth birthday and that period of extension has not expired, the court may further extend jurisdiction by written order setting forth its reasons.

(3) In no event may the juvenile court have authority to extend jurisdiction over any juvenile offender beyond the juvenile offender's twenty-first birthday except for the purpose of enforcing an order of restitution or penalty assessment.

(4) Notwithstanding any extension of jurisdiction over a person pursuant to this section, the juvenile court has no jurisdiction over any offenses alleged to have been committed by a person eighteen years of age or older.

Passed by the House March 9, 2005.

Passed by the Senate April 12, 2005.

Approved by the Governor April 28, 2005.

Filed in Office of Secretary of State April 28, 2005.

CHAPTER 239

[Engrossed House Bill 1222]

BALLOT MEASURE PETITIONS

AN ACT Relating to ballot measure petitions; amending RCW 29A.72.110, 29A.72.120, and 29A.72.130; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 29A.72.110 and 2003 c 111 s 1812 are each amended to read as follows:

Petitions for proposing measures for submission to the legislature at its next regular session must be substantially in the following form:

The warning prescribed by RCW 29A.72.140; followed by:

INITIATIVE PETITION FOR SUBMISSION TO THE LEGISLATURE

To the Honorable, Secretary of State of the State of Washington:

We, the undersigned citizens and legal voters of the State of Washington, respectfully direct that this petition and the proposed measure known as Initiative Measure No. and entitled (here set forth the established ballot title of the measure), a full, true, and correct copy of which is printed on the reverse side of this petition, be transmitted to the legislature of the State of Washington at its next ensuing regular session, and we respectfully petition the legislature to enact said proposed measure into law; and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington in the city (or town) and county written after my name, my residence address is correctly stated, and I have knowingly signed this petition only once.

The following declaration must be printed on the reverse side of the petition:

I,, swear or affirm under penalty of law that I circulated this sheet of the foregoing petition, and that, to the best of my knowledge, every person who signed this sheet of the foregoing petition knowingly and without any compensation or promise of compensation willingly signed his or her true

name and that the information provided therewith is true and correct. I further acknowledge that under chapter 29A.84 RCW, forgery of signatures on this petition constitutes a class C felony, and that offering any consideration or gratuity to any person to induce them to sign a petition is a gross misdemeanor, such violations being punishable by fine or imprisonment or both.

RCW 9A.46.020 applies to any conduct constituting harassment against a petition signature gatherer. This penalty does not preclude the victim from seeking any other remedy otherwise available under law.

The petition must include a place for each petitioner to sign and print his or her name, and the address, city, and county at which he or she is registered to vote.

Sec. 2. RCW 29A.72.120 and 2003 c 111 s 1813 are each amended to read as follows:

Petitions for proposing measures for submission to the people for their approval or rejection at the next ensuing general election must be substantially in the following form:

The warning prescribed by RCW 29A.72.140; followed by:

INITIATIVE PETITION FOR SUBMISSION TO THE PEOPLE

To the Honorable, Secretary of State of the State of Washington:

We, the undersigned citizens and legal voters of the State of Washington, respectfully direct that the proposed measure known as Initiative Measure No., entitled (here insert the established ballot title of the measure), a full, true and correct copy of which is printed on the reverse side of this petition, be submitted to the legal voters of the State of Washington for their approval or rejection at the general election to be held on the day of November, (year); and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the city (or town) and county written after my name, my residence address is correctly stated, and I have knowingly signed this petition only once.

The following declaration must be printed on the reverse side of the petition:

I swear or affirm under penalty of law that I circulated this sheet of the foregoing petition, and that, to the best of my knowledge, every person who signed this sheet of the foregoing petition knowingly and without any compensation or promise of compensation willingly signed his or her true name and that the information provided therewith is true and correct. I further acknowledge that under chapter 29A.84 RCW, forgery of signatures on this petition constitutes a class C felony, and that offering any consideration or gratuity to any person to induce them to sign a petition is a gross misdemeanor, such violations being punishable by fine or imprisonment or both.

RCW 9A.46.020 applies to any conduct constituting harassment against a petition signature gatherer. This penalty does not preclude the victim from seeking any other remedy otherwise available under law.

The petition must include a place for each petitioner to sign and print his or her name, and the address, city, and county at which he or she is registered to vote.

Sec. 3. RCW 29A.72.130 and 2003 c 111 s 1814 are each amended to read as follows:

Petitions ordering that acts or parts of acts passed by the legislature be referred to the people at the next ensuing general election, or special election ordered by the legislature, must be substantially in the following form:

The warning prescribed by RCW 29A.72.140; followed by:

PETITION FOR REFERENDUM

To the Honorable, Secretary of State of the State of Washington:

We, the undersigned citizens and legal voters of the State of Washington, respectfully order and direct that Referendum Measure No., filed to revoke a (or part or parts of a) bill that (concise statement required by RCW ((~~29A.36.070~~) 29A.36.071) and that was passed by the legislature of the State of Washington at the last regular (special) session of said legislature, shall be referred to the people of the state for their approval or rejection at the regular (special) election to be held on the . . . day of November, (year); and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the city (or town) and county written after my name, my residence address is correctly stated, and I have knowingly signed this petition only once.

The following declaration must be printed on the reverse side of the petition:

I,, swear or affirm under penalty of law that I circulated this sheet of the foregoing petition, and that, to the best of my knowledge, every person who signed this sheet of the foregoing petition knowingly and without any compensation or promise of compensation willingly signed his or her true name and that the information provided therewith is true and correct. I further acknowledge that under chapter 29A.84 RCW, forgery of signatures on this petition constitutes a class C felony, and that offering any consideration or gratuity to any person to induce them to sign a petition is a gross misdemeanor, such violations being punishable by fine or imprisonment or both.

RCW 9A.46.020 applies to any conduct constituting harassment against a petition signature gatherer. This penalty does not preclude the victim from seeking any other remedy otherwise available under law.

The petition must include a place for each petitioner to sign and print his or her name, and the address, city, and county at which he or she is registered to vote.

NEW SECTION. Sec. 4. This act takes effect January 1, 2006.

Passed by the House April 20, 2005.

Passed by the Senate April 14, 2005.

Approved by the Governor May 3, 2005.

Filed in Office of Secretary of State May 3, 2005.

CHAPTER 240

[House Bill 1749]

ELECTIONS—COUNTY PROCEDURES—REVIEWS

AN ACT Relating to review of county election procedures; and amending RCW 29A.04.570.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 29A.04.570 and 2003 c 111 s 155 are each amended to read as follows:

(1)(a) The election review staff of the office of the secretary of state shall conduct a review of election-related policies, procedures, and practices in an affected county or counties:

(i) If the unofficial returns of a primary or general election for a position in the state legislature indicate that a mandatory recount is likely for that position; or

(ii) If unofficial returns indicate a mandatory recount is likely in a statewide election or an election for federal office.

Reviews conducted under (ii) of this subsection shall be performed in as many selected counties as time and staffing permit. Reviews conducted as a result of mandatory recounts shall be performed between the time the unofficial returns are complete and the time the recount is to take place, if possible.

(b) In addition to conducting reviews under (a) of this subsection, the election review staff shall also conduct such a review in a county (~~periodically~~) at least once in each three-year period, in conjunction with a county primary or special or general election, at the direction of the secretary of state or at the request of the county auditor. If staffing or budget levels do not permit a three-year election cycle for reviews, then reviews must be done as often as possible. If any resident of this state believes that an aspect of a primary or election has been conducted inappropriately in a county, the resident may file a complaint with the secretary of state. The secretary shall consider such complaints in scheduling periodic reviews under this section.

(c) Before an election review is conducted in a county, the secretary of state shall provide the county auditor of the affected county and the chair of the state central committee of each major political party with notice that the review is to be conducted. When a periodic review is to be conducted in a county at the direction of the secretary of state under (b) of this subsection, the secretary shall provide the affected county auditor not less than thirty days' notice.

(2) Reviews shall be conducted in conformance with rules adopted under RCW 29A.04.630. In performing a review in a county under this chapter, the election review staff shall evaluate the policies and procedures established for conducting the primary or election in the county and the practices of those conducting it. As part of the review, the election review staff shall issue to the county auditor and the members of the county canvassing board a report of its findings and recommendations regarding such policies, procedures, and practices. A review conducted under this chapter shall not include any evaluation, finding, or recommendation regarding the validity of the outcome of a primary or election or the validity of any canvass of returns nor does the election review staff have any jurisdiction to make such an evaluation, finding, or recommendation under this title.

(3) The county auditor or the county canvassing board shall respond to the review report in writing, listing the steps that will be taken to correct any problems listed in the report. The secretary of state shall visit the county before the next state primary or general election to verify that the county has taken the steps they listed to correct the problems noted in the report.

(4) The county auditor of the county in which a review is conducted under this section or a member of the canvassing board of the county may appeal the findings or recommendations of the election review staff regarding the review by filing an appeal with the board created under RCW 29A.04.510.

Passed by the House March 15, 2005.

Passed by the Senate April 12, 2005.

Approved by the Governor May 3, 2005.

Filed in Office of Secretary of State May 3, 2005.

CHAPTER 241

[Substitute House Bill 1754]

ELECTIONS—VOTE BY MAIL

AN ACT Relating to mail ballot elections; amending RCW 29A.48.010; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 29A.48.010 and 2004 c 266 s 14 are each amended to read as follows:

(1) With express authorization from the county legislative authority, the county auditor may conduct all primary, special, and general elections entirely by mail ballot. The county legislative authority must give the county auditor at least ninety days' notice before the first election to be conducted entirely by mail ballot. If the county legislative authority and the county auditor decide to return to a polling place election environment, the county legislative authority must give the county auditor at least one hundred eighty days' notice before the first election to be conducted using polling places. Authorization under this subsection must apply to all primary, special, and general elections conducted by the county auditor.

(2) The county auditor may designate any precinct having fewer than two hundred active registered voters at the time of closing of voter registration as provided in RCW 29A.08.140 as a mail ballot precinct. ~~((The county auditor shall notify each registered voter by mail that for all future primaries and elections the voting in his or her precinct will be by mail ballot only.))~~ Authorization from the county legislative authority is not required to designate a precinct as a mail ballot precinct under this subsection. In determining the number of registered voters in a precinct for the purposes of this section, persons who are ongoing absentee voters under RCW 29A.40.040 shall not be counted. Nothing in this section may be construed as altering the vote tallying requirements of RCW 29A.60.230.

(3) The county auditor shall notify each registered voter by mail that for all future primaries and elections the voting will be by mail ballot only. The auditor shall mail each active voter a ballot at least eighteen days before a primary, general election, or special election. The auditor shall send each inactive voter

either a ballot or an application to receive a ballot at least eighteen days before a primary, general election, or special election. The auditor shall determine which of the two is to be sent. If the inactive voter returns a voted ballot, the ballot shall be counted and the voter's status restored to active. If the inactive voter completes and returns an application, a ballot shall be sent and the voter's status restored to active. The requirements regarding certification, reporting, and the mailing of overseas and military ballots in RCW ((29.36.270)) 29A.40.070 apply to elections conducted by mail ballot ((precincts)).

(4) If the ((precinct exceeds two hundred registered voters, or the)) county legislative authority and county auditor determine under subsection (1) of this section, or if the county auditor determines under subsection (2) of this section, to return to a polling place election environment, the auditor shall notify each registered voter, by mail, of this and shall provide the address of the polling place to be used.

NEW SECTION. Sec. 2. The secretary of state shall evaluate available technologies to allow voters the ability to conveniently determine if their mail ballots were received and counted by their county auditor. No later than December 31, 2006, the secretary of state shall submit a report to the legislature outlining available mail ballot tracking technology. The report must include the secretary of state's recommendations on whether such technology should be implemented, and if so, how.

Passed by the House April 20, 2005.

Passed by the Senate April 14, 2005.

Approved by the Governor May 3, 2005.

Filed in Office of Secretary of State May 3, 2005.

CHAPTER 242

[Engrossed Substitute Senate Bill 5395]

ELECTIONS—ELECTRONIC VOTING—PAPER RECORDS

AN ACT Relating to requiring electronic voting devices to produce paper records; adding a new section to chapter 29A.12 RCW; adding new sections to chapter 29A.44 RCW; adding new sections to chapter 29A.60 RCW; adding a new section to chapter 29A.84 RCW; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 29A.12 RCW to read as follows:

Beginning on January 1, 2006, all electronic voting devices must produce a paper record of each vote that may be accepted or rejected by the voter before finalizing his or her vote. This record may not be removed from the polling place, and must be human readable without an interface and machine readable for counting purposes. If the device is programmed to display the ballot in multiple languages, the paper record produced must be printed in the language used by the voter. Rejected records must either be destroyed or marked in order to clearly identify the record as rejected.

NEW SECTION. Sec. 2. A new section is added to chapter 29A.44 RCW to read as follows:

Paper records produced by electronic voting devices are subject to all the requirements of this chapter and chapter 29A.60 RCW for ballot handling, preservation, reconciliation, transit to the counting center, and storage. The paper records must be preserved in the same manner and for the same period of time as ballots.

NEW SECTION. Sec. 3. A new section is added to chapter 29A.60 RCW to read as follows:

(1) The electronic record produced and counted by electronic voting devices is the official record of each vote for election purposes. The paper record produced under section 1 of this act must be stored and maintained for use only in the following circumstances:

- (a) In the event of a manual recount;
- (b) By order of the county canvassing board;
- (c) By order of a court of competent jurisdiction; or
- (d) For use in the random audit of results described in section 5 of this act.

(2) When such paper record is used in any of the circumstances listed in subsection (1) of this section, it shall be the official record of the election.

NEW SECTION. Sec. 4. A new section is added to chapter 29A.44 RCW to read as follows:

A voter voting on an electronic voting device may not leave the device during the voting process, except to request assistance from the precinct election officers, until the voting process is completed.

NEW SECTION. Sec. 5. A new section is added to chapter 29A.60 RCW to read as follows:

Prior to certification of the election as required by RCW 29A.60.190, the county auditor shall conduct an audit of results of votes cast on the direct recording electronic voting devices used in the county. This audit must be conducted by randomly selecting by lot up to four percent of the direct recording electronic voting devices or one direct recording electronic voting device, whichever is greater, and, for each device, comparing the results recorded electronically with the results recorded on paper. For purposes of this audit, the results recorded on paper must be tabulated as follows: On one-fourth of the devices selected for audit, the paper records must be tabulated manually; on the remaining devices, the paper records may be tabulated by a mechanical device determined by the secretary of state to be capable of accurately reading the votes cast and printed thereon and qualified for use in the state under applicable state and federal laws. Three races or issues, randomly selected by lot, must be audited on each device. This audit procedure must be subject to observation by political party representatives if representatives have been appointed and are present at the time of the audit.

NEW SECTION. Sec. 6. A new section is added to chapter 29A.84 RCW to read as follows:

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

Passed by the Senate April 18, 2005.

Passed by the House April 13, 2005.

Approved by the Governor May 3, 2005.
 Filed in Office of Secretary of State May 3, 2005.

CHAPTER 243

[Engrossed Substitute Senate Bill 5499]

ELECTION REFORM

AN ACT Relating to election reform; amending RCW 29A.04.008, 29A.04.530, 29A.40.091, 29A.40.110, 29A.60.021, 29A.60.050, 29A.60.070, 29A.60.160, 29A.60.190, 29A.60.210, 29A.60.250, 29A.64.021, 29A.64.030, 29A.64.061, 29A.68.011, and 29A.84.650; adding a new section to chapter 29A.36 RCW; adding new sections to chapter 29A.44 RCW; adding new sections to chapter 29A.60 RCW; adding a new section to chapter 29A.84 RCW; prescribing penalties; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 29A.04.008 and 2004 c 271 s 102 are each amended to read as follows:

As used in this title:

(1) "Ballot" means, as the context implies, either:

(a) The issues and offices to be voted upon in a jurisdiction or portion of a jurisdiction at a particular primary, general election, or special election;

(b) A facsimile of the contents of a particular ballot whether printed on a paper ballot or ballot card or as part of a voting machine or voting device;

(c) A physical or electronic record of the choices of an individual voter in a particular primary, general election, or special election; or

(d) The physical document on which the voter's choices are to be recorded;

(2) "Paper ballot" means a piece of paper on which the ballot for a particular election or primary has been printed, on which a voter may record his or her choices for any candidate or for or against any measure, and that is to be tabulated manually;

(3) "Ballot card" means any type of card or piece of paper of any size on which a voter may record his or her choices for any candidate and for or against any measure and that is to be tabulated on a vote tallying system;

(4) "Sample ballot" means a printed facsimile of all the issues and offices on the ballot in a jurisdiction and is intended to give voters notice of the issues, offices, and candidates that are to be voted on at a particular primary, general election, or special election;

(5) "Provisional ballot" means a ballot issued (~~(to a voter)~~) at the polling place on election day by the precinct election board (~~(, for one of the following reasons)~~) to a voter who would otherwise be denied an opportunity to vote a regular ballot, for any reason authorized by the help America vote act, including but not limited to the following:

(a) The voter's name does not appear in the poll book;

(b) There is an indication in the poll book that the voter has requested an absentee ballot, but the voter wishes to vote at the polling place;

(c) There is a question on the part of the voter concerning the issues or candidates on which the voter is qualified to vote;

(d) Any other reason allowed by law;

(6) "Party ballot" means a primary election ballot specific to a particular major political party that lists all partisan offices to be voted on at that primary,

and the candidates for those offices who affiliate with that same major political party;

(7) "Nonpartisan ballot" means a primary election ballot that lists all nonpartisan races and ballot measures to be voted on at that primary.

Sec. 2. RCW 29A.04.530 and 2003 c 111 s 151 are each amended to read as follows:

The secretary of state shall:

(1) Establish and operate, or provide by contract, training and certification programs for state and county elections administration officials and personnel, including training on the various types of election law violations and discrimination, and training programs for political party observers which conform to the rules for such programs established under RCW 29A.04.630;

(2) Establish guidelines, in consultation with state and local law enforcement or certified document examiners, for signature verification processes. All election personnel assigned to verify signatures must receive training on the guidelines;

(3) Administer tests for state and county officials and personnel who have received such training and issue certificates to those who have successfully completed the training and passed such tests;

~~((3))~~ (4) Maintain a record of those individuals who have received such training and certificates; and

~~((4))~~ (5) Provide the staffing and support services required by the board created under RCW 29A.04.510.

NEW SECTION. Sec. 3. A new section is added to chapter 29A.36 RCW to read as follows:

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

(1) Printed on colored paper; or

(2) Imprinted with a bar code for the purpose of identifying the ballot as a provisional or absentee ballot. The bar code must not identify the voter.

Provisional and absentee ballots must be incapable of being tabulated by poll-site counting devices.

***Sec. 4.** RCW 29A.40.091 and 2004 c 271 s 135 are each amended to read as follows:

The county auditor shall send each absentee voter a ballot, a security envelope in which to seal the ballot after voting, a larger envelope in which to return the security envelope, and instructions on how to mark the ballot and how to return it to the county auditor. The instructions that accompany an absentee ballot for a partisan primary must include instructions for voting the applicable ballot style, as provided in chapter 29A.36 RCW. The absentee voter's name and address must be printed on the larger return envelope, which must also contain a declaration by the absentee voter reciting his or her qualifications and stating that he or she has not voted in any other jurisdiction at this election, together with a summary of the penalties for any violation of any of the provisions of this chapter. The declaration must clearly inform the voter that it is illegal to vote if he or she is not a United States citizen; it is illegal to vote if he or she has been convicted of a felony and has not had his or her voting rights restored; and, except as otherwise provided by law, it is illegal

to cast a ballot or sign an absentee envelope on behalf of another voter. The return envelope must provide space for the voter to indicate the date on which the ballot was voted and for the voter to sign the oath. It must also contain a space that the voter may include a telephone number. A summary of the applicable penalty provisions of this chapter must be printed on the return envelope immediately adjacent to the space for the voter's signature. The signature of the voter on the return envelope must affirm and attest to the statements regarding the qualifications of that voter and to the validity of the ballot. The return envelope must also have a secrecy flap that the voter may seal that will cover the voter's signature and optional telephone number. For out-of-state voters, overseas voters, and service voters, the signed declaration on the return envelope constitutes the equivalent of a voter registration for the election or primary for which the ballot has been issued. The voter must be instructed to either return the ballot to the county auditor by whom it was issued or attach sufficient first class postage, if applicable, and mail the ballot to the appropriate county auditor no later than the day of the election or primary for which the ballot was issued.

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

*Sec. 4 was vetoed. See message at end of chapter.

Sec. 5. RCW 29A.40.110 and 2003 c 111 s 1011 are each amended to read as follows:

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

(2) **All received absentee return envelopes must be placed in secure locations from the time of delivery to the county auditor until their subsequent opening.** After opening the return envelopes, the county canvassing board shall place all of the ballots in secure storage until after 8:00 p.m. of the day of the primary or election. Absentee ballots that are to be tabulated on an electronic vote tallying system may be taken from the inner envelopes and all the normal procedural steps may be performed to prepare these ballots for tabulation.

(3) Before opening a returned absentee ballot, the canvassing board, or its designated representatives, shall examine the postmark, statement, and signature on the return envelope that contains the security envelope and absentee ballot. They shall verify that the voter's signature on the return envelope is the same as the signature of that voter in the registration files of the county. For registered voters casting absentee ballots, the date on the return envelope to which the voter has attested determines the validity, as to the time of voting for that absentee ballot if the postmark is missing or is illegible. For out-of-state voters, overseas voters, and service voters **stationed in the United States,** the date on the return envelope to which the voter has attested determines the validity as to the time of voting for that absentee ballot. For any absentee ballot, a variation between the

signature of the voter on the return envelope and the signature of that voter in the registration files due to the substitution of initials or the use of common nicknames is permitted so long as the surname and handwriting are clearly the same.

NEW SECTION. Sec. 6. A new section is added to chapter 29A.44 RCW to read as follows:

Provisional ballots must be issued, along with a provisional ballot outer envelope and a security envelope, to voters as appropriate under RCW 29A.04.008. The provisional ballot outer envelope must include a place for the voter's name; registered address, both present and former if applicable; date of birth; reason for the provisional ballot; the precinct number and the precinct polling location at which the voter has voted; and a space for the county auditor to list the disposition of the provisional ballot. The provisional ballot outer envelope must also contain a declaration as required for absentee ballot outer envelopes under RCW 29A.40.091; a place for the voter to sign the oath; and a summary of the applicable penalty provisions of this chapter. The voter shall vote the provisional ballot in secrecy and, when done, place the provisional ballot in the security envelope, then place the security envelope into the outer envelope, and return it to the precinct election official. The election official shall ensure that the required information is completed on the outer envelope, have the voter sign it in the appropriate space, and place the envelope in a secure container. The official shall then give the voter written information advising the voter how to ascertain whether the vote was counted and, if applicable, the reason why the vote was not counted.

NEW SECTION. Sec. 7. A new section is added to chapter 29A.44 RCW to read as follows:

Any person desiring to vote at any primary or election is required to provide identification to the election officer before signing the poll book. The identification required in this section can be satisfied by providing a valid photo identification, such as a driver's license or state identification card, student identification card, or tribal identification card, a voter's voter identification issued by a county elections officer, or a copy of a current utility bill, bank statement, paycheck, or government check or other government document. Any individual who desires to vote in person but cannot provide identification as required by this section shall be issued a provisional ballot.

The secretary of state may adopt rules to carry out this section.

NEW SECTION. Sec. 8. A new section is added to chapter 29A.60 RCW to read as follows:

(1) If the voter neglects to sign the outside envelope of an absentee or provisional ballot, the auditor shall notify the voter by telephone and advise the voter of the correct procedures for completing the unsigned affidavit. If the auditor is not able to provide the information personally to the voter by telephone, then the voter must be contacted by first class mail and advised of the correct procedures for completing the unsigned affidavit. Leaving a voice mail message for the voter is not to be considered as personally contacting the voter. In order for the ballot to be counted, the voter must either:

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

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

(2)(a) If the handwriting of the signature on an absentee or provisional ballot envelope is not the same as the handwriting of the signature on the registration file, the auditor shall notify the voter by telephone and advise the voter of the correct procedures for updating his or her signature on the voter registration file. If the auditor is not able to provide the information personally to the voter by telephone, then the voter must be contacted by first class mail and advised of the correct procedures for completing the unsigned affidavit. Leaving a voice mail message for the voter is not to be considered as personally contacting the voter. In order for the ballot to be counted, the voter must either:

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

(ii) Sign a copy of the affidavit provided by the auditor and return it to the auditor no later than the day before the certification of the primary or election. If the signature on the copy of the affidavit does not match the signature on file, the voter must appear in person and sign a new registration form no later than the day before the certification of the primary or election in order for the ballot to be counted.

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

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

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

(4) A record must be kept of all ballots with missing and mismatched signatures. The record must contain the date on which the voter was contacted or the notice was mailed, as well as the date on which the voter signed the envelope, a copy of the envelope, a new registration form, or a change-of-name form. That record is a public record under chapter 42.17 RCW and may be disclosed to interested parties on written request.

NEW SECTION. Sec. 9. A new section is added to chapter 29A.60 RCW to read as follows:

Before certification of the primary or election, the county auditor must examine and investigate all received provisional ballots to determine whether the ballot can be counted. The auditor shall provide the disposition of the provisional ballot and, if the ballot was not counted, the reason why it was not counted, on a free access system such as a toll-free telephone number, web site, mail, or other means. The auditor must notify the voter in accordance with section 8 of this act when the envelope is unsigned or when the signatures do not match.

NEW SECTION. Sec. 10. A new section is added to chapter 29A.60 RCW to read as follows:

If inspection of the ballot reveals a physically damaged ballot or ballot that may be otherwise unreadable or uncountable by the tabulating system, the county auditor may refer the ballot to the county canvassing board or duplicate the ballot if so authorized by the county canvassing board. The voter's original ballot may not be altered. A ballot may be duplicated only if the intent of the voter's marks on the ballot is clear and the electronic voting equipment might not otherwise properly tally the ballot to reflect the intent of the voter. Ballots must be duplicated by teams of two or more people working together. When duplicating ballots, the county auditor shall take the following steps to create and maintain an audit trail of the action taken:

(1) Each original ballot and duplicate ballot must be assigned the same unique control number, with the number being marked upon the face of each ballot, to ensure that each duplicate ballot may be tied back to the original ballot;

(2) A log must be kept of the ballots duplicated, which must at least include:

(a) The control number of each original ballot and the corresponding duplicate ballot;

(b) The initials of at least two people who participated in the duplication of each ballot; and

(c) The total number of ballots duplicated.

Original and duplicate ballots must be sealed in secure storage at all times, except during duplication, inspection by the canvassing board, or tabulation.

NEW SECTION. Sec. 11. A new section is added to chapter 29A.60 RCW to read as follows:

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

(a) The number of registered voters;

(b) The number of ballots counted;

(c) The number of provisional ballots issued;

(d) The number of provisional ballots counted;

(e) The number of provisional ballots rejected;

(f) The number of absentee ballots issued;

(g) The number of absentee ballots counted;

(h) The number of absentee ballots rejected;

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

(j) The number of out-of-state, overseas, and service ballots issued;

(k) The number of out-of-state, overseas, and service ballots counted; and

(l) The number of out-of-state, overseas, and service ballots rejected.

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

(a) The number of registered voters;

(b) The total number of voters credited with voting;

(c) The number of poll voters credited with voting;

(d) The number of provisional voters credited with voting;

(e) The number of absentee voters credited with voting;

(f) The number of federal write-in voters credited with voting;

(g) The number of out-of-state, overseas, and service voters credited with voting;

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

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

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

Sec. 12. RCW 29A.60.021 and 2004 c 271 s 147 are each amended to read as follows:

(1) For any office at any election or primary, any voter may write in on the ballot the name of any person for an office who has filed as a write-in candidate for the office in the manner provided by RCW 29A.24.311 and such vote shall be counted the same as if the name had been printed on the ballot and marked by the voter. ~~((For a partisan primary in a jurisdiction using the physically separate ballot format, a voter may write in on a party ballot only the names of write in candidates who affiliate with that major political party.))~~ No write-in vote made for any person who has not filed a declaration of candidacy pursuant to RCW 29A.24.311 is valid if that person filed for the same office, either as a regular candidate or a write-in candidate, at the preceding primary. Any abbreviation used to designate office~~((s))~~ or position~~((, or political party shall))~~ will be accepted if the canvassing board can determine, to ~~((their))~~ its satisfaction, the voter's intent.

(2) The number of write-in votes cast for each office must be recorded and reported with the canvass for the election.

(3) A write-in vote for an individual candidate for an office whose name appears on the ballot for that same office is a valid vote for that candidate as long as the candidate's name is clearly discernible, even if other requirements of RCW 29A.24.311 are not satisfied and even if the voter also marked a vote for that candidate such as to register an overvote. These votes need not be tabulated unless: (a) The difference between the number of votes cast for the candidate apparently qualified to appear on the general election ballot or elected and the candidate receiving the next highest number of votes is less than the sum of the total number of write-in votes cast for the office plus the overvotes and undervotes recorded by the vote tabulating system; or (b) a manual recount is conducted for that office.

(4) Write-in votes cast for an individual candidate for an office whose name does not appear on the ballot need not be tallied ~~((if))~~ unless the total number of write-in votes and undervotes recorded by the vote tabulation system for the office is ~~((not))~~ greater than the number of votes cast for the candidate apparently ~~((nominated))~~ qualified to appear on the general election ballot or elected~~((, and the write in votes could not have altered the outcome of the primary or election. In the case of write in votes for statewide office or for any office whose jurisdiction encompasses more than one county, write in votes for an individual candidate must be tallied whenever the county auditor is notified by either the office of the secretary of state or another auditor in a multicounty jurisdiction that it appears that the write in votes could alter the outcome of the primary or election)).~~

~~((4))~~ (5) In the case of write-in votes for a statewide office~~((s))~~ or any office whose jurisdiction~~((s that))~~ encompasses more than one county, ~~((if the total number of write-in votes and undervotes recorded by the vote tabulation~~

~~system for an office within a county is greater than the number of votes cast for a candidate apparently nominated or elected in a primary or election, the auditor shall tally all write-in votes for individual candidates for that office and notify the office of the secretary of state and the auditors of the other counties within the jurisdiction, that the write-in votes for individual candidates should be tallied)~~ write-in votes for an individual candidate must be tallied when the county auditor is notified by either the secretary of state or another county auditor in the multicounty jurisdiction that it appears that the write-in votes must be tabulated under the terms of this section. In all other cases, the county auditor determines when write-in votes must be tabulated. Any abstract of votes must be modified to reflect the tabulation and certified by the canvassing board. Tabulation of write-in votes may be performed simultaneously with a recount.

Sec. 13. RCW 29A.60.050 and 2003 c 111 s 1505 are each amended to read as follows:

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

Sec. 14. RCW 29A.60.070 and 2003 c 111 s 1507 are each amended to read as follows:

The county auditor shall produce cumulative and precinct returns for each primary and election and deliver them to the canvassing board for verification and certification. The precinct and cumulative returns of any primary or election are public records under chapter 42.17 RCW.

Cumulative returns for state offices, judicial offices, the United States senate, and congress must be electronically transmitted to the secretary of state immediately.

Sec. 15. RCW 29A.60.160 and 2003 c 111 s 1516 are each amended to read as follows:

~~((At least every third day after a primary or election and before certification of the election results,))~~ Except Sundays and legal holidays, the county auditor, as delegated by the county canvassing board, shall process absentee ballots and canvass the votes cast at that primary or election on a daily basis in counties with a population of seventy-five thousand or more, or at least every third day for counties with a population of less than seventy-five thousand, if the county auditor is in possession of more than twenty-five ballots that have yet to be canvassed. The county auditor, as delegated by the county canvassing board, may use his or her discretion in determining when to process the remaining absentee ballots and canvass the votes during the final four days before the certification of election results in order to protect the secrecy of any ballot. In counties where this process has not been delegated to the county auditor, the county auditor shall convene the county canvassing board to process absentee

ballots and canvass the votes cast at the primary or election as set forth in this section.

Each absentee ballot previously not canvassed that was received by the county auditor two days or more before processing absentee ballots and canvassing the votes as delegated by or processed by the county canvassing board, that either was received by the county auditor before the closing of the polls on the day of the primary or election for which it was issued, or that bears a postmark on or before the primary or election for which it was issued, must be processed at that time. The tabulation of votes that results from that day's canvass must be made available to the general public immediately upon completion of the canvass.

Sec. 16. RCW 29A.60.190 and 2004 c 266 s 18 are each amended to read as follows:

(1) ~~((On the tenth day after a special election or primary and on the fifteenth day))~~ Ten days after a primary or special election and twenty-one days after a general election, the county canvassing board shall complete the canvass and certify the results. Each absentee ballot that was returned before the closing of the polls on the date of the primary or election for which it was issued, and each absentee ballot with a postmark on or before the date of the primary or election for which it was issued and received on or before the date on which the primary or election is certified, must be included in the canvass report.

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

Sec. 17. RCW 29A.60.210 and 2003 c 111 s 1521 are each amended to read as follows:

Whenever the canvassing board finds during the initial counting process, or during any subsequent recount thereof, that there is an apparent discrepancy or an inconsistency in the returns of a primary or election, or that election staff has made an error regarding the treatment or disposition of a ballot, the board may recanvass the ballots or voting devices in any precincts of the county. The canvassing board shall conduct any necessary recanvass activity on or before the last day to certify or recertify the results of the primary ((or)), election, or subsequent recount and correct any error and document the correction of any error that it finds.

Sec. 18. RCW 29A.60.250 and 2003 c 111 s 1525 are each amended to read as follows:

As soon as the returns have been received from all the counties of the state, but not later than the thirtieth day after the election, the secretary of state shall ((make a)) canvass ((of such of the returns as are not required to be canvassed by the legislature and make out a statement thereof, file it in his or her office, and transmit a certified copy to the governor)) and certify the returns of the general election as to candidates for state offices, the United States senate, congress, and all other candidates whose districts extend beyond the limits of a single county. The secretary of state shall transmit a copy of the certification to the governor, president of the senate, and speaker of the house of representatives.

Sec. 19. RCW 29A.64.021 and 2004 c 271 s 178 are each amended to read as follows:

(1) If the official canvass of all of the returns for any office at any primary or election reveals that the difference in the number of votes cast for a candidate apparently nominated or elected to any office and the number of votes cast for the closest apparently defeated opponent is less than two thousand votes and also less than one-half of one percent of the total number of votes cast for both candidates, the county canvassing board shall conduct a recount of all votes cast on that position.

(a) Whenever such a difference occurs in the number of votes cast for candidates for a position the declaration of candidacy for which was filed with the secretary of state, the secretary of state shall, within three business days of the day that the returns of the primary or election are first certified by the canvassing boards of those counties, direct those boards to recount all votes cast on the position.

(b)(i) For statewide elections, if the difference in the number of votes cast for the apparent winner and the closest apparently defeated opponent is less than one (~~hundred fifty~~) thousand votes and also less than one-fourth of one percent of the total number of votes cast for both candidates, the votes shall be recounted manually or as provided in subsection (3) of this section.

(ii) For elections not included in (b)(i) of this subsection, if the difference in the number of votes cast for the apparent winner and the closest apparently defeated opponent is less than one hundred fifty votes and also less than one-fourth of one percent of the total number of votes cast for both candidates, the votes shall be recounted manually or as provided in subsection (3) of this section.

(2) A mandatory recount shall be conducted in the manner provided by RCW 29A.64.030, 29A.64.041, and 29A.64.061. No cost of a mandatory recount may be charged to any candidate.

(3) The apparent winner and closest apparently defeated opponent for an office for which a manual recount is required under subsection (1)(b) of this section may select an alternative method of conducting the recount. To select such an alternative, the two candidates shall agree to the alternative in a signed, written statement filed with the election official for the office. The recount shall be conducted using the alternative method if: It is suited to the balloting system that was used for casting the votes for the office; it involves the use of a vote tallying system that is approved for use in this state by the secretary of state; and the vote tallying system is readily available in each county required to conduct the recount. If more than one balloting system was used in casting votes for the office, an alternative to a manual recount may be selected for each system.

Sec. 20. RCW 29A.64.030 and 2003 c 111 s 1603 are each amended to read as follows:

An application for a recount shall state the office for which a recount is requested and whether the request is for all or only a portion of the votes cast in that jurisdiction of that office. The person filing an application for a manual recount shall, at the same time, deposit with the county canvassing board or secretary of state, in cash or by certified check, a sum equal to twenty-five cents for each ballot cast in the jurisdiction or portion of the jurisdiction for which the recount is requested as security for the payment of any costs of conducting the

recount. If the application is for a machine recount, the deposit must be equal to fifteen cents for each ballot. These charges shall be determined by the county canvassing board or boards under RCW ((29A.64.080)) 29A.64.081.

The county canvassing board shall determine ((a)) the date, time, and ((a)) place or places at which the recount will be conducted. ~~((This time shall be less than three business days after the day upon which: The application was filed with the board; the request for a recount or directive ordering a recount was received by the board from the secretary of state; or the returns are certified which indicate that a recount is required under RCW 29A.64.020 for an issue or office voted upon only within the county.))~~ Not less than two days before the date of the recount, the county auditor shall mail a notice of the time and place of the recount to the applicant or affected parties and, if the recount involves an office, to any person for whom votes were cast for that office. The county auditor shall also notify the affected parties by either telephone, fax, e-mail, or other electronic means at the time of mailing. At least three attempts must be made over a two-day period to notify the affected parties or until the affected parties have received the notification. Each attempt to notify affected parties must request a return response indicating that the notice has been received. Each person entitled to receive notice of the recount may attend, witness the recount, and be accompanied by counsel.

Proceedings of the canvassing board are public under chapter 42.30 RCW. Subject to reasonable and equitable guidelines adopted by the canvassing board, all interested persons may attend and witness a recount.

Sec. 21. RCW 29A.64.061 and 2004 c 271 s 180 are each amended to read as follows:

Upon completion of the canvass of a recount, the canvassing board shall prepare and certify an amended abstract showing the votes cast in each precinct for which the recount was conducted. Copies of the amended abstracts must be transmitted to the same officers who received the abstract on which the recount was based.

If the nomination, election, or issue for which the recount was conducted was submitted only to the voters of a county, the canvassing board shall file the amended abstract with the original results of that election or primary.

If the nomination, election, or issue for which a recount was conducted was submitted to the voters of more than one county, the secretary of state shall canvass the amended abstracts and shall file an amended abstract with the original results of that election. The secretary of state may require that the amended abstracts be certified by each canvassing board on a uniform date. An amended abstract certified under this section supersedes any prior abstract of the results for the same offices or issues at the same primary or election.

Sec. 22. RCW 29A.68.011 and 2004 c 271 s 182 are each amended to read as follows:

Any justice of the supreme court, judge of the court of appeals, or judge of the superior court in the proper county shall, by order, require any person charged with error, wrongful act, or neglect to forthwith correct the error, desist from the wrongful act, or perform the duty and to do as the court orders or to show cause forthwith why the error should not be corrected, the wrongful act

desisted from, or the duty or order not performed, whenever it is made to appear to such justice or judge by affidavit of an elector that:

(1) An error or omission has occurred or is about to occur in printing the name of any candidate on official ballots; or

(2) An error other than as provided in subsections (1) and (3) of this section has been committed or is about to be committed in printing the ballots; or

(3) The name of any person has been or is about to be wrongfully placed upon the ballots; or

(4) A wrongful act other than as provided for in subsections (1) and (3) of this section has been performed or is about to be performed by any election officer; or

(5) Any neglect of duty on the part of an election officer other than as provided for in subsections (1) and (3) of this section has occurred or is about to occur; or

(6) An error or omission has occurred or is about to occur in the issuance of a certificate of election.

An affidavit of an elector under subsections (1) and (3) (~~above~~) of this section when relating to a primary election must be filed with the appropriate court no later than the second Friday following the closing of the filing period for nominations for such office and shall be heard and finally disposed of by the court not later than five days after the filing thereof. An affidavit of an elector under subsections (1) and (3) of this section when relating to a general election must be filed with the appropriate court no later than three days following the official certification of the primary election returns and shall be heard and finally disposed of by the court not later than five days after the filing thereof. An affidavit of an elector under subsection (6) of this section shall be filed with the appropriate court no later than ten days following the (~~issuance of a certificate of election~~) official certification of the election as provided in RCW 29A.60.190, 29A.60.240, or 29A.60.250 or, in the case of a recount, ten days after the official certification of the amended abstract as provided in RCW 29A.64.061.

NEW SECTION, Sec. 23. A new section is added to chapter 29A.84 RCW to read as follows:

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

Sec. 24. RCW 29A.84.650 and 2003 c 111 s 2131 are each amended to read as follows:

(1) Any person who intentionally votes or attempts to vote in this state more than once at any (~~primary or general or special~~) election, or who intentionally votes or attempts to vote in both this state and another state at any election, is guilty of a (~~gross misdemeanor, punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021~~) class C felony.

(2) Any person who recklessly or negligently violates this section commits a class 1 civil infraction as provided in RCW 7.80.120.

NEW SECTION. Sec. 25. The secretary of state shall study the feasibility of requiring that the names of the top two vote-getters in primary elections of justices of the state supreme court, judges of the courts of appeals, superior courts, and district courts, and the superintendent of public instruction shall appear on the general election ballot. The study shall include a survey of how many times a judicial candidate and a candidate for superintendent of public instruction have appeared without opposition on the general election ballot from 1985 to present; the number of voters voting for these races in the primary election as opposed to voting for the same races in the general election; and if the differences in the numbers of voters voting at the primary and voting at the general election may have resulted in a different election result. The study shall also include a financial analysis of the proposed changes. The secretary of state shall report the results of the study to the appropriate committees of the legislature no later than January 31, 2006.

Passed by the Senate April 23, 2005.

Passed by the House April 22, 2005.

Approved by the Governor May 3, 2005, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 3, 2005.

Note: Governor's explanation of partial veto is as follows:

"I am returning, without my approval as to Section 4, Engrossed Substitute Senate Bill No. 5499 entitled:

"AN ACT Relating to election reform."

This bill reforms and strengthens our election system. As one of its priorities, our Legislature has passed several bills on election reform. Many of those bills have reached my desk for signature. Section 4 of this bill is essentially identical to Section 21 of Engrossed Substitute Senate Bill 5743, which I also sign today. The only difference between the two bills is their effective date. Engrossed Substitute Senate Bill No. 5499 becomes effective in 90 days. Engrossed Substitute Senate Bill 5743 becomes effective on January 1, 2006.

The above-noted bill sections concern absentee ballot envelopes, and the declarations required on those envelopes. As certain rural counties have already begun purchasing envelopes for this year's election cycle, and in light of limited funds to purchase new envelopes, it would create unnecessary hardship to require them to immediately purchase new return envelopes under Section 4 of Engrossed Substitute Senate Bill No. 5499. I am therefore vetoing Section 4 of Engrossed Substitute Senate Bill 5499.

This veto does not take away the strong warnings on absentee ballot return envelopes concerning the need for voters to return them in timely fashion. It just gives our cash-strapped rural county auditors an additional six months to comply with the new envelope requirements.

For these reasons, I have vetoed Section 4 of Engrossed Substitute Senate Bill No. 5499

With the exception of Section 4, Engrossed Substitute Senate Bill No. 5499 is approved."

CHAPTER 244

[Senate Bill 5564]

ELECTIONS—LAWS AND RULES MANUAL

AN ACT Relating to a manual of election laws and rules; and adding a new section to chapter 29A.04 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 29A.04 RCW to read as follows:

The secretary of state shall prepare a manual that explains all election laws and rules in easy-to-understand, plain language for use during the vote counting, recounting, tabulation, and canvassing process. The secretary of state shall print and distribute sufficient copies of the manual so that it is available for use in all vote-counting centers throughout the state. The secretary of state may also make the manual available in electronic form.

Passed by the Senate March 4, 2005.

Passed by the House April 13, 2005.

Approved by the Governor May 3, 2005.

Filed in Office of Secretary of State May 3, 2005.

CHAPTER 245

[Senate Bill 5565]

ELECTIONS—OUT-OF-STATE VOTERS—ENVELOPE INSTRUCTIONS

AN ACT Relating to information for out-of-state, overseas, and service voters; and amending RCW 29A.40.150.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 29A.40.150 and 2003 c 111 s 1015 are each amended to read as follows:

The secretary of state shall produce and furnish envelopes and instructions for out-of-state voters, overseas voters, and service voters to the county auditors. The information on the envelopes or instructions must explain that:

(1) Return postage is free if the ballot is mailed through the United States postal service, United States armed forces postal service, or the postal service of a United States foreign embassy;

(2) The date of the signature is considered the date of mailing;

(3) The envelope must be signed by election day;

(4) The signed declaration on the envelope is the equivalent of voter registration;

(5) A voter may fax a voted ballot and the accompanying envelope if the voter agrees to waive secrecy. The ballot will be counted if the original documents are received before certification of the election; and

(6) A voter may obtain a ballot via electronic mail, which the voter may print out, vote, and return by mail. In order to facilitate the electronic acquisition of ballots by out-of-state, overseas, and service voters, the ballot instructions shall include the web site of the office of the secretary of state.

Passed by the Senate April 16, 2005.

Passed by the House April 13, 2005.

Approved by the Governor May 3, 2005.

Filed in Office of Secretary of State May 3, 2005.

CHAPTER 246

[Engrossed Substitute Senate Bill 5743]

ELECTIONS—VOTER REGISTRATION

AN ACT Relating to voter registration procedures; amending RCW 29A.08.010, 29A.08.030, 29A.08.107, 29A.08.110, 29A.08.115, 29A.08.125, 29A.08.145, 29A.08.210, 29A.08.250, 29A.08.330, 29A.08.520, 29A.08.651, 29A.08.710, 29A.08.720, 29A.08.775, 29A.40.091, 29A.84.140, 46.20.118, and 46.20.155; reenacting and amending RCW 29A.08.740; adding a new section to chapter 10.64 RCW; adding new sections to chapter 29A.08 RCW; repealing RCW 29A.08.155 and 29A.08.730; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 10.64 RCW to read as follows:

When a person is convicted of a felony, the court shall require the defendant to sign a statement acknowledging that:

- (1) The defendant's right to vote has been lost due to the felony conviction;
- (2) If the defendant is registered to vote, the voter registration will be canceled;
- (3) The right to vote may be restored by:
 - (a) A certificate of discharge issued by the sentencing court, as provided in RCW 9.94A.637;
 - (b) A court order issued by the sentencing court restoring the right, as provided in RCW 9.92.066;
 - (c) A final order of discharge issued by the indeterminate sentence review board, as provided in RCW 9.96.050; or
 - (d) A certificate of restoration issued by the governor, as provided in RCW 9.96.020; and
- (4) Voting before the right is restored is a class C felony under RCW 29A.84.660.

Sec. 2. RCW 29A.08.010 and 2004 c 267 s 102 are each amended to read as follows:

As used in this chapter: "Information required for voter registration" means the minimum information provided on a voter registration application that is required by the county auditor in order to place a voter registration applicant on the voter registration rolls. This information includes (~~the applicant's~~):

- (1) Name(~~(, complete residence)~~);
- (2) Residential address(;;);
- (3) Date of birth(;;);
- (4) Washington state driver's license number(;;) or Washington state identification card number, or the last four digits of the applicant's Social Security number(;;) if the applicant does not have a Washington state driver's license or Washington state identification card;
- (5) A signature attesting to the truth of the information provided on the application(;;); and
- (6) A check or indication in the box confirming the individual is a United States citizen.

If the individual does not have a driver's license, state identification card, or Social Security number, the registrant must be issued a unique voter registration number (~~and~~) in order to be placed on the voter registration rolls. All other information supplied is ancillary and not to be used as grounds for not

registering an applicant to vote. Modification of the language of the official Washington state voter registration form by the voter will not be accepted and will cause the rejection of the registrant's application.

Sec. 3. RCW 29A.08.030 and 2004 c 267 s 104 are each amended to read as follows:

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

(1) "Verification notice" means a notice sent by the county auditor or secretary of state to a voter registration applicant and is used to verify or collect information about the applicant in order to complete the registration. The verification notice must be designed to include a postage prepaid, preaddressed return form by which the applicant may verify or send information.

(2) "Acknowledgement notice" means a notice sent by nonforwardable mail by the county auditor or secretary of state to a registered voter to acknowledge a voter registration transaction, which can include initial registration, transfer, or reactivation of an inactive registration. An acknowledgement notice may be a voter registration card.

(3) "Confirmation notice" means a notice sent to a registered voter by first class forwardable mail at the address indicated on the voter's permanent registration record and to any other address at which the county auditor or secretary of state could reasonably expect mail to be received by the voter in order to confirm the voter's residence address. The confirmation notice must be designed ~~((so that the voter may update his or her current residence address))~~ to include a postage prepaid, preaddressed return form by which the registrant may verify the address information.

Sec. 4. RCW 29A.08.107 and 2004 c 267 s 106 are each amended to read as follows:

(1) The secretary of state must review the information provided by each voter registration applicant to ensure that ~~((either))~~ the provided driver's license number, state identification card number, or ~~((the))~~ last four digits of the Social Security number match the information maintained by the Washington department of licensing or the Social Security administration. If a match cannot be made, the secretary of state or county auditor must correspond with the applicant to resolve the discrepancy.

(2) If the applicant fails to respond to any correspondence required in this section to confirm information provided on a voter registration application~~((;))~~ within ~~((thirty))~~ forty-five days, the applicant will not be registered to vote. The secretary of state shall forward the application to the appropriate county auditor for document storage.

(3) Only after the secretary of state has confirmed that ~~((an applicant's))~~ the provided driver's license number, state identification card number, or ~~((the))~~ last four digits of the applicant's Social Security number match existing records with the Washington department of licensing or the Social Security administration, or determined that the applicant does not have ~~((either))~~ a driver's license number, state identification card number, or Social Security number may the applicant be placed on the official list of registered voters.

(4) In order to prevent duplicate registration records, all complete voter registration applications must be screened against existing voter registration

records in the official statewide voter registration list. If a match of an existing record is found in the official list, the record must be updated with the new information provided on the application. If the new information indicates that the voter has changed his or her county of residence, the application must be forwarded to the voter's new county of residence for processing.

Sec. 5. RCW 29A.08.110 and 2004 c 267 s 107 are each amended to read as follows:

(1) ~~((On receipt of an application for voter registration, the county auditor shall review the application to determine whether the information supplied is complete.))~~ An application is considered complete only if it contains the applicant's name, complete valid residence address, date of birth, ~~((and))~~ signature attesting to the truth of the information provided, a mark in the check-off box confirming United States citizenship, and an indication ~~((the license information))~~ that the provided driver's license number, state identification card number, or Social Security number has been confirmed by the secretary of state. If it is not complete, the auditor shall promptly mail a verification notice of the deficiency to the applicant. This verification notice shall require the applicant to provide the missing information. If the verification notice is not returned by the applicant within forty-five days or is returned as undeliverable ~~((the auditor shall not place)),~~ the name of the applicant shall not be placed on the ~~((county voter))~~ official list of registered voters. If the applicant provides the required verified information, the applicant shall be registered to vote as of the original date of mailing ~~((of the original voter registration application))~~ or date of delivery, whichever is applicable.

(2) ~~((In order to prevent duplicate registration records, all complete voter registration applications must be screened against existing voter registration records in the official statewide voter registration list. If a match of an existing record is found in the official list the record must be updated with the new information provided on the application. If the new information indicates that the voter has changed his or her county of residence, the application must be forwarded to the voter's new county of residence for processing. If the new information indicates that the voter remains in the same county of residence or if the applicant is a new voter the application must be processed by the county of residence.~~

~~((3))~~ If the information required in subsection (1) of this section is complete, the applicant is considered to be registered to vote as of the original date of mailing or date of delivery, whichever is applicable. The auditor shall record the appropriate precinct identification, taxing district identification, and date of registration on the voter's record in the state voter registration list. Within forty-five days after the receipt of an application but no later than seven days before the next primary, special election, or general election, the auditor shall send to the applicant, by first class mail, an acknowledgement notice identifying the registrant's precinct and containing such other information as may be required by the secretary of state. The postal service shall be instructed not to forward a voter registration card to any other address and to return to the auditor any card which is not deliverable. ~~((If the registrant has indicated on the form that he or she is registered to vote within the county but has provided a new address within the county that is for voter registration purposes, the auditor shall transfer the voter's registration.~~

(4)) (3) If an acknowledgement notice card is properly mailed as required by this section to the address listed by the voter as being the voter's mailing address and the notice is subsequently returned to the auditor by the postal service as being undeliverable to the voter at that address, the auditor shall promptly send the voter a confirmation notice. The auditor shall place the voter's registration on inactive status pending a response from the voter to the confirmation notice.

NEW SECTION. Sec. 6. A new section is added to chapter 29A.08 RCW to read as follows:

No person registering to vote, who meets all the qualifications of a registered voter in the state of Washington, shall be disqualified because of a nontraditional address being used as a residence address. Voters using such an address will be registered and assigned to a precinct based on the location provided. Voters without a traditional address will be registered at the county courthouse, city hall, or other public building near the area that the voter considers his or her residence. Registering at a nontraditional address will not disqualify a voter from requesting ongoing absentee voter status if the voter designates a valid mailing address.

For the purposes of this section, "nontraditional address" includes shelters, parks, or other identifiable locations that the voter deems to be his or her residence.

NEW SECTION. Sec. 7. A new section is added to chapter 29A.08 RCW to read as follows:

(1) If a voter who registered by mail indicates on the voter registration form that he or she does not have a Washington state driver's license, Washington state identification card, or Social Security number, he or she must provide one of the following forms of identification the first time he or she votes after registering:

- (a) Valid photo identification;
- (b) A valid enrollment card of a federally recognized Indian tribe in Washington state;
- (c) A copy of a current utility bill;
- (d) A current bank statement;
- (e) A copy of a current government check;
- (f) A copy of a current paycheck; or
- (g) A government document that shows both the name and address of the voter.

(2) If the voter fails to provide one of the above forms of identification prior to or at the time of voting, the ballot must be treated as a provisional ballot regardless of whether the voter is voting at a poll site or by mail. The ballot may only be counted if the voter's signature on the outside envelope matches the signature in the voter registration records.

(3) The requirements of this section do not apply to an out-of-state, overseas, or service voter who registers to vote by signing the return envelope of the absentee ballot.

Sec. 8. RCW 29A.08.115 and 2004 c 267 s 108 are each amended to read as follows:

A person or organization collecting voter registration application forms must transmit the forms to the secretary of state or a ((designee)) county auditor

at least once weekly. The registration date on such forms will be the date they are received by the secretary of state or county auditor.

Sec. 9. RCW 29A.08.125 and 2004 c 267 s 110 are each amended to read as follows:

(1) Each county auditor shall maintain a computer file containing a copy of each record of all registered voters within the county contained on the official statewide voter registration list for that county.

(2) The secretary of state shall at least quarterly review and update the records of all registered voters on the official statewide voter registration data base to make additions and corrections.

(3) The computer file must include, but not be limited to, each voter's last name, first name, middle initial, date of birth, residence address, gender, date of registration, applicable taxing district and precinct codes, and the last date on which the individual voted.

(4) The county auditor shall subsequently record each consecutive date upon which the individual has voted and retain all such consecutive dates.

Sec. 10. RCW 29A.08.145 and 2004 c 267 s 113 are each amended to read as follows:

This section establishes a special procedure which an elector may use to register to vote or transfer a voter registration by changing his or her address during the period beginning after the closing of registration for voting at the polls under RCW 29A.08.140 and ending on the fifteenth day before a primary, special election, or general election. A qualified elector in the state may register to vote or change his or her registration address in person in the office of the county auditor of the county in which the applicant resides, or at a voter registration location specifically designated for this purpose by the county auditor (~~of the county in which the applicant resides~~) or secretary of state, and apply for an absentee ballot for that primary or election. The auditor or registration assistant shall register that individual in the manner provided in this chapter. The application for an absentee ballot executed by the newly registered or transferred voter for the primary or election that follows the execution of the registration shall be promptly transmitted to the auditor with the completed voter registration form.

Sec. 11. RCW 29A.08.210 and 2003 c 111 s 216 are each amended to read as follows:

An applicant for voter registration shall complete an application providing the following information concerning his or her qualifications as a voter in this state:

(1) The address of the last former registration of the applicant as a voter in the state;

(2) The applicant's full name;

(3) The applicant's date of birth;

(4) The address of the applicant's residence for voting purposes;

(5) The mailing address of the applicant if that address is not the same as the address in subsection (4) of this section;

(6) The sex of the applicant;

(7) The applicant's Washington state driver's license number or Washington state identification card number, or the last four digits of the applicant's Social

Security number if he or she does not have a Washington state driver's license or Washington state identification card:

(8) A check box for the applicant to indicate that he or she does not have a Washington state driver's license, Washington state identification card, or Social Security number:

(9) A check box allowing the applicant to indicate that he or she is a member of the armed forces, national guard, or reserves, or that he or she is an overseas voter:

(10) A check box allowing the applicant to confirm that he or she is at least eighteen years of age:

(11) Clear and conspicuous language, designed to draw the applicant's attention, stating that the applicant must be a United States citizen in order to register to vote:

(12) A check box and declaration confirming that the applicant is a citizen of the United States;

~~((8))~~ (13) The following warning:

"If you knowingly provide false information on this voter registration form or knowingly make a false declaration about your qualifications for voter registration you will have committed a class C felony that is punishable by imprisonment for up to five years, a fine of up to ten thousand dollars, or both."

(14) The following affirmation by the applicant:

"By signing this document, I hereby assert, under penalty of perjury, that I am legally eligible to vote. If I am found to have voted illegally, I may be prosecuted and/or fined for this illegal act. In addition, I hereby acknowledge that my name and last known address will be forwarded to the appropriate state and/or federal authorities if I am found to have voted illegally."

(15) The oath required by RCW 29A.08.230 and a space for the applicant's signature; and

~~((9))~~ (16) Any other information that the secretary of state determines is necessary to establish the identity of the applicant and prevent duplicate or fraudulent voter registrations.

This information shall be recorded on a single registration form to be prescribed by the secretary of state.

If the applicant fails to provide the information required for voter registration, the auditor shall send the applicant a verification notice. The ~~((auditor shall not register the))~~ applicant may not be registered until the required information is provided. If a verification notice is returned as undeliverable or the applicant fails to respond to the notice within forty-five days, the ~~((auditor shall not register the))~~ applicant shall not be registered to vote.

~~((The following warning shall appear in a conspicuous place on the voter registration form:~~

~~"If you knowingly provide false information on this voter registration form or knowingly make a false declaration about your qualifications for voter registration you will have committed a class C felony that is punishable by imprisonment for up to five years, or by a fine of up to ten thousand dollars, or both imprisonment and fine."))~~

NEW SECTION. Sec. 12. A new section is added to chapter 29A.08 RCW to read as follows:

(1) When a felony offender has completed all the requirements of his or her sentence, the county clerk shall immediately transmit this information to the secretary of state along with information about the county where the conviction occurred and the county that is the last known residence of the offender. The secretary of state shall maintain such records as part of the elections data base.

(2) If the offender has completed all the requirements of all of his or her sentences for all of his or her felony convictions, the secretary of state shall transmit information about the restoration of the former felon's voting rights to the county auditor where the conviction took place and, if different, the county where the felon was last known to reside.

Sec. 13. RCW 29A.08.250 and 2004 c 267 s 117 are each amended to read as follows:

The secretary of state shall furnish registration forms necessary to carry out the registration of voters as provided by this chapter without cost to the respective counties. ~~((All voter registration forms must include clear and conspicuous language, designed to draw an applicant's attention, stating that the applicant must be a United States citizen in order to register to vote. Voter registration application forms must also contain a space for the applicant to provide his or her driver's license number or the last four digits of his or her social security number as well as check boxes intended to allow the voter to indicate age and United States citizenship eligibility under the Help America Vote Act of 2002 (P.L. 107-252).))~~

Sec. 14. RCW 29A.08.330 and 2003 c 111 s 224 are each amended to read as follows:

(1) The secretary of state shall prescribe the method of voter registration for each designated agency. The agency shall use either the state voter registration by mail form with a separate declination form for the applicant to indicate that he or she declines to register at this time, or the agency may use a separate form approved for use by the secretary of state.

(2) The person providing service at the agency shall offer voter registration services to every client whenever he or she applies for service or assistance and with each renewal, recertification, or change of address. The person providing service shall give the applicant the same level of assistance with the voter registration application as is offered to fill out the agency's forms and documents, including information about age and citizenship requirements for voter registration.

(3) The person providing service at the agency shall determine if the prospective applicant wants to register to vote or transfer his or her voter registration by asking the following question:

"Do you want to register to vote or transfer your voter registration?"

If the applicant chooses to register or transfer a registration, the service agent shall ask the following:

(a) "Are you a United States citizen?"

(b) "Are you or will you be eighteen years of age on or before the next election?"

If the applicant answers in the affirmative to both questions, the agent shall then provide the applicant with a voter registration form and instructions and shall record that the applicant has requested to register to vote or transfer a voter registration. If the applicant answers in the negative to either question, the agent shall not provide the applicant with a voter registration form.

(4) If an agency uses a computerized application process, it may, in consultation with the secretary of state, develop methods to capture simultaneously the information required for voter registration during a person's computerized application process.

~~((4))~~ (5) Each designated agency shall provide for the voter registration application forms to be collected from each agency office at least once each week. The agency shall then forward the application forms to the secretary of state each week. The secretary of state shall forward the forms to the county in which the applicant has registered to vote no later than ten days after the date on which the forms were received by the secretary of state.

Sec. 15. RCW 29A.08.520 and 2004 c 267 s 126 are each amended to read as follows:

(1) Upon receiving official notice of a person's conviction of a felony in either state or federal court, if the convicted person is a registered voter in the county, the county auditor shall cancel the defendant's voter registration. Additionally, the secretary of state in conjunction with the department of corrections, the Washington state patrol, the office of the administrator for the courts, and other appropriate state agencies shall arrange for a ~~((periodic))~~ quarterly comparison of a list of known felons with the statewide voter registration list. If a person is found on ~~((the department of corrections))~~ a felon list and the statewide voter registration list, the secretary of state or county auditor shall confirm the match through a date of birth comparison and ~~((cancel))~~ suspend the voter registration from the official state voter registration list. The canceling authority shall send ~~((notice of the proposed cancellation))~~ to the person at his or her last known voter registration address a notice of the proposed cancellation and an explanation of the requirements for restoring the right to vote once all terms of sentencing have been completed. If the person does not respond within thirty days, the registration must be canceled.

(2) The right to vote may be restored by, for each felony conviction, one of the following:

(a) A certificate of discharge issued by the sentencing court, as provided in RCW 9.94A.637;

(b) A court order restoring the right, as provided in RCW 9.92.066;

(c) A final order of discharge issued by the indeterminate sentence review board, as provided in RCW 9.96.050; or

(d) A certificate of restoration issued by the governor, as provided in RCW 9.96.020.

Sec. 16. RCW 29A.08.651 and 2004 c 267 s 101 are each amended to read as follows:

(1) The office of the secretary of state shall create and maintain a statewide voter registration data base. This data base must be a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the state level that contains the name and

registration information of every legally registered voter in the state and assigns a unique identifier to each legally registered voter in the state.

(2) The computerized list must serve as the single system for storing and maintaining the official list of registered voters throughout the state.

(3) The computerized list must contain the name and registration information of every legally registered voter in the state.

(4) Under the computerized list, a unique identifier is assigned to each legally registered voter in the state.

(5) The computerized list must be coordinated with other agency data bases within the state, including but not limited to the department of corrections, the department of licensing, ~~(and) the department of health, the Washington state patrol, and the office of the administrator for the courts.~~ The computerized list may also be coordinated with the data bases of election officials in other states.

(6) Any election officer in the state, including any local election officer, may obtain immediate electronic access to the information contained in the computerized list.

(7) All voter registration information obtained by any local election officer in the state must be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local officer.

(8) The chief state election officer shall provide support, as may be required, so that local election officers are able to enter information as described in subsection (3) of this section.

(9) The computerized list serves as the official voter registration list for the conduct of all elections.

(10) The secretary of state has data authority on all voter registration data.

(11) The voter registration data base must be designed to accomplish at a minimum, the following:

(a) Comply with the Help America Vote Act of 2002 (P.L. 107-252);

(b) Identify duplicate voter registrations;

(c) Identify suspected duplicate voters;

(d) Screen against the department of corrections, the Washington state patrol, and other appropriate state agency data bases to aid in the cancellation of voter registration of felons, of persons who have declined to serve on juries by virtue of not being citizens of the United States, and of persons determined to be legally incompetent to vote;

(e) Provide up-to-date signatures of voters for the purposes of initiative signature checking;

(f) Provide for a comparison between the voter registration data base and the department of licensing change of address data base;

(g) Provide online access for county auditors with the goal of real time duplicate checking and update capabilities; and

(h) Provide for the cancellation of voter registration for persons who have moved to other states and surrendered their Washington state drivers' licenses.

(12) In order to maintain the statewide voter registration data base, the secretary of state may, upon agreement with other appropriate jurisdictions, screen against data bases maintained by election officials in other states and data bases maintained by federal agencies including, but not limited to, the federal bureau of investigation, the federal court system, the federal bureau of prisons, and the bureau of citizenship and immigration services.

(13) The secretary of state shall retain information regarding previous successful appeals of proposed cancellations of registrations in order to avoid repeated cancellations for the same reason.

(14) The secretary of state must review and update the records of all registered voters on the computerized list on a quarterly basis to make additions and corrections.

Sec. 17. RCW 29A.08.710 and 2004 c 267 s 133 are each amended to read as follows:

(1) The county auditor shall have custody of the original voter registration records for each county. The original voter registration form must be filed without regard to precinct and is considered confidential and unavailable for public inspection and copying. An automated file of all registered voters must be maintained pursuant to RCW 29A.08.125. An auditor may maintain the automated file in lieu of filing or maintaining the original voter registration forms if the automated file includes all of the information from the original voter registration forms including, but not limited to, a retrievable facsimile of each voter's signature.

(2) The following information contained in voter registration records or files regarding a voter or a group of voters is available for public inspection and copying, except as provided in RCW 40.24.060: The voter's name, address, political jurisdiction, gender, date of birth, voting record, date of registration, and registration number. (~~The address and political jurisdiction of a registered voter are available for public inspection and copying except as provided by chapter 40.24 RCW.~~) No other information from voter registration records or files is available for public inspection or copying.

Sec. 18. RCW 29A.08.720 and 2004 c 266 s 9 are each amended to read as follows:

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

(2) (~~(A)~~) Subject to the restrictions of RCW 29A.08.710, poll books (~~(or), precinct lists, and current lists of registered voters~~ (~~(, except original voter registration forms or their images, shall be)~~) are public records and must be made available for public inspection and copying under such reasonable rules and regulations as the county auditor or secretary of state may prescribe. The county auditor or secretary of state shall promptly furnish current lists (~~(or mailing labels)~~) of registered voters in his or her possession, at actual reproduction cost, to any person requesting such information. The lists (~~(and labels)~~) shall not be used for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or

service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value. However, the lists and labels may be used for any political purpose. The county auditor or secretary of state must provide a copy of RCW 29A.08.740 to the person requesting the material that is released under this section.

Sec. 19. RCW 29A.08.740 and 2003 c 111 s 249 and 2003 c 53 s 176 are each reenacted and amended to read as follows:

(1) Any person who uses registered voter data furnished under RCW 29A.08.720 (~~or 29A.08.730~~) for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value is guilty of a class C felony punishable by imprisonment in a state correctional facility for a period of not more than five years or a fine of not more than ten thousand dollars or both such fine and imprisonment, and is liable to each person provided such advertisement or solicitation, without the person's consent, for the nuisance value of such person having to dispose of it, which value is herein established at five dollars for each item mailed or delivered to the person's residence. However, a person who mails or delivers any advertisement, offer, or solicitation for a political purpose is not liable under this section unless the person is liable under subsection (2) of this section. For purposes of this subsection, two or more attached papers or sheets or two or more papers that are enclosed in the same envelope or container or are folded together are one item. Merely having a mailbox or other receptacle for mail on or near the person's residence is not an indication that the person consented to receive the advertisement or solicitation. A class action may be brought to recover damages under this section, and the court may award a reasonable attorney's fee to any party recovering damages under this section.

(2) Each person furnished data under RCW 29A.08.720 (~~or 29A.08.730~~) shall take reasonable precautions designed to assure that the data is not used for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value. However, the data may be used for any political purpose. Where failure to exercise due care in carrying out this responsibility results in the data being used for such purposes, then such person is jointly and severally liable for damages under subsection (1) of this section along with any other person liable under subsection (1) of this section for the misuse of such data.

Sec. 20. RCW 29A.08.775 and 2004 c 267 s 136 are each amended to read as follows:

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

Sec. 21. RCW 29A.40.091 and 2004 c 271 s 135 are each amended to read as follows:

The county auditor shall send each absentee voter a ballot, a security envelope in which to seal the ballot after voting, a larger envelope in which to return the security envelope, and instructions on how to mark the ballot and how to return it to the county auditor. The instructions that accompany an absentee ballot for a partisan primary must include instructions for voting the applicable ballot style, as provided in chapter 29A.36 RCW. The absentee voter's name and address must be printed on the larger return envelope, which must also contain a declaration by the absentee voter reciting his or her qualifications and stating that he or she has not voted in any other jurisdiction at this election, together with a summary of the penalties for any violation of any of the provisions of this chapter. The declaration must clearly inform the voter that it is illegal to vote if he or she is not a United States citizen; it is illegal to vote if he or she has been convicted of a felony and has not had his or her voting rights restored; and, except as otherwise provided by law, it is illegal to cast a ballot or sign an absentee envelope on behalf of another voter. The return envelope must provide space for the voter to indicate the date on which the ballot was voted and for the voter to sign the oath. It must also contain a space so that the voter may include a telephone number. A summary of the applicable penalty provisions of this chapter must be printed on the return envelope immediately adjacent to the space for the voter's signature. The signature of the voter on the return envelope must affirm and attest to the statements regarding the qualifications of that voter and to the validity of the ballot. The return envelope must also have a secrecy flap that the voter may seal that will cover the voter's signature and optional telephone number. For out-of-state voters, overseas voters, and service voters, the signed declaration on the return envelope constitutes the equivalent of a voter registration for the election or primary for which the ballot has been issued. The voter must be instructed to either return the ballot to the county auditor by whom it was issued or attach sufficient first class postage, if applicable, and mail the ballot to the appropriate county auditor no later than the day of the election or primary for which the ballot was issued.

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

Sec. 22. RCW 29A.84.140 and 2003 c 111 s 2108 are each amended to read as follows:

A person who knows that he or she does not possess the legal qualifications of a voter and who registers to vote is guilty of a (~~misdemeanor punishable under RCW 9A.20.024~~) class C felony.

Sec. 23. RCW 46.20.118 and 1990 c 250 s 37 are each amended to read as follows:

The department shall maintain a negative file. It shall contain negatives of all pictures taken by the department of licensing as authorized by RCW 46.20.070 through 46.20.119. Negatives in the file shall not be available for public inspection and copying under chapter 42.17 RCW. The department may

make the file available to official governmental enforcement agencies to assist in the investigation by the agencies of suspected criminal activity. The department shall make the file available to the office of the secretary of state, at the expense of the secretary of state, to assist in maintenance of the statewide voter registration data base. The department may also provide a print to the driver's next of kin in the event the driver is deceased.

Sec. 24. RCW 46.20.155 and 2004 c 249 s 7 are each amended to read as follows:

(1) Before issuing an original license or identicard or renewing a license or identicard under this chapter, the licensing agent shall determine if the applicant wants to register to vote or transfer his or her voter registration by asking the following question:

"Do you want to register to vote or transfer your voter registration?"

If the applicant chooses to register or transfer a registration, the agent shall ((state)) ask the following:

~~(("I would like to remind you that you must be a United States citizen and at least eighteen years of age in order to vote."))~~

(1) "Are you a United States citizen?"

(2) "Are you or will you be eighteen years of age on or before the next election?"

If the applicant answers in the affirmative to both questions, the agent shall then provide the applicant with a voter registration form and instructions and shall record that the applicant has requested to register to vote or transfer a voter registration. If the applicant answers in the negative to either question, the agent shall not provide the applicant with a voter registration form.

(2) The department shall establish a procedure that substantially meets the requirements of subsection (1) of this section when permitting an applicant to renew a license or identicard by mail or by electronic commerce.

NEW SECTION. Sec. 25. The following acts or parts of acts are each repealed:

(1) RCW 29A.08.155 (Payment for maintenance of electronic records) and 2004 c 267 s 114 & 2003 c 111 s 215; and

(2) RCW 29A.08.730 (Registration, voting—Furnishing data upon request—Cost—Use restricted) and 2003 c 111 s 248, 1994 c 57 s 6, & 1973 1st ex.s. c 111 s 3.

NEW SECTION. Sec. 26. This act takes effect January 1, 2006.

Passed by the Senate April 23, 2005.

Passed by the House April 22, 2005.

Approved by the Governor May 3, 2005.

Filed in Office of Secretary of State May 3, 2005.

CHAPTER 247

[Substitute House Bill 1938]

VETERANS—EMPLOYMENT, RETIREMENT RIGHTS

AN ACT Relating to employment and retirement rights of members of the armed forces called to active duty; amending RCW 41.40.170; reenacting and amending RCW 41.04.005; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 41.04.005 and 2002 c 292 s 1 and 2002 c 27 s 1 are each reenacted and amended to read as follows:

(1) As used in RCW 41.04.005, 41.16.220, 41.20.050, 41.40.170, and 28B.15.380 "veteran" includes every person, who at the time he or she seeks the benefits of RCW 41.04.005, 41.16.220, 41.20.050, 41.40.170, or 28B.15.380 has received an honorable discharge, is actively serving honorably, or received a discharge for physical reasons with an honorable record and who meets at least one of the following criteria:

(a) The person has served between World War I and World War II or during any period of war, as defined in subsection (2) of this section, as either:

(i) A member in any branch of the armed forces of the United States;

(ii) A member of the women's air forces service pilots;

(iii) A U.S. documented merchant mariner with service aboard an oceangoing vessel operated by the war shipping administration, the office of defense transportation, or their agents, from December 7, 1941, through December 31, 1946; or

(iv) A civil service crewmember with service aboard a U.S. army transport service or U.S. naval transportation service vessel in oceangoing service from December 7, 1941, through December 31, 1946; or

(b) The person has received the armed forces expeditionary medal, or marine corps and navy expeditionary medal, for opposed action on foreign soil, for service:

(i) In any branch of the armed forces of the United States; or

(ii) As a member of the women's air forces service pilots.

(2) A "period of war" includes:

(a) World War I;

(b) World War II;

(c) The Korean conflict;

(d) The Vietnam era(~~(, which)~~), which means:

(i) The period beginning on February 28, 1961, and ending on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period;

(ii) The period beginning August 5, 1964, and ending on May 7, 1975;

(e) The Persian Gulf War, which was the period beginning August 2, 1990, and ending on the date prescribed by presidential proclamation or law;

(f) The period beginning on the date of any future declaration of war by the congress and ending on the date prescribed by presidential proclamation or concurrent resolution of the congress; and

(g) The following armed conflicts, if the participant was awarded the respective campaign badge or medal: The crisis in Lebanon; the invasion of Grenada; Panama, Operation Just Cause; Somalia, Operation Restore Hope; Haiti, Operation Uphold Democracy; (~~and~~) Bosnia, Operation Joint Endeavor;

Operation Noble Eagle; Operation Enduring Freedom; and Operation Iraqi Freedom.

Sec. 2. RCW 41.40.170 and 2002 c 27 s 2 are each amended to read as follows:

(1) A member who has served or shall serve on active federal service in the military or naval forces of the United States and who left or shall leave an employer to enter such service shall be deemed to be on military leave of absence if he or she has resumed or shall resume employment as an employee within one year from termination thereof.

(2) If he or she has applied or shall apply for reinstatement of employment, within one year from termination of the military service, and is refused employment for reasons beyond his or her control, he or she shall, upon resumption of service within ten years have such service credited to him or her.

(3) In any event, after completing twenty-five years of creditable service, any member may have service in the armed forces credited to him or her as a member whether or not he or she left the employ of an employer to enter the armed service: PROVIDED, That in no instance, described in this section, shall military service in excess of five years be credited: AND PROVIDED FURTHER, That in each instance the member must restore all withdrawn accumulated contributions, which restoration must be completed within five years of membership service following the first resumption of employment or complete twenty-five years of creditable service: AND PROVIDED FURTHER, That this section will not apply to any individual, not a veteran within the meaning of RCW 41.04.005.

(4)(a) A member, after completing twenty-five years of creditable service, who would have otherwise become eligible for a retirement benefit as defined under this chapter while serving honorably in the armed forces as referenced in RCW 41.04.005, shall, upon application to the department, be eligible to receive credit for this service without returning to covered employment.

(b) Service credit granted under (a) of this subsection applies only to veterans as defined in RCW 41.40.005.

NEW SECTION. Sec. 3. 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. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House April 19, 2005.

Passed by the Senate April 4, 2005.

Approved by the Governor May 3, 2005.

Filed in Office of Secretary of State May 3, 2005.

CHAPTER 248

[House Bill 1019]

PROPERTY TAX EXEMPTION—DISABLED VETERANS

AN ACT Relating to property tax exemptions for persons with disabilities related to the performance of military duties; amending RCW 84.36.379 and 84.36.381; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 84.36.379 and 2000 c 103 s 25 are each amended to read as follows:

The legislature finds that the property tax exemption authorized by Article VII, section 10 of the state Constitution should be made available on the basis of a retired person's ability to pay property taxes(~~(--The legislature further finds))~~ and that the best measure of a retired person's ability to pay taxes is that person's disposable income as defined in RCW 84.36.383. The legislature further finds that veterans with one hundred percent service-connected disabilities have given so much to our country that they deserve property tax relief.

Sec. 2. RCW 84.36.381 and 2004 c 270 s 1 are each amended to read as follows:

A person shall be exempt from any legal obligation to pay all or a portion of the amount of excess and regular real property taxes due and payable in the year following the year in which a claim is filed, and thereafter, in accordance with the following:

(1) The property taxes must have been imposed upon a residence which was occupied by the person claiming the exemption as a principal place of residence as of the time of filing: PROVIDED, That any person who sells, transfers, or is displaced from his or her residence may transfer his or her exemption status to a replacement residence, but no claimant shall receive an exemption on more than one residence in any year: PROVIDED FURTHER, That confinement of the person to a hospital, nursing home, boarding home, or adult family home shall not disqualify the claim of exemption if:

- (a) The residence is temporarily unoccupied;
- (b) The residence is occupied by a spouse and/or a person financially dependent on the claimant for support; or
- (c) The residence is rented for the purpose of paying nursing home, hospital, boarding home, or adult family home costs;

(2) The person claiming the exemption must have owned, at the time of filing, in fee, as a life estate, or by contract purchase, the residence on which the property taxes have been imposed or if the person claiming the exemption lives in a cooperative housing association, corporation, or partnership, such person must own a share therein representing the unit or portion of the structure in which he or she resides. For purposes of this subsection, a residence owned by a marital community or owned by cotenants shall be deemed to be owned by each spouse or cotenant, and any lease for life shall be deemed a life estate;

(3) The person claiming the exemption must be (a) sixty-one years of age or older on December 31st of the year in which the exemption claim is filed, or must have been, at the time of filing, retired from regular gainful employment by reason of disability((--PROVIDED, That any)), or (b) a veteran of the armed forces of the United States with one hundred percent service connected disability

as provided in 42 U.S.C. Sec. 423 (d)(1)(A) as amended prior to January 1, 2005. However, any surviving spouse of a person who was receiving an exemption at the time of the person's death shall qualify if the surviving spouse is fifty-seven years of age or older and otherwise meets the requirements of this section;

(4) The amount that the person shall be exempt from an obligation to pay shall be calculated on the basis of combined disposable income, as defined in RCW 84.36.383. If the person claiming the exemption was retired for two months or more of the assessment year, the combined disposable income of such person shall be calculated by multiplying the average monthly combined disposable income of such person during the months such person was retired by twelve. If the income of the person claiming exemption is reduced for two or more months of the assessment year by reason of the death of the person's spouse, or when other substantial changes occur in disposable income that are likely to continue for an indefinite period of time, the combined disposable income of such person shall be calculated by multiplying the average monthly combined disposable income of such person after such occurrences by twelve. If it is necessary to estimate income to comply with this subsection, the assessor may require confirming documentation of such income prior to May 31 of the year following application;

(5)(a) A person who otherwise qualifies under this section and has a combined disposable income of thirty-five thousand dollars or less shall be exempt from all excess property taxes; and

(b)(i) A person who otherwise qualifies under this section and has a combined disposable income of thirty thousand dollars or less but greater than twenty-five thousand dollars shall be exempt from all regular property taxes on the greater of fifty thousand dollars or thirty-five percent of the valuation of his or her residence, but not to exceed seventy thousand dollars of the valuation of his or her residence; or

(ii) A person who otherwise qualifies under this section and has a combined disposable income of twenty-five thousand dollars or less shall be exempt from all regular property taxes on the greater of sixty thousand dollars or sixty percent of the valuation of his or her residence;

(6) For a person who otherwise qualifies under this section and has a combined disposable income of thirty-five thousand dollars or less, the valuation of the residence shall be the assessed value of the residence on the later of January 1, 1995, or January 1st of the assessment year the person first qualifies under this section. If the person subsequently fails to qualify under this section only for one year because of high income, this same valuation shall be used upon requalification. If the person fails to qualify for more than one year in succession because of high income or fails to qualify for any other reason, the valuation upon requalification shall be the assessed value on January 1st of the assessment year in which the person requalifies. If the person transfers the exemption under this section to a different residence, the valuation of the different residence shall be the assessed value of the different residence on January 1st of the assessment year in which the person transfers the exemption.

In no event may the valuation under this subsection be greater than the true and fair value of the residence on January 1st of the assessment year.

This subsection does not apply to subsequent improvements to the property in the year in which the improvements are made. Subsequent improvements to the property shall be added to the value otherwise determined under this subsection at their true and fair value in the year in which they are made.

NEW SECTION. Sec. 3. This act applies to taxes levied for collection in 2006 and thereafter.

Passed by the House April 23, 2005.

Passed by the Senate April 23, 2005.

Approved by the Governor May 3, 2005.

Filed in Office of Secretary of State May 3, 2005.

CHAPTER 249

[Substitute House Bill 1174]

HIGHER EDUCATION—TUITION WAIVERS—VETERANS

AN ACT Relating to tuition waivers at institutions of higher education; amending RCW 28B.15.380, 28B.15.910, and 28B.15.558; adding a new section to chapter 28B.15 RCW; and repealing RCW 28B.10.265, 28B.15.620, 28B.15.628, and 28B.15.629.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 28B.15 RCW to read as follows:

(1) The legislature finds that active military and naval veterans, reserve military and naval veterans, and national guard members called to active duty have served their country and have risked their lives to defend the lives of all Americans and the freedoms that define and distinguish our nation. The legislature intends to honor active military and naval veterans, reserve military and naval veterans, and national guard members who have served on active military or naval duty for the public service they have provided to this country.

(2) Subject to the limitations in RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges, may waive all or a portion of tuition and fees for the following persons:

(a) An eligible veteran or national guard member;

(b) A child and the spouse of an eligible veteran or national guard member who became totally disabled as defined in RCW 28B.15.385 while engaged in active federal military or naval service, or who is determined by the federal government to be a prisoner of war or missing in action;

(c) A child and the surviving spouse of an eligible veteran or national guard member who lost his or her life while engaged in active federal military or naval service. However, upon remarriage, the surviving spouse of an eligible veteran or national guard member is ineligible for a waiver under this section.

(3) The governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges, may waive all or a portion of tuition and fees for a military or naval veteran who is a Washington domiciliary, but who did not serve on foreign soil or in international waters or in another location in support of those serving on foreign soil or in international waters and who does not qualify as an eligible veteran or national guard member

under subsection (5) of this section. However, there shall be no state general fund support for waivers granted under this subsection.

(4) Private vocational schools and private higher education institutions are encouraged to provide waivers consistent with the terms in subsections (2) and (3) of this section.

(5) As used in this section "eligible veteran or national guard member" means a Washington domiciliary who was an active or reserve member of the United States military or naval forces, or a national guard member called to active duty, who served in active federal service, under either Title 10 or Title 32 of the United States Code, in a war or conflict fought on foreign soil or in international waters or in another location in support of those serving on foreign soil or in international waters, and if discharged from service, has received an honorable discharge.

Sec. 2. RCW 28B.15.380 and 1993 sp.s. c 18 s 10 are each amended to read as follows:

Subject to the limitations of RCW 28B.15.910, the governing boards of the state universities, the regional universities, and The Evergreen State College may exempt the following students from the payment of all or a portion of tuition fees and services and activities fees:

~~((1) All veterans as defined in RCW 41.04.005: PROVIDED, That such persons are no longer entitled to federal vocational or educational benefits conferred by virtue of their military service: AND PROVIDED FURTHER, That if any such veterans have not resided in this state for one year prior to registration, the board may exempt the student from paying up to fifty percent of the nonresident tuition fees differential. Such exemptions may be provided only to those persons otherwise covered who were enrolled in universities on or before October 1, 1977.~~

(2)) Children of any law enforcement officer or fire fighter who lost his or her life or became totally disabled in the line of duty while employed by any public law enforcement agency or full time or volunteer fire department in this state: PROVIDED, That such persons may receive the exemption only if they begin their course of study at a state-supported college or university within ten years of their graduation from high school.

Sec. 3. RCW 28B.15.910 and 2004 c 275 s 51 are each amended to read as follows:

(1) For the purpose of providing state general fund support to public institutions of higher education, except for revenue waived under programs listed in subsections (3) and (4) of this section, and unless otherwise expressly provided in the omnibus state appropriations act, the total amount of operating fees revenue waived, exempted, or reduced by a state university, a regional university, The Evergreen State College, or the community colleges as a whole, shall not exceed the percentage of total gross authorized operating fees revenue in this subsection. As used in this section, "gross authorized operating fees revenue" means the estimated gross operating fees revenue as estimated under RCW 82.33.020 or as revised by the office of financial management, before granting any waivers. This limitation applies to all tuition waiver programs established before or after July 1, 1992.

(a) University of Washington

21 percent

- (b) Washington State University 20 percent
 - (c) Eastern Washington University 11 percent
 - (d) Central Washington University 8 percent
 - (e) Western Washington University 10 percent
 - (f) The Evergreen State College 6 percent
 - (g) Community colleges as a whole 35 percent
- (2) The limitations in subsection (1) of this section apply to waivers, exemptions, or reductions in operating fees contained in the following:

- (a) (~~RCW 28B.10.265;~~
~~(b))~~ RCW 28B.15.014;
- ~~((c))~~ ~~(b)~~ RCW 28B.15.100;
- ~~((d))~~ ~~(c)~~ RCW 28B.15.225;
- ~~((e))~~ ~~(d)~~ RCW 28B.15.380;
- ~~((f))~~ ~~(e)~~ RCW 28B.15.520;
- ~~((g))~~ ~~(f)~~ RCW 28B.15.526;
- ~~((h))~~ ~~(g)~~ RCW 28B.15.527;
- ~~((i))~~ ~~(h)~~ RCW 28B.15.543;
- ~~((j))~~ ~~(i)~~ RCW 28B.15.545;
- ~~((k))~~ ~~(j)~~ RCW 28B.15.555;
- ~~((l))~~ ~~(k)~~ RCW 28B.15.556;
- ~~((m))~~ ~~(l)~~ RCW 28B.15.615;
- ~~((n))~~ ~~RCW 28B.15.620;~~
- ~~((o))~~ ~~RCW 28B.15.628;~~
- ~~((p))~~ ~~(m)~~ RCW 28B.15.730;
- ~~((q))~~ ~~(n)~~ RCW 28B.15.740;
- ~~((r))~~ ~~(o)~~ RCW 28B.15.750;
- ~~((s))~~ ~~(p)~~ RCW 28B.15.756;
- ~~((t))~~ ~~(q)~~ RCW 28B.50.259;
- ~~((u))~~ ~~(r)~~ RCW 28B.70.050; and
- ~~((v))~~ ~~During the 1997-99 fiscal biennium, the western interstate commission for higher education undergraduate exchange program for students attending Eastern Washington University))~~ ~~(s)~~ Section 1(2) of this act.

(3) The limitations in subsection (1) of this section do not apply to waivers, exemptions, or reductions in services and activities fees contained in the following:

- (a) RCW 28B.15.522;
- (b) RCW 28B.15.540; and
- (c) RCW 28B.15.558.

(4) The total amount of operating fees revenue waived, exempted, or reduced by institutions of higher education participating in the western interstate commission for higher education western undergraduate exchange program under RCW 28B.15.544 shall not exceed the percentage of total gross authorized operating fees revenue in this subsection.

- (a) Washington State University 1 percent
- (b) Eastern Washington University 3 percent
- (c) Central Washington University 3 percent

Sec. 4. RCW 28B.15.558 and 2003 c 160 s 2 are each amended to read as follows:

(1) The governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges may waive all or a portion of the tuition and services and activities fees for state employees as defined under subsection (2) of this section (~~(, veterans of the Korean conflict, and members of the Washington national guard)~~). The enrollment of these persons is pursuant to the following conditions:

(a) Such persons shall register for and be enrolled in courses on a space available basis and no new course sections shall be created as a result of the registration;

(b) Enrollment information on persons registered pursuant to this section shall be maintained separately from other enrollment information and shall not be included in official enrollment reports, nor shall such persons be considered in any enrollment statistics that would affect budgetary determinations; and

(c) Persons registering on a space available basis shall be charged a registration fee of not less than five dollars.

(2) For the purposes of this section, "state employees" means persons employed half-time or more in one or more of the following employee classifications:

(a) Permanent employees in classified service under chapter 41.06 RCW;

(b) Permanent employees governed by chapter 41.56 RCW pursuant to the exercise of the option under RCW 41.56.201;

(c) Permanent classified employees and exempt paraprofessional employees of technical colleges; and

(d) Faculty, counselors, librarians, and exempt professional and administrative employees at institutions of higher education as defined in RCW 28B.10.016.

~~(3) ((For the purposes of this section, "veterans of the Korean conflict" means persons who served on active duty in the armed forces of the United States during any portion of the period beginning June 27, 1950, and ending January 31, 1955.~~

~~(4))~~ (4) In awarding waivers, an institution of higher education may award waivers to eligible persons employed by the institution before considering waivers for eligible persons who are not employed by the institution.

~~((5))~~ (4) If an institution of higher education exercises the authority granted under this section, it shall include all eligible state employees (~~(, veterans of the Korean conflict, and members of the Washington national guard)~~) in the pool of persons eligible to participate in the program.

~~((6))~~ (5) In establishing eligibility to receive waivers, institutions of higher education may not discriminate between full-time employees and employees who are employed half-time or more.

NEW SECTION. Sec. 5. The following acts or parts of acts are each repealed:

(1) RCW 28B.10.265 (Waiver from fees—Children of certain citizens missing in action or prisoners of war) and 1993 sp.s. c 18 s 1, 1992 c 231 s 2, 1985 c 390 s 1, 1973 c 63 s 2, & 1972 ex.s. c 17 s 2;

(2) RCW 28B.15.620 (Exemption from tuition and fees increase at institutions of higher education—Vietnam veterans) and 1999 c 82 s 1, 1995 c 349 s 1, 1994 c 208 s 1, 1993 sp.s. c 18 s 24, 1992 c 231 s 22, 1989 c 306 s 4,

1983 c 307 s 1, 1979 ex.s. c 83 s 1, 1977 ex.s. c 322 s 9, 1972 ex.s. c 149 s 3, & 1971 ex.s. c 279 s 22;

(3) RCW 28B.15.628 (Waiver of tuition and fees increases at institutions of higher education—Persian Gulf veterans) and 1999 c 82 s 2, 1996 c 169 s 1, 1994 c 208 s 2, 1993 sp.s. c 18 s 25, 1992 c 231 s 23, & 1991 c 228 s 14; and

(4) RCW 28B.15.629 (Tuition waivers at technical colleges—Vietnam veterans—Persian Gulf veterans) and 1999 c 82 s 3.

Passed by the House April 18, 2005.

Passed by the Senate April 13, 2005.

Approved by the Governor May 3, 2005.

Filed in Office of Secretary of State May 3, 2005.

CHAPTER 250

[Substitute House Bill 1189]

VETERANS' ASSISTANCE PROGRAMS

AN ACT Relating to veterans' relief; amending RCW 73.08.010, 73.08.070, and 73.08.080; adding new sections to chapter 73.08 RCW; creating a new section; and repealing RCW 73.08.030, 73.08.040, and 73.08.050.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) It is the intent of the legislature that each county establish a veterans' assistance program to benefit indigent veterans and their families. These programs must be funded, at least in part, by veterans' assistance funds. The legislature intends also for each county to establish a veterans' advisory board responsible for advising the county legislative authority on needed and appropriate assistance programs for local indigent veterans and their families. Recognizing the valuable insight and perspectives that veterans offer, it is the intent of the legislature that each board be comprised entirely of veterans.

(2) The legislature recognizes that ongoing veterans' relief or assistance programs in some areas of the state have provided meaningful assistance to indigent veterans and family members. The legislature further recognizes that veterans' service organizations have traditionally been the initial point of contact for indigent veterans and family members seeking assistance. In recognition of these factors, the legislature intends to authorize, upon the satisfaction of certain administrative requirements, existing veterans' relief or assistance programs to continue providing needed and effective assistance to indigent veterans and their families.

(3) The legislature recognizes that counties respond to the needs of indigent veterans and family members in the manner most appropriate to the needs and resources of the county. The legislature intends for the provisions of this act to facilitate the effective use of assistance funds through efficient model programs that benefit veterans and family members experiencing financial hardships.

(4) It is the policy of the state of Washington that bias shall not play a role in the distribution of the veterans' assistance fund.

NEW SECTION. Sec. 2. A new section is added to chapter 73.08 RCW to read as follows:

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

(1) "Direct costs" includes those allowable costs that can be readily assigned to the statutory objectives of this chapter, consistent with the cost principles promulgated by the federal office of management and budget in circular No. A-87, dated May 10, 2004.

(2) "Family" means the spouse, widow, widower, and dependent children of a living or deceased veteran.

(3) "Indigent" means a person who is defined as such by the county legislative authority using one or more of the following definitions:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, general assistance, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income;

(b) Receiving an annual income, after taxes, of up to one hundred fifty percent or less of the current federally established poverty level, or receiving an annual income not exceeding a higher qualifying income established by the county legislative authority; or

(c) Unable to pay reasonable costs for shelter, food, utilities, and transportation because his or her available funds are insufficient.

(4) "Indirect costs" includes those allowable costs that are generally associated with carrying out the statutory objectives of this chapter, but the identification and tracking of those costs cannot be readily assigned to a specific statutory objective without an accounting effort that is disproportionate to the benefit received. A county legislative authority may allocate allowable indirect costs to its veterans' assistance fund if it is accomplished in a manner consistent with the cost principles promulgated by the federal office of management and budget in circular No. A-87, dated May 10, 2004.

(5) "Veteran" has the same meaning as defined in RCW 41.04.005 and 41.04.007.

(6) "Veterans' advisory board" means a board established by a county legislative authority under the authority of section 4 of this act.

(7) "Veterans' assistance fund" means an account in the custody of the county auditor, or the chief financial officer in a county operating under a charter, that is funded by taxes levied under the authority of RCW 73.08.080.

(8) "Veterans' assistance program" means a program approved by the county legislative authority under the authority of RCW 73.08.010 that is fully or partially funded by the veterans' assistance fund authorized by RCW 73.08.080.

Sec. 3. RCW 73.08.010 and 2002 c 292 s 7 are each amended to read as follows:

~~(1) For the relief of indigent (and suffering) veterans (as defined in RCW 41.04.007 and), their families (or), and the families of (those) deceased indigent veterans, (who need assistance in any city, town or precinct in this state,) the legislative authority of (the) each county (in which the city, town or precinct is situated shall provide such sum or sums of money as may be necessary, to be drawn upon by the commander and quartermaster, or commander and adjutant or commander and service officer of any post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress in the city or town upon recommendation of the~~

~~relief committee of said post, camp or chapter: PROVIDED, Said veteran or the families of those deceased are and have been residents of the state for at least twelve months, and the orders of said commander and quartermaster, or commander and adjutant or commander and service officer shall be the proper voucher for the expenditure of said sum or sums of money))~~ shall establish a veterans' assistance program to address the needs of local indigent veterans and their families. The county legislative authority shall consult with and solicit recommendations from the veterans' advisory board established under section 4 of this act to determine the appropriate services needed for local indigent veterans. Veterans' assistance programs shall be funded, at least in part, by the veterans' assistance fund created under the authority of RCW 73.08.080.

(2) The county legislative authority may authorize other entities to administer a veterans' assistance program or programs through grants, contracts, or interlocal agreements. If the county legislative authority authorizes another entity to administer a veterans' assistance program or programs, the terms of the grant, contract, or interlocal agreement must, for each program, specify:

(a) The details of the program;

(b) The responsibilities of all parties;

(c) The duration of the program;

(d) The costs and sources of funding;

(e) Any insurance or bond requirements;

(f) The format and frequency of progress and final reports; and

(g) Any other information deemed necessary or appropriate by either party.

(3) If the county legislative authority authorizes another entity to administer a veterans' assistance program or programs, the authorized entity should, to the extent feasible and consistent with this chapter, ensure that a local branch of a nationally recognized veterans' service organization is the initial point of contact for a veteran or family member seeking assistance.

(4) Nothing in this section shall prohibit or be construed as prohibiting a county from authorizing the continued operation of a veterans' relief or assistance program or programs existing on January 1, 2005, if the authorizing legislative authority:

(a) Solicits advice from the veterans' advisory board established in section 4 of this act; and

(b) Satisfies the grant, contractual, or interlocal agreement requirements of subsection (2) of this section.

NEW SECTION. Sec. 4. A new section is added to chapter 73.08 RCW to read as follows:

(1) The legislative authority for each county must establish a veterans' advisory board. Upon its establishment, the board shall advise the county legislative authority on the needs of local indigent veterans, the resources available to local indigent veterans, and programs that could benefit the needs of local indigent veterans and their families.

(2) The county legislative authority must solicit representatives from either local branches of nationally recognized veterans' service organizations or the veterans' community at large, or both, to serve on the board. No fewer than a majority of the board members shall be members from nationally recognized veterans' service organizations and only veterans are eligible to serve as board members.

(3) Service on the board is voluntary. The county legislative authority may provide for reimbursement to board members for expenses incurred.

Sec. 5. RCW 73.08.070 and 2002 c 292 s 9 are each amended to read as follows:

~~((It shall be the duty of))~~ (1) The legislative authority ((in each of the counties in this state to)) for each county must designate ((some)) a proper authority ((other than the one designated by law for the care of paupers and the custody of criminals who shall cause to be interred)) to be responsible, at the expense of the county ((the body of any honorably discharged veterans as defined in RCW 41.04.007 and the wives, husbands, minor children, widows or widowers of such veterans, who shall hereafter die)), for the burial or cremation of any deceased indigent veteran or deceased family member of an indigent veteran who died without leaving means sufficient to defray funeral expenses((; and when requested so to do by the commanding officer of any post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress or the relief committee of any such posts, camps or chapters: PROVIDED, HOWEVER, That such interment shall not cost more than)). The costs of such a burial or cremation may not exceed the limit established by the county legislative authority nor be less than three hundred dollars.

(2) If the deceased has relatives or friends who desire to conduct the burial or cremation of such deceased person, then ((upon request of said commander or relief committee)) a sum not to exceed the limit established by the county legislative authority nor less than three hundred dollars shall be paid to ((said)) the relatives or friends by the county ((treasurer, upon)) auditor, or by the chief financial officer in a county operating under a charter. Payment shall be made to the relatives or friends upon presenting to the auditor or chief financial officer due proof of the death ((and)), burial ((of any person provided for by this section and proof of expenses incurred)) or cremation, and expenses incurred.

(3) Expenses incurred for the burial or cremation of a deceased indigent veteran or the deceased family member of an indigent veteran as provided by this section shall be paid from the veterans' assistance fund authorized by RCW 73.08.080.

Sec. 6. RCW 73.08.080 and 1985 c 181 s 2 are each amended to read as follows:

(1) The legislative ((authorities of the several counties in this state)) authority in each county shall levy, in addition to the taxes now levied by law, a tax in a sum equal to the amount which would be raised by not less than one and one-eighth cents per thousand dollars of assessed value, and not greater than twenty-seven cents per thousand dollars of assessed value against the taxable property of their respective counties, to be levied and collected as now prescribed by law for the assessment and collection of taxes, for the purpose of creating ((the veteran's)) a veterans' assistance fund ((for the relief of honorably discharged veterans as defined in RCW 41.04.005 and the indigent wives, husbands, widows, widowers and minor children of such indigent or deceased veterans, to be disbursed for such relief by such county legislative authority: PROVIDED, That if)). Expenditures from the veterans' assistance fund, and interest earned on balances from the fund, may be used only for:

- (a) The veterans' assistance programs authorized by RCW 73.08.010;
 (b) The burial or cremation of a deceased indigent veteran or deceased family member of an indigent veteran as authorized by RCW 73.08.070; and
 (c) The direct and indirect costs incurred in the administration of the fund as authorized by subsection (2) of this section.

(2) If the funds on deposit(~~(less outstanding warrants, residing~~)) in the ((veteran's)) veterans' assistance fund, ~~less outstanding warrants,~~ on the first Tuesday in September exceed the expected yield of one and one-eighth cents per thousand dollars of assessed value against the taxable property of the county, the county legislative authority may levy a lesser amount(~~(=~~—PROVIDED FURTHER, That the)). The direct and indirect costs incurred in the administration of ((said veteran's)) the veterans' assistance fund shall be computed by the county ((treasurer)) auditor, or the chief financial officer in a county operating under a charter, not less than annually ((and such amount)). Following the computation of these direct and indirect costs, an amount equal to these costs may then be transferred from the ((veteran's)) veterans' assistance fund ((as herein provided for)) to the county current expense fund.

(3) The amount of a levy allocated to the purposes specified in this section may be reduced in the same proportion as the regular property tax levy of the county is reduced by chapter 84.55 RCW.

NEW SECTION. Sec. 7. A new section is added to chapter 73.08 RCW to read as follows:

The department of social and health services shall exempt payments provided under sections 2 and 4 of this act and RCW 73.08.010, 73.08.070, and 73.08.080 when determining eligibility for public assistance.

NEW SECTION. Sec. 8. The following acts or parts of acts are each repealed:

(1) RCW 73.08.030 (Procedure where no veterans' organization in precinct) and 1983 c 295 s 2, 1947 c 180 s 2, 1945 c 144 s 2, 1921 c 41 s 2, 1907 c 64 s 2, & 1888 p 208 s 2;

(2) RCW 73.08.040 (Notice of intention to furnish relief—Annual statement) and 1947 c 180 s 3, 1945 c 144 s 3, 1921 c 41 s 3, 1907 c 64 s 3, & 1888 p 209 s 3; and

(3) RCW 73.08.050 (Performance bond may be required) and 1983 c 295 s 3, 1947 c 180 s 4, 1945 c 144 s 4, 1921 c 41 s 4, 1907 c 64 s 4, & 1888 p 209 s 4.

Passed by the House April 18, 2005.

Passed by the Senate April 7, 2005.

Approved by the Governor May 3, 2005.

Filed in Office of Secretary of State May 3, 2005.

CHAPTER 251

[House Bill 1307]

VETERANS—DEFINITION

AN ACT Relating to defining veteran for certain purposes; and amending RCW 41.04.007.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 41.04.007 and 2002 c 292 s 2 are each amended to read as follows:

"Veteran" includes every person, who at the time he or she seeks the benefits of RCW 72.36.030, 41.04.010, 73.04.090, 73.04.110, 73.08.010, 73.08.060, 73.08.070, or 73.08.080 has received an honorable discharge or received a discharge for medical reasons with an honorable record, where applicable, and who has served in at least one of the following capacities:

(1) As a member in any branch of the armed forces of the United States, including the national guard and armed forces reserves, and has fulfilled his or her initial military service obligation;

(2) As a member of the women's air forces service pilots;

(3) As a member of the armed forces reserves, national guard, or coast guard, and has been called into federal service by a presidential select reserve call up for at least one hundred eighty cumulative days;

(4) As a civil service crewmember with service aboard a U.S. army transport service or U.S. naval transportation service vessel in oceangoing service from December 7, 1941, through December 31, 1946; ((or))

(5) As a member of the Philippine armed forces/scouts during the period of armed conflict from December 7, 1941, through August 15, 1945; or

(6) A United States documented merchant mariner with service aboard an oceangoing vessel operated by the department of defense, or its agents, from both June 25, 1950, through July 27, 1953, in Korean territorial waters and from August 5, 1964, through May 7, 1975, in Vietnam territorial waters, and who received a military commendation.

Passed by the House April 19, 2005.

Passed by the Senate April 14, 2005.

Approved by the Governor May 3, 2005.

Filed in Office of Secretary of State May 3, 2005.

CHAPTER 252

[House Bill 1457]

MILITARY DEPARTMENT ACCOUNTS

AN ACT Relating to military department accounts; amending RCW 38.20.010; and adding new sections to chapter 38.40 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 38.40 RCW to read as follows:

The military department capital account is created in the state treasury. All receipts from the sale of state-owned military department property must be deposited into the account. Money in the account may be spent only after appropriation. Expenditures from the account may be used only for military department capital projects.

NEW SECTION. Sec. 2. A new section is added to chapter 38.40 RCW to read as follows:

The military department rental and lease account is created in the state treasury. All receipts from the rental or lease of state-owned military department property must be deposited into the account. Money in the account may be spent only after appropriation. Expenditures from the account may be used only for operating and maintenance costs of military property.

Sec. 3. RCW 38.20.010 and 1989 c 19 s 33 are each amended to read as follows:

Except as provided in this section, state-owned armories shall be used strictly for military purposes.

(1) One room, together with the necessary furniture, heat, light, and janitor service, may be set aside for the exclusive use of bona fide veterans' organizations subject to the direction of the officer in charge. Members of these veterans' organizations and their auxiliaries shall have access to the room and its use at all times.

(2) A bona fide veterans' organization may use any state armory for athletic and social events without payment of rent whenever the armory is not being used by the organized militia. The adjutant general may require the veterans' organization to pay the cost of heating, lighting, or other miscellaneous expenses incidental to this use.

(3) The adjutant general may, during an emergency, permit transient lodging of service personnel in armories.

(4) The adjutant general may, upon the recommendation of the executive head or governing body of a county, city or town, permit transient lodging of anyone in armories. The adjutant general may require the county, city or town to pay no more than the actual cost of staffing, heating, lighting and other miscellaneous expenses incidental to this use.

(5) Civilian rifle clubs affiliated with the National Rifle Association of America are permitted to use small arms ranges in the armories at least one night each week under regulations prescribed by the adjutant general.

(6) State-owned armories shall be available, at the discretion of the adjutant general, for use for casual civic purposes, and amateur and professional sports and theatricals upon payment of fixed rental charges and compliance with regulations of the state military department. Children attending primary and high schools have a preferential right to use these armories.

The adjutant general shall prepare a schedule of rental charges, including a cleaning deposit, and utility costs for each state-owned armory which may not be waived except for activities sponsored by the organized militia or activities provided for in subsection (4) of this section. The rental charges derived from armory rentals less the cleaning deposit shall be paid into the ~~((state general fund))~~ military department rental and lease account under section 2 of this act.

Passed by the House March 10, 2005.

Passed by the Senate April 13, 2005.

Approved by the Governor May 3, 2005.

Filed in Office of Secretary of State May 3, 2005.

CHAPTER 253

[Substitute House Bill 1509]

PROPERTY TAX EXEMPTION—WIDOWS OR WIDOWERS OF VETERANS

AN ACT Relating to a property tax exemption for widows or widowers of honorably discharged veterans; amending RCW 82.03.130; adding a new chapter to Title 84 RCW; creating a new section; and making appropriations.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A person is entitled to a property tax exemption in the form of a grant as provided in this chapter. The person is entitled to assistance for the payment of all or a portion of the amount of excess and regular real property taxes imposed on the person's residence in the year in which a claim is filed in accordance with the following:

(1) The claimant must meet all requirements for an exemption for the residence under RCW 84.36.381, other than the income limits under RCW 84.36.381.

(2)(a) The person making the claim must be:

(i) Sixty-two years of age or older on December 31st of the year in which the claim is filed, or must have been, at the time of filing, retired from regular gainful employment by reason of physical disability; and

(ii) A widow or widower of a veteran who:

(A) Died as a result of a service-connected disability;

(B) Was rated as one hundred percent disabled by the United States veterans' administration for the ten years prior to his or her death;

(C) Was a former prisoner of war as substantiated by the United States veterans' administration and was rated as one hundred percent disabled by the United States veterans' administration for one or more years prior to his or her death; or

(D) Died on active duty or in active training status as a member of the United States uniformed services, reserves, or national guard; and

(b) The person making the claim must not have remarried.

(3) The claimant must have a combined disposable income of forty thousand dollars or less.

(4) The claimant must have owned, at the time of filing, the residence on which the real property taxes have been imposed. For purposes of this subsection, a residence owned by cotenants shall be deemed to be owned by each cotenant. A claimant who has only a share ownership in cooperative housing, a life estate, a lease for life, or a revocable trust does not satisfy the ownership requirement.

(5) A person who otherwise qualifies under this section is entitled to assistance in an amount equal to regular and excess property taxes imposed on the difference between the value of the residence eligible for exemption under RCW 84.36.381(5) and:

(a) The first one hundred thousand dollars of assessed value of the residence for a person who has a combined disposable income of thirty thousand dollars or less;

(b) The first seventy-five thousand dollars of assessed value of the residence for a person who has a combined disposable income of thirty-five thousand dollars or less but greater than thirty thousand dollars; or

(c) The first fifty thousand dollars of assessed value of the residence for a person who has a combined disposable income of forty thousand dollars or less but greater than thirty-five thousand dollars.

(6) As used in this section:

(a) "Veteran" has the same meaning as provided under RCW 41.04.005.

(b) The meanings attributed in RCW 84.36.383 to the terms "residence," "combined disposable income," "disposable income," and "disability" apply equally to this section.

NEW SECTION. Sec. 2. (1) Each claimant applying for assistance under section 1 of this act shall file a claim with the department, on forms prescribed by the department, no later than thirty days before the tax is due. The department may waive this requirement for good cause shown. The department shall supply forms to the county assessor to allow persons to apply for the program at the county assessor's office.

(2) The claim shall designate the property to which the assistance applies and shall include a statement setting forth (a) a list of all members of the claimant's household, (b) facts establishing the eligibility under this section, and (c) any other relevant information required by the rules of the department. Each copy shall be signed by the claimant subject to the penalties as provided in chapter 9A.72 RCW for false swearing. The first claim shall include proof of the claimant's age acceptable to the department.

(3) The following documentation shall be filed with a claim along with any other documentation required by the department:

(a) The deceased veteran's DD 214 report of separation, or its equivalent, that must be under honorable conditions;

(b) A copy of the applicant's certificate of marriage to the deceased;

(c) A copy of the deceased veteran's death certificate; and

(d) A letter from the United States veterans' administration certifying that the death of the veteran meets the requirements of section 1(2) of this act.

The department of veterans affairs shall assist an eligible widow or widower in the preparation and submission of an application and the procurement of necessary substantiating documentation.

(4) The department shall determine if each claimant is eligible each year. Any applicant aggrieved by the department's denial of assistance may petition the state board of tax appeals to review the denial and the board shall consider any appeals to determine (a) if the claimant is entitled to assistance and (b) the amount or portion thereof.

NEW SECTION. Sec. 3. (1) Claims for assistance for all years following the first year may be made by filing with the department no later than thirty days before the tax is due a renewal form in duplicate, prescribed by the department, that affirms the continued eligibility of the claimant.

(2) In January of each year, the department shall send to each claimant who has been granted assistance for the previous year renewal forms and notice to renew.

NEW SECTION. Sec. 4. If the claimant is unable to make his or her own claim, it may be made by a duly authorized agent or by a guardian or other person charged with care of the person or property of the claimant.

NEW SECTION. Sec. 5. If the claimant receiving assistance under section 1 of this act ceases to reside permanently on the property for which the claim is made between the date of filing the declaration and December 15th of that year, the amount of assistance otherwise allowable under section 1 of this act shall not be allowed for that portion of the year in which the claimant was not qualified, and that amount shall constitute a lien on the property in favor of the state and shall have priority as provided in chapter 84.60 RCW until repaid to the department.

NEW SECTION. **Sec. 6.** (1) The department shall consult with the appropriate county assessors and county treasurers to determine the amount of assistance to which each claimant is eligible and the appropriate method of providing the assistance. The department shall pay, from amounts appropriated for this purpose, to the claimant, the claimant's mortgage company, or the county treasurer, as appropriate for each claimant, the amount of assistance to which the claimant is entitled under section 1 of this act.

(2) The department shall request in its biennial budget request an appropriation to satisfy its obligations under this section.

Sec. 7. RCW 82.03.130 and 1998 c 54 s 1 are each amended to read as follows:

(1) The board shall have jurisdiction to decide the following types of appeals:

(a) Appeals taken pursuant to RCW 82.03.190.

(b) Appeals from a county board of equalization pursuant to RCW 84.08.130.

(c) Appeals by an assessor or landowner from an order of the director of revenue made pursuant to RCW 84.08.010 and 84.08.060, if filed with the board of tax appeals within thirty days after the mailing of the order, the right to such an appeal being hereby established.

(d) Appeals by an assessor or owner of an intercounty public utility or private car company from determinations by the director of revenue of equalized assessed valuation of property and the apportionment thereof to a county made pursuant to chapter 84.12 and 84.16 RCW, if filed with the board of tax appeals within thirty days after mailing of the determination, the right to such appeal being hereby established.

(e) Appeals by an assessor, landowner, or owner of an intercounty public utility or private car company from a determination of any county indicated ratio for such county compiled by the department of revenue pursuant to RCW 84.48.075: PROVIDED, That

(i) Said appeal be filed after review of the ratio under RCW 84.48.075(3) and not later than fifteen days after the mailing of the certification; and

(ii) The hearing before the board shall be expeditiously held in accordance with rules prescribed by the board and shall take precedence over all matters of the same character.

(f) Appeals from the decisions of sale price of second class shorelands on navigable lakes by the department of natural resources pursuant to RCW 79.94.210.

(g) Appeals from urban redevelopment property tax apportionment district proposals established by governmental ordinances pursuant to RCW 39.88.060.

(h) Appeals from interest rates as determined by the department of revenue for use in valuing farmland under current use assessment pursuant to RCW 84.34.065.

(i) Appeals from revisions to stumpage value tables used to determine value by the department of revenue pursuant to RCW 84.33.091.

(j) Appeals from denial of tax exemption application by the department of revenue pursuant to RCW 84.36.850.

(k) Appeals pursuant to RCW 84.40.038(3).

(l) Appeals pursuant to section 2 of this act.

(2) Except as otherwise specifically provided by law hereafter, the provisions of RCW 1.12.070 shall apply to all notices of appeal filed with the board of tax appeals.

NEW SECTION. Sec. 8. (1) The sum of ninety-three thousand dollars, or as much thereof as may be necessary, is appropriated from the general fund to the department of revenue for the fiscal year ending June 30, 2006, to carry out the purposes of this act.

(2) The sum of one hundred eighty-three thousand dollars, or as much thereof as may be necessary, is appropriated from the general fund to the department of revenue for the fiscal year ending June 30, 2007, to carry out the purposes of this act.

NEW SECTION. Sec. 9. This act applies to taxes levied for collection in 2006 and thereafter.

NEW SECTION. Sec. 10. Sections 1 through 6 of this act constitute a new chapter in Title 84 RCW.

Passed by the House April 23, 2005.

Passed by the Senate April 23, 2005.

Approved by the Governor May 3, 2005.

Filed in Office of Secretary of State May 3, 2005.

CHAPTER 254

[Substitute House Bill 2173]

MILITARY—SERVICE MEMBERS' CIVIL RELIEF

AN ACT Relating to service members' civil relief; adding a new chapter to Title 38 RCW; prescribing penalties; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. DEFINITIONS. The definitions in this section apply throughout this chapter.

(1) "Dependent" means:

(a) The service member's spouse;

(b) The service member's minor child; or

(c) An individual for whom the service member provided more than one-half of the individual's support for one hundred eighty days immediately preceding an application for relief under this chapter.

(2) "Judgment" does not include temporary orders as issued by a judicial court or administrative tribunal in domestic relations cases under Title 26 RCW, including but not limited to establishment of a temporary child support obligation, creation of a temporary parenting plan, or entry of a temporary protective or restraining order.

(3) "Military service" means a service member under a call to active service authorized by the president of the United States or the secretary of defense for a period of more than thirty consecutive days.

(4) "National guard" has the meaning in RCW 38.04.010.

(5) "Service member" means any resident of Washington state that is a member of the national guard or member of a military reserve component.

NEW SECTION. Sec. 2. APPLICABILITY OF CHAPTER. (1) Any service member who is ordered to report for military service and his or her dependents are entitled to the rights and protections of this chapter during the period beginning on the date on which the service member receives the order and ending one hundred eighty days after termination of or release from military service.

(2) This chapter applies to any judicial or administrative proceeding commenced in any court or agency in Washington state in which a service member or his or her dependent is a defendant. This chapter does not apply to criminal proceedings.

(3) This chapter shall be construed liberally so as to provide fairness and do substantial justice to service members and their dependents.

NEW SECTION. Sec. 3. PROTECTION OF PERSONS SECONDARILY LIABLE. (1) Whenever pursuant to this chapter a court stays, postpones, or suspends (a) the enforcement of an obligation or liability, (b) the prosecution of a suit or proceeding, (c) the entry or enforcement of an order, writ, judgment, or decree, or (d) the performance of any other act, the court may likewise grant such a stay, postponement, or suspension to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily subject to the obligation or liability the performance or enforcement of which is stayed, postponed, or suspended.

(2) When a judgment or decree is vacated or set aside, in whole or in part, pursuant to this chapter, the court may also set aside or vacate, as the case may be, the judgment or decree as to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily liable on the contract or liability for the enforcement of the judgment decree.

NEW SECTION. Sec. 4. WAIVER OF RIGHTS PURSUANT TO WRITTEN AGREEMENT. (1) A service member may waive any of the rights and protections provided by this chapter. In the case of a waiver that permits an action described in subsection (2) of this section, the waiver is effective only if made pursuant to a written agreement of the parties that is executed during or after the service member's period of military service. The written agreement shall specify the legal instrument to which the waiver applies and, if the service member is not party to that instrument, the service member concerned.

(2) The requirement in subsection (1) of this section for a written waiver applies to the following: (a) The modification, termination, or cancellation of a contract, lease, or bailment; or an obligation secured by a mortgage, trust, deed, lien, or other security in the nature of a mortgage; and (b) the repossession, retention, foreclosure, sale, forfeiture, or taking possession of property that is security for any obligation or was purchased or received under a contract, lease, or bailment.

NEW SECTION. Sec. 5. PROTECTION OF SERVICE MEMBERS AGAINST DEFAULT JUDGMENTS. (1) This section applies to any civil action or proceeding in which a service member or his or her dependent is a defendant and does not make an appearance under applicable court rules or by law.

(2) In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit:

(a) Stating whether the defendant is in military service, or is a dependent of a service member in military service, and showing necessary facts to support the affidavit; or

(b) If the plaintiff is unable to determine whether the defendant is in military service or is a dependent of a service member in military service, stating that the plaintiff is unable to determine whether the defendant is in military service or is a dependent of a service member in military service.

(3) If in an action covered by this section it appears that the defendant is in military service or is a dependent of a service member in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a service member or his or her dependent cannot locate the service member or dependent, actions by the attorney in the case do not waive any defense of the service member or dependent or otherwise bind the service member or dependent.

(4) In an action covered by this section in which the defendant is in military service or is a dependent of a service member in military service, the court shall grant a stay of proceedings until one hundred eighty days after termination of or release from military service, upon application of defense counsel, or on the court's own motion, if the court determines that:

(a) There may be a defense to the action and a defense cannot be presented without presence of the defendant; or

(b) After due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

(5) No bar to entry of judgment under subsection (3) of this section or requirement for grant of stay under subsection (4) of this section precludes the entry of temporary orders in domestic relations cases. If a court or administrative tribunal enters a temporary order as allowed under this subsection, it shall include a finding that failure to act, despite the absence of the service member, would result in manifest injustice to the other interested parties. Temporary orders issued without the service member's participation shall not set any precedent for the final disposition of the matters addressed therein.

(6) If a service member or dependent who is a defendant in an action covered by this section receives actual notice of the action, the service member or dependent may request a stay of proceedings pursuant to section 6 of this act.

(7) A person who makes or uses an affidavit permitted under this section knowing it to be false, is guilty of a class C felony.

(8) If a default judgment is entered in an action covered by this section against a service member or his or her dependent during the service member's period of military service or within one hundred eighty days after termination of or release from military service, the court entering the judgment shall, upon application by or on behalf of the service member or his or her dependent, reopen the judgment for the purpose of allowing the service member or his or her dependent to defend the action if it appears that:

(a) The service member or dependent was materially affected by reason of that military service in making a defense to the action; and

(b) The service member or dependent has a meritorious or legal defense to the action or some part of it.

(9) If a court vacates, sets aside, or reverses a default judgment against a service member or his or her dependent and the vacating, setting aside, or reversing is because of a provision of this chapter, that action does not impair a right or title acquired by a bona fide purchaser for value.

NEW SECTION. Sec. 6. STAY OF PROCEEDINGS WHEN SERVICE MEMBER HAS NOTICE. (1) This section applies to any civil action or proceeding in which a defendant at the time of filing an application under this section:

(a)(i) Is in military service, or it is within one hundred eighty days after termination of or release from military service; or

(ii) Is a dependent of a service member in military service; and

(b) Has received actual notice of the action or proceeding.

(2) At any stage before final judgment in a civil action or proceeding in which a service member or his or her dependent described in subsection (1) of this section is a party, the court may on its own motion and shall, upon application by the service member or his or her dependent, stay the action until one hundred eighty days after termination of or release from military service, if the conditions in subsection (3) of this section are met.

(3) An application for a stay under subsection (2) of this section shall include the following:

(a) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the service member's or dependent's ability to appear and stating a date when the service member or dependent will be available to appear; and

(b) A letter or other communication from the service member's commanding officer stating that the service member's current military duty prevents either the service member's or dependent's appearance and that military leave is not authorized for the service member at the time of the letter.

(4) An application for a stay under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense, including a defense relating to lack of personal jurisdiction.

(5) A service member or dependent who is granted a stay of a civil action or proceeding under subsection (2) of this section may apply for an additional stay based on the continuing material affect of military duty on the service member's or dependent's ability to appear. Such application may be made by the service member or his or her dependent at the time of the initial application under subsection (2) of this section or when it appears that the service member or his or her dependent is unable to prosecute or defend the action. The same information required under subsection (3) of this subsection shall be included in an application under this subsection.

(6) If the court refuses to grant an additional stay of proceedings under subsection (2) of this section, the court shall appoint counsel to represent the service member or his or her dependent in the action or proceeding.

(7) A service member or dependent who applies for a stay under this section and is unsuccessful may not seek the protections afforded by section 5 of this act.

NEW SECTION. Sec. 7. FINES AND PENALTIES UNDER CONTRACTS. (1) If an action for compliance with the terms of a contract is stayed pursuant to this chapter, a penalty shall not accrue for failure to comply with the terms of the contract during the period of the stay.

(2) If a service member or his or her dependent fails to perform an obligation arising under a contract and a penalty is incurred arising from that nonperformance, a court may reduce or waive the fine or penalty if:

(a)(i) The service member was in military service at the time the fine or penalty was incurred; or

(ii) The action is against a dependent of the service member and the service member was in military service at the time the fine or penalty was incurred; and

(b) The ability of the service member or dependent to perform the obligation was materially affected by the military service.

NEW SECTION. Sec. 8. CODEFENDANTS. If the service member or his or her dependent is a codefendant with others who are not in military service and who are not entitled to the relief and protections provided under this chapter, the plaintiff may proceed against those other defendants with the approval of the court.

NEW SECTION. Sec. 9. STATUTE OF LIMITATIONS. (1) The period of a service member's military service may not be included in computing any period limited by law, rule, or order, for the bringing of any action or proceeding in a court, or in any board bureau, commission, department, or other agency of a state, or political subdivision of a state, or the United States by or against the service member or the service member's dependents, heirs, executors, administrators, or assigns.

(2) A period of military service may not be included in computing any period provided by law for the redemption of real property sold or forfeited to enforce an obligation, tax, or assessment.

(3) This section does not apply to any period of limitation prescribed by or under the internal revenue laws of the United States.

NEW SECTION. Sec. 10. INAPPROPRIATE USE OF CHAPTER. If a court determines, in any proceeding to enforce a civil right, that any interest, property, or contract has been transferred or acquired with the intent to delay the just enforcement of such right by taking advantage of this chapter, the court shall enter such judgment or make such order as might lawfully be entered or made concerning such transfer or acquisition.

NEW SECTION. Sec. 11. This chapter may be known and cited as the Washington service members' civil relief act.

NEW SECTION. Sec. 12. Captions used in this act are no part of the law.

NEW SECTION. Sec. 13. Sections 1 through 12 of this act constitute a new chapter in Title 38 RCW.

NEW SECTION. Sec. 14. 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. 15. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House April 19, 2005.

Passed by the Senate April 6, 2005.

Approved by the Governor May 3, 2005.

Filed in Office of Secretary of State May 3, 2005.

CHAPTER 255

[Substitute Senate Bill 5112]

VETERANS—AFGHANISTAN—IRAQ

AN ACT Relating to veterans of the Afghanistan conflict and the Persian Gulf War II; and reenacting and amending RCW 41.04.005.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 41.04.005 and 2002 c 292 s 1 and 2002 c 27 s 1 are each reenacted and amended to read as follows:

(1) As used in RCW 41.04.005, 41.16.220, 41.20.050, 41.40.170, and 28B.15.380 "veteran" includes every person, who at the time he or she seeks the benefits of RCW 41.04.005, 41.16.220, 41.20.050, 41.40.170, or 28B.15.380 has received an honorable discharge or received a discharge for physical reasons with an honorable record and who meets at least one of the following criteria:

(a) The person has served between World War I and World War II or during any period of war, as defined in subsection (2) of this section, as either:

(i) A member in any branch of the armed forces of the United States;

(ii) A member of the women's air forces service pilots;

(iii) A U.S. documented merchant mariner with service aboard an oceangoing vessel operated by the war shipping administration, the office of defense transportation, or their agents, from December 7, 1941, through December 31, 1946; or

(iv) A civil service crewmember with service aboard a U.S. army transport service or U.S. naval transportation service vessel in oceangoing service from December 7, 1941, through December 31, 1946; or

(b) The person has received the armed forces expeditionary medal, or marine corps and navy expeditionary medal, for opposed action on foreign soil, for service:

(i) In any branch of the armed forces of the United States; or

(ii) As a member of the women's air forces service pilots.

(2) A "period of war" includes:

(a) World War I;

(b) World War II;

(c) The Korean conflict;

(d) The Vietnam era(~~([which])~~), which means:

(i) The period beginning on February 28, 1961, and ending on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period;

(ii) The period beginning August 5, 1964, and ending on May 7, 1975;

(e) The Persian Gulf War, which was the period beginning August 2, 1990, and ending on the date prescribed by presidential proclamation or law;

(f) The period beginning on the date of any future declaration of war by the congress and ending on the date prescribed by presidential proclamation or concurrent resolution of the congress; and

(g) The following armed conflicts, if the participant was awarded the respective campaign badge or medal: The crisis in Lebanon; the invasion of Grenada; Panama, Operation Just Cause; Somalia, Operation Restore Hope; Haiti, Operation Uphold Democracy; and Bosnia, Operation Joint Endeavor; southern or central Asia, Operation Enduring Freedom; Persian Gulf, Operation Iraqi Freedom.

Passed by the Senate April 18, 2005.

Passed by the House April 5, 2005.

Approved by the Governor May 3, 2005.

Filed in Office of Secretary of State May 3, 2005.

CHAPTER 256

[Engrossed Substitute Senate Bill 5415]

MILITARY BORROWERS

AN ACT Relating to making loans under chapter 31.45 RCW to military borrowers; and adding a new section to chapter 31.45 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. **Sec. 1.** A new section is added to chapter 31.45 RCW to read as follows:

(1) A licensee shall:

(a) When collecting any delinquent small loan, not garnish any wages or salary paid for service in the armed forces;

(b) Defer for the duration of the posting all collection activity against a military borrower who has been deployed to a combat or combat support posting for the duration of the posting;

(c) Not contact the military chain of command of a military borrower in an effort to collect a delinquent small loan;

(d) Honor the terms of any repayment agreement between the licensee and any military borrower, including any repayment agreement negotiated through military counselors or third party credit counselors; and

(e) Not make a loan from a specific location to a person that the licensee knows is a military borrower when the military borrower's commander has notified the licensee in writing that the specific location is designated off-limits to military personnel under their command.

(2) For purposes of this section, "military borrower" means any active duty member of the armed forces of the United States, or any member of the national guard or the reserves of the armed forces of the United States who has been called to active duty.

Passed by the Senate April 18, 2005.

Passed by the House April 15, 2005.

Approved by the Governor May 3, 2005.

Filed in Office of Secretary of State May 3, 2005.

CHAPTER 257

[Substitute Senate Bill 5539]

VETERANS CONSERVATION CORPS

AN ACT Relating to restoring Washington's watersheds with help from postconflict veterans; reenacting and amending RCW 77.85.130; adding a new section to chapter 43.60A RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that many Washington citizens are veterans of armed forces conflicts that have important skills that may be employed in projects that help to protect and restore Washington's rivers, streams, lakes, marine waters, and open lands. The legislature further finds that such work has demonstrated benefits for many veterans who are coping with posttraumatic stress disorder or have other mental health or substance abuse disorders related to their service in the armed forces. Therefore, it is the purpose of this chapter to create a program that provides state funding assistance for projects that restore Washington's waters, forests, and habitat through the primary participation of such veterans.

NEW SECTION. Sec. 2. A new section is added to chapter 43.60A RCW to read as follows:

The department shall create a list of veterans with posttraumatic stress disorder and related conditions who are interested in working on projects that restore Washington's natural habitat. The list shall be referred to as the veterans conservation corps. The department shall promote the opportunity to volunteer for the veterans conservation corps through its local counselors and representative. Only veterans who grant their approval may be included on the list. The department shall consult with the salmon recovery board, the interagency committee for outdoor recreation, the department of natural resources, the department of fish and wildlife, and the state parks and recreation commission to determine the most effective ways to market the veterans conservation corps to agencies and local sponsors of habitat restoration projects.

The department shall submit a report to the appropriate committees of the legislature by December 1, 2009, on the use of veterans conservation corps members by state agencies and local sponsors of habitat restoration projects.

Sec. 3. RCW 77.85.130 and 2000 c 107 s 102 and 2000 c 15 s 1 are each reenacted and amended to read as follows:

(1) The salmon recovery funding board shall develop procedures and criteria for allocation of funds for salmon habitat projects and salmon recovery activities on a statewide basis to address the highest priorities for salmon habitat protection and restoration. To the extent practicable the board shall adopt an annual allocation of funding. The allocation should address both protection and restoration of habitat, and should recognize the varying needs in each area of the state on an equitable basis. The board has the discretion to partially fund, or to fund in phases, salmon habitat projects. The board may annually establish a maximum amount of funding available for any individual project, subject to available funding. No projects required solely as a mitigation or a condition of permitting are eligible for funding.

(2)(a) In evaluating, ranking, and awarding funds for projects and activities the board shall give preference to projects that:

(i) Are based upon the limiting factors analysis identified under RCW 77.85.060;

(ii) Provide a greater benefit to salmon recovery based upon the stock status information contained in the department of fish and wildlife salmonid stock inventory (SASSI), the salmon and steelhead habitat inventory and assessment project (SSHAP), and any comparable science-based assessment when available;

(iii) Will benefit listed species and other fish species; and

(iv) Will preserve high quality salmonid habitat.

(b) In evaluating, ranking, and awarding funds for projects and activities the board shall also give consideration to projects that:

(i) Are the most cost-effective;

(ii) Have the greatest matched or in-kind funding; ~~((and))~~

(iii) Will be implemented by a sponsor with a successful record of project implementation; and

(iv) Involve members of the veterans conservation corps established in section 2 of this act.

(3) The board may reject, but not add, projects from a habitat project list submitted by a lead entity for funding.

(4) For fiscal year 2000, the board may authorize the interagency review team to evaluate, rank, and make funding decisions for categories of projects or activities or from funding sources provided for categories of projects or activities. In delegating such authority the board shall consider the review team's staff resources, procedures, and technical capacity to meet the purposes and objectives of this chapter. The board shall maintain general oversight of the team's exercise of such authority.

(5) The board shall seek the guidance of the technical review team to ensure that scientific principles and information are incorporated into the allocation standards and into proposed projects and activities. If the technical review team determines that a habitat project list complies with the critical pathways methodology under RCW 77.85.060, it shall provide substantial weight to the list's project priorities when making determinations among applications for funding of projects within the area covered by the list.

(6) The board shall establish criteria for determining when block grants may be made to a lead entity or other recognized regional recovery entity consistent with one or more habitat project lists developed for that region. Where a lead entity has been established pursuant to RCW 77.85.050, the board may provide grants to the lead entity to assist in carrying out lead entity functions under this chapter, subject to available funding. The board shall determine an equitable minimum amount of funds for each region, and shall distribute the remainder of funds on a competitive basis.

(7) The board may waive or modify portions of the allocation procedures and standards adopted under this section in the award of grants or loans to conform to legislative appropriations directing an alternative award procedure or when the funds to be awarded are from federal or other sources requiring other allocation procedures or standards as a condition of the board's receipt of the funds. The board shall develop an integrated process to manage the allocation of funding from federal and state sources to minimize delays in the award of

funding while recognizing the differences in state and legislative appropriation timing.

(8) The board may award a grant or loan for a salmon recovery project on private or public land when the landowner has a legal obligation under local, state, or federal law to perform the project, when expedited action provides a clear benefit to salmon recovery, and there will be harm to salmon recovery if the project is delayed. For purposes of this subsection, a legal obligation does not include a project required solely as a mitigation or a condition of permitting.

(9) The board may condition a grant or loan to include the requirement that property may only be transferred to a federal agency if the agency that will acquire the property agrees to comply with all terms of the grant or loan to which the project sponsor was obligated. Property acquired or improved by a project sponsor may be conveyed to a federal agency, but only if the agency agrees to comply with all terms of the grant or loan to which the project sponsor was obligated.

Passed by the Senate April 20, 2005.

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CHAPTER 258

[Engrossed Second Substitute House Bill 1794]

BACCALAUREATE DEGREE PROGRAMS

AN ACT Relating to expanding access to baccalaureate degree programs; amending RCW 28B.45.014, 28B.45.020, 28B.45.030, 28B.45.040, 28B.50.020, 28B.50.030, 28B.50.140, 28B.15.069, and 28B.76.230; adding new sections to chapter 28B.50 RCW; creating new sections; and providing an expiration date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) Since their creation in 1989, the research university branch campuses have significantly expanded access to baccalaureate and graduate education for placebound students in Washington's urban and metropolitan cities. Furthermore, the campuses have contributed to community revitalization and economic development in their regions. The campuses have met their overall mission through the development of new degree programs and through collaboration with community and technical colleges. These findings were confirmed by a comprehensive review of the campuses by the Washington state institute for public policy in 2002 and 2003, and reaffirmed through legislation enacted in 2004 that directed four of the campuses to make recommendations for their future evolution.

(2) The self-studies conducted by the University of Washington Bothell, University of Washington Tacoma, Washington State University Tri-Cities, and Washington State University Vancouver reflect thoughtful and strategic planning and involved the input of numerous students, faculty, community and business leaders, community colleges, advisory committees, and board members. The higher education coordinating board's careful review provides a statewide context for the legislature to implement the next stage of the campuses.

(3) Concurrently, the higher education coordinating board has developed a strategic master plan for higher education that sets a goal of increasing the

number of students who earn college degrees at all levels: Associate, baccalaureate, and graduate. The strategic master plan also sets a goal to increase the higher education system's responsiveness to the state's economic needs.

(4) The legislature finds that to meet both of the master plan's goals and to provide adequate educational opportunities for Washington's citizens, additional access is needed to baccalaureate degree programs. Expansion of the four campuses is one strategy for achieving the desired outcomes of the master plan. Other strategies must also be implemented through service delivery models that reflect both regional demands and statewide priorities.

(5) Therefore, the legislature intends to increase baccalaureate access and encourage economic development through overall expansion of upper division capacity, continued development of two plus two programs in some areas of the state, authorization of four-year university programs in other areas of the state, and creation of new types of baccalaureate programs on a pilot basis. These steps will make significant progress toward achieving the master plan goals, but the legislature will also continue to monitor the development of the higher education system and evaluate what additional changes or expansion may be necessary.

Sec. 2. RCW 28B.45.014 and 2004 c 57 s 2 are each amended to read as follows:

(1) The primary mission of the higher education branch campuses created under this chapter remains to expand access to baccalaureate and master's level graduate education in underserved urban areas of the state in collaboration with community and technical colleges. The top priority for each of the campuses is to expand courses and degree programs for transfer and graduate students. New degree programs should be driven by the educational needs and demands of students and the community, as well as the economic development needs of local businesses and employers.

(2) Branch campuses shall collaborate with the community and technical colleges in their region to develop articulation agreements, dual admissions policies, and other partnerships to ensure that branch campuses serve as innovative models of a two plus two educational system. Other possibilities for collaboration include but are not limited to joint development of curricula and degree programs, colocation of instruction, and arrangements to share faculty.

(3) In communities where a private postsecondary institution is located, representatives of the private institution may be invited to participate in the conversation about meeting the baccalaureate and master's level graduate needs in underserved urban areas of the state.

(4) However, the legislature recognizes there are alternative models for achieving this primary mission. Some campuses may have additional missions in response to regional needs and demands. At selected branch campuses, an innovative combination of instruction and research targeted to support regional economic development may be appropriate to meet the region's needs for both access and economic viability. Other campuses should focus on becoming models of a two plus two educational system through continuous improvement of partnerships and agreements with community and technical colleges. Still other campuses may be best suited to transition to a four-year ((comprehensive)) university or be removed from designation as a branch campus entirely.

(5) ~~(It is the legislature's intent that each branch campus be funded commensurate with its unique mission, the degree programs offered, and the institutional combination of instruction and research, but at a level less than a research university))~~ The legislature recognizes that size, mix of degree programs, and proportion of lower versus upper-division and graduate enrollments are factors that affect costs at branch campuses. However over time, the legislature intends that branch campuses be funded more similarly to regional universities.

(6) In consultation with the higher education coordinating board, a branch campus may propose legislation to authorize practice-oriented or professional doctoral programs if: (a) Unique research facilities and equipment are located near the campus; or (b) the campus can clearly demonstrate student and employer demand in the region that is linked to regional economic development.

(7) It is not the legislature's intent to have each campus chart its own future path without legislative guidance. Instead, the legislature intends to consider carefully the mission and model of education that best suits each campus and best meets the needs of students, the community, and the region. The higher education coordinating board shall monitor and evaluate the addition of lower division students to the branch campuses and periodically report and make recommendations to the higher education committees of the legislature to ensure the campuses continue to follow the priorities established under this chapter.

Sec. 3. RCW 28B.45.020 and 1994 c 217 s 3 are each amended to read as follows:

(1) The University of Washington is responsible for ensuring the expansion of ~~((upper division))~~ baccalaureate and graduate educational programs in the central Puget Sound area under rules or guidelines adopted by the higher education coordinating board and in accordance with proportionality agreements emphasizing access for transfer students developed with the state board for community and technical colleges. The University of Washington shall meet that responsibility through the operation of at least two branch campuses. One branch campus shall be located in the Tacoma area. Another branch campus shall be collocated with Cascadia Community College in the Bothell-Woodinville area.

(2) At the University of Washington Tacoma, a top priority is expansion of upper division capacity for transfer students and graduate capacity and programs. Beginning in the fall of 2006, the campus may offer lower division courses linked to specific majors in fields not addressed at local community colleges. The campus shall admit lower division students through coadmission or coenrollment agreements with a community college, or through direct transfer for students who have accumulated approximately one year of transferable college credits. In addition to offering lower division courses linked to specific majors as addressed above, the campus may also directly admit freshmen and sophomores gradually and deliberately in accordance with the campus plan submitted to the higher education coordinating board in 2004.

(3) At the University of Washington Bothell, a top priority is expansion of upper division capacity for transfer students and graduate capacity and programs. The campus shall also seek additional opportunities to collaborate with and maximize its collocation with Cascadia Community College. Beginning in the fall of 2006, the campus may offer lower division courses

linked to specific majors in fields not addressed at local community colleges. The campus may admit lower division students through coadmission or coenrollment agreements with a community college, or through direct transfer for students who have accumulated approximately one year of transferable college credits. In addition to offering lower division courses linked to specific majors as addressed above, the campus may also directly admit freshmen and sophomores gradually and deliberately in accordance with the campus plan submitted to the higher education coordinating board in 2004.

Sec. 4. RCW 28B.45.030 and 1989 1st ex.s. c 7 s 4 are each amended to read as follows:

(1) Washington State University is responsible for providing (~~upper-division~~) baccalaureate and graduate level higher education programs to the citizens of the Tri-Cities area, under rules or guidelines adopted by the higher education coordinating board and in accordance with proportionality agreements emphasizing access for transfer students developed with the state board for community and technical colleges. Washington State University shall meet that responsibility through the operation of a branch campus in the Tri-Cities area. The branch campus shall replace and supersede the Tri-Cities university center. All land, facilities, equipment, and personnel of the Tri-Cities university center shall be transferred from the University of Washington to Washington State University.

(2) Washington State University Tri-Cities shall continue providing innovative coadmission and coenrollment options with Columbia Basin College, and expand its upper division capacity for transfer students and graduate capacity and programs. The campus shall also seek additional opportunities to collaborate with the Pacific Northwest national laboratory. Beginning in the fall of 2006, the campus may offer lower division courses linked to specific majors in fields not addressed at local community colleges. The campus may admit lower division students through coadmission or coenrollment agreements with a community college, or through direct transfer for students who have accumulated approximately one year of transferable college credits. In addition to offering lower division courses linked to specific majors as addressed above, the campus may also directly admit freshmen and sophomores for a bachelor's degree program in biotechnology subject to approval by the higher education coordinating board. The campus may not directly admit freshmen and sophomores for degree programs other than biotechnology, however this topic shall be the subject of further study and recommendations by the higher education coordinating board.

Sec. 5. RCW 28B.45.040 and 1989 1st ex.s. c 7 s 5 are each amended to read as follows:

(1) Washington State University is responsible for providing (~~upper-division~~) baccalaureate and graduate level higher education programs to the citizens of the southwest Washington area, under rules or guidelines adopted by the higher education coordinating board and in accordance with proportionality agreements emphasizing access for transfer students developed with the state board for community and technical colleges. Washington State University shall meet that responsibility through the operation of a branch campus in the southwest Washington area.

(2) Washington State University Vancouver shall expand upper division capacity for transfer students and graduate capacity and programs and continue to collaborate with local community colleges on coadmission and coenrollment programs. In addition, beginning in the fall of 2006, the campus may admit lower division students directly. By simultaneously admitting freshmen and sophomores, increasing transfer enrollment, coadmitting transfer students, and expanding graduate and professional programs, the campus shall develop into a four-year institution serving the southwest Washington region.

NEW SECTION. Sec. 6. A new section is added to chapter 28B.50 RCW to read as follows:

(1) The college board shall select four community or technical colleges to develop and offer programs of study leading to an applied baccalaureate degree. At least one of the four pilot programs chosen must lead to a baccalaureate of applied science degree which builds on an associate of applied science degree. The college board shall convene a task force that includes representatives of both the community and technical colleges to develop objective selection criteria.

(2) Colleges may submit an application to become a pilot college under this section. The college board shall review the applications and select the pilot colleges using objective criteria, including:

(a) The college demonstrates the capacity to make a long-term commitment of resources to build and sustain a high quality program;

(b) The college has or can readily engage faculty appropriately qualified to develop and deliver a high quality curriculum at the baccalaureate level;

(c) The college can demonstrate demand for the proposed program from a sufficient number of students within its service area to make the program cost-effective and feasible to operate;

(d) The college can demonstrate that employers demand the level of technical training proposed within the program, making it cost-effective for students to seek the degree; and

(e) The proposed program fills a gap in options available for students because it is not offered by a public four-year institution of higher education in the college's geographic area.

(3) A college selected as a pilot college under this section may develop the curriculum for and design and deliver courses leading to an applied baccalaureate degree. However, degree programs developed under this section are subject to approval by the college board under RCW 28B.50.090 and by the higher education coordinating board under RCW 28B.76.230 before a pilot college may enroll students in upper-division courses. A pilot college may not enroll students in upper division courses before the fall academic quarter of 2006.

Sec. 7. RCW 28B.50.020 and 1991 c 238 s 21 are each amended to read as follows:

The purpose of this chapter is to provide for the dramatically increasing number of students requiring high standards of education either as a part of the continuing higher education program or for occupational education and training, or for adult basic skills and literacy education, by creating a new, independent system of community and technical colleges which will:

(1) Offer an open door to every citizen, regardless of his or her academic background or experience, at a cost normally within his or her economic means;

(2) Ensure that each college district shall offer thoroughly comprehensive educational, training and service programs to meet the needs of both the communities and students served by combining high standards of excellence in academic transfer courses; realistic and practical courses in occupational education, both graded and ungraded; community services of an educational, cultural, and recreational nature; and adult education, including basic skills and general, family, and work force literacy programs and services. However, college districts containing only technical colleges shall maintain programs solely for occupational education, basic skills, and literacy purposes, and, for as long as a need exists, may continue those programs, activities, and services offered by the technical colleges during the twelve-month period preceding September 1, 1991;

(3) Provide for basic skills and literacy education, and occupational education and technical training at technical colleges in order to prepare students for careers in a competitive work force;

(4) Provide or coordinate related and supplemental instruction for apprentices at community and technical colleges;

(5) Provide administration by state and local boards which will avoid unnecessary duplication of facilities or programs; and which will encourage efficiency in operation and creativity and imagination in education, training and service to meet the needs of the community and students;

(6) Allow for the growth, improvement, flexibility and modification of the community colleges and their education, training and service programs as future needs occur; and

(7) Establish firmly that, except on a pilot basis as provided under section 6 of this act, community colleges are, for purposes of academic training, two year institutions, and are an independent, unique, and vital section of our state's higher education system, separate from both the common school system and other institutions of higher learning, and never to be considered for conversion into four-year liberal arts colleges.

Sec. 8. RCW 28B.50.030 and 2003 2nd sp.s. c 4 s 33 are each amended to read as follows:

As used in this chapter, unless the context requires otherwise, the term:

(1) "System" shall mean the state system of community and technical colleges, which shall be a system of higher education.

(2) "Board" shall mean the work force training and education coordinating board.

(3) "College board" shall mean the state board for community and technical colleges created by this chapter.

(4) "Director" shall mean the administrative director for the state system of community and technical colleges.

(5) "District" shall mean any one of the community and technical college districts created by this chapter.

(6) "Board of trustees" shall mean the local community and technical college board of trustees established for each college district within the state.

(7) "Occupational education" shall mean that education or training that will prepare a student for employment that does not require a baccalaureate degree, and education and training leading to an applied baccalaureate degree.

(8) "K-12 system" shall mean the public school program including kindergarten through the twelfth grade.

(9) "Common school board" shall mean a public school district board of directors.

(10) "Community college" shall include those higher education institutions that conduct education programs under RCW 28B.50.020.

(11) "Technical college" shall include those higher education institutions with the sole mission of conducting occupational education, basic skills, literacy programs, and offering on short notice, when appropriate, programs that meet specific industry needs. The programs of technical colleges shall include, but not be limited to, continuous enrollment, competency-based instruction, industry-experienced faculty, curriculum integrating vocational and basic skills education, and curriculum approved by representatives of employers and labor. For purposes of this chapter, technical colleges shall include Lake Washington Vocational-Technical Institute, Renton Vocational-Technical Institute, Bates Vocational-Technical Institute, Clover Park Vocational Institute, and Bellingham Vocational-Technical Institute.

(12) "Adult education" shall mean all education or instruction, including academic, vocational education or training, basic skills and literacy training, and "occupational education" provided by public educational institutions, including common school districts for persons who are eighteen years of age and over or who hold a high school diploma or certificate. However, "adult education" shall not include academic education or instruction for persons under twenty-one years of age who do not hold a high school degree or diploma and who are attending a public high school for the sole purpose of obtaining a high school diploma or certificate, nor shall "adult education" include education or instruction provided by any four year public institution of higher education.

(13) "Dislocated forest product worker" shall mean a forest products worker who: (a)(i) Has been terminated or received notice of termination from employment and is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for his or her skills in that occupation or industry; or (ii) is self-employed and has been displaced from his or her business because of the diminishing demand for the business' services or goods; and (b) at the time of last separation from employment, resided in or was employed in a rural natural resources impact area.

(14) "Forest products worker" shall mean a worker in the forest products industries affected by the reduction of forest fiber enhancement, transportation, or production. The workers included within this definition shall be determined by the employment security department, but shall include workers employed in the industries assigned the major group standard industrial classification codes "24" and "26" and the industries involved in the harvesting and management of logs, transportation of logs and wood products, processing of wood products, and the manufacturing and distribution of wood processing and logging equipment. The commissioner may adopt rules further interpreting these

definitions. For the purposes of this subsection, "standard industrial classification code" means the code identified in RCW 50.29.025(3).

(15) "Dislocated salmon fishing worker" means a finfish products worker who: (a)(i) Has been terminated or received notice of termination from employment and is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for his or her skills in that occupation or industry; or (ii) is self-employed and has been displaced from his or her business because of the diminishing demand for the business's services or goods; and (b) at the time of last separation from employment, resided in or was employed in a rural natural resources impact area.

(16) "Salmon fishing worker" means a worker in the finfish industry affected by 1994 or future salmon disasters. The workers included within this definition shall be determined by the employment security department, but shall include workers employed in the industries involved in the commercial and recreational harvesting of finfish including buying and processing finfish. The commissioner may adopt rules further interpreting these definitions.

(17) "Rural natural resources impact area" means:

(a) A nonmetropolitan county, as defined by the 1990 decennial census, that meets three of the five criteria set forth in subsection (18) of this section;

(b) A nonmetropolitan county with a population of less than forty thousand in the 1990 decennial census, that meets two of the five criteria as set forth in subsection (18) of this section; or

(c) A nonurbanized area, as defined by the 1990 decennial census, that is located in a metropolitan county that meets three of the five criteria set forth in subsection (18) of this section.

(18) For the purposes of designating rural natural resources impact areas, the following criteria shall be considered:

(a) A lumber and wood products employment location quotient at or above the state average;

(b) A commercial salmon fishing employment location quotient at or above the state average;

(c) Projected or actual direct lumber and wood products job losses of one hundred positions or more;

(d) Projected or actual direct commercial salmon fishing job losses of one hundred positions or more; and

(e) An unemployment rate twenty percent or more above the state average. The counties that meet these criteria shall be determined by the employment security department for the most recent year for which data is available. For the purposes of administration of programs under this chapter, the United States post office five-digit zip code delivery areas will be used to determine residence status for eligibility purposes. For the purpose of this definition, a zip code delivery area of which any part is ten miles or more from an urbanized area is considered nonurbanized. A zip code totally surrounded by zip codes qualifying as nonurbanized under this definition is also considered nonurbanized. The office of financial management shall make available a zip code listing of the areas to all agencies and organizations providing services under this chapter.

(19) "Applied baccalaureate degree" means a baccalaureate degree awarded by a college under section 6 of this act for successful completion of a program of study that is:

(a) Specifically designed for individuals who hold an associate of applied science degree, or its equivalent, in order to maximize application of their technical course credits toward the baccalaureate degree; and

(b) Based on a curriculum that incorporates both theoretical and applied knowledge and skills in a specific technical field.

Sec. 9. RCW 28B.50.140 and 2004 c 275 s 58 are each amended to read as follows:

Each board of trustees:

(1) Shall operate all existing community and technical colleges in its district;

(2) Shall create comprehensive programs of community and technical college education and training and maintain an open-door policy in accordance with the provisions of RCW 28B.50.090(3). However, technical colleges, and college districts containing only technical colleges, shall maintain programs solely for occupational education, basic skills, and literacy purposes. For as long as a need exists, technical colleges may continue those programs, activities, and services they offered during the twelve-month period preceding September 1, 1991;

(3) Shall employ for a period to be fixed by the board a college president for each community and technical college and, may appoint a president for the district, and fix their duties and compensation, which may include elements other than salary. Compensation under this subsection shall not affect but may supplement retirement, health care, and other benefits that are otherwise applicable to the presidents as state employees. The board shall also employ for a period to be fixed by the board members of the faculty and such other administrative officers and other employees as may be necessary or appropriate and fix their salaries and duties. Compensation and salary increases under this subsection shall not exceed the amount or percentage established for those purposes in the state appropriations act by the legislature as allocated to the board of trustees by the state board for community and technical colleges. The state board for community and technical colleges shall adopt rules defining the permissible elements of compensation under this subsection;

(4) May establish, under the approval and direction of the college board, new facilities as community needs and interests demand. However, the authority of boards of trustees to purchase or lease major off-campus facilities shall be subject to the approval of the higher education coordinating board pursuant to RCW 28B.76.230;

(5) May establish or lease, operate, equip and maintain dormitories, food service facilities, bookstores and other self-supporting facilities connected with the operation of the community and technical college;

(6) May, with the approval of the college board, borrow money and issue and sell revenue bonds or other evidences of indebtedness for the construction, reconstruction, erection, equipping with permanent fixtures, demolition and major alteration of buildings or other capital assets, and the acquisition of sites, rights-of-way, easements, improvements or appurtenances, for dormitories, food service facilities, and other self-supporting facilities connected with the

operation of the community and technical college in accordance with the provisions of RCW 28B.10.300 through 28B.10.330 where applicable;

(7) May establish fees and charges for the facilities authorized hereunder, including reasonable rules and regulations for the government thereof, not inconsistent with the rules (~~(and regulations)~~) of the college board; each board of trustees operating a community and technical college may enter into agreements, subject to rules (~~(and regulations)~~) of the college board, with owners of facilities to be used for housing regarding the management, operation, and government of such facilities, and any board entering into such an agreement may:

(a) Make rules (~~(and regulations)~~) for the government, management and operation of such housing facilities deemed necessary or advisable; and

(b) Employ necessary employees to govern, manage and operate the same;

(8) May receive such gifts, grants, conveyances, devises and bequests of real or personal property from private sources, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out the community and technical college programs as specified by law and the (~~(regulations)~~) rules of the state college board; sell, lease or exchange, invest or expend the same or the proceeds, rents, profits and income thereof according to the terms and conditions thereof; and adopt (~~(regulations)~~) rules to govern the receipt and expenditure of the proceeds, rents, profits and income thereof;

(9) May establish and maintain night schools whenever in the discretion of the board of trustees it is deemed advisable, and authorize classrooms and other facilities to be used for summer or night schools, or for public meetings and for any other uses consistent with the use of such classrooms or facilities for community and technical college purposes;

(10) May make rules (~~(and regulations)~~) for pedestrian and vehicular traffic on property owned, operated, or maintained by the district;

(11) Shall prescribe, with the assistance of the faculty, the course of study in the various departments of the community and technical college or colleges under its control, and publish such catalogues and bulletins as may become necessary;

(12) May grant to every student, upon graduation or completion of a course of study, a suitable diploma, (~~(nonbaccalaureate)~~) degree, or certificate. Technical colleges shall offer only (~~(nonbaccalaureate)~~) technical degrees under the rules of the state board for community and technical colleges that are appropriate to their work force education and training mission. The primary purpose of (~~(this)~~) these degrees is to lead the individual directly to employment in a specific occupation. Technical colleges may not offer transfer degrees. Only pilot colleges under section 6 of this act may award baccalaureate degrees. The board, upon recommendation of the faculty, may also confer honorary associate of arts degrees upon persons other than graduates of the community college, in recognition of their learning or devotion to education, literature, art, or science. No degree may be conferred in consideration of the payment of money or the donation of any kind of property;

(13) Shall enforce the rules (~~(and regulations)~~) prescribed by the state board for community and technical colleges for the government of community and technical colleges, students and teachers, and (~~(promulgate)~~) adopt such rules (~~(and regulations)~~) and perform all other acts not inconsistent with law or rules

~~((and regulations))~~ of the state board for community and technical colleges as the board of trustees may in its discretion deem necessary or appropriate to the administration of college districts: PROVIDED, That such rules ~~((and regulations))~~ shall include, but not be limited to, rules ~~((and regulations))~~ relating to housing, scholarships, conduct at the various community and technical college facilities, and discipline: PROVIDED, FURTHER, That the board of trustees may suspend or expel from community and technical colleges students who refuse to obey any of the duly ~~((promulgated))~~ adopted rules ~~((and regulations))~~);

(14) May, by written order filed in its office, delegate to the president or district president any of the powers and duties vested in or imposed upon it by this chapter. Such delegated powers and duties may be exercised in the name of the district board;

(15) May perform such other activities consistent with this chapter and not in conflict with the directives of the college board;

(16) Notwithstanding any other provision of law, may offer educational services on a contractual basis other than the tuition and fee basis set forth in chapter 28B.15 RCW for a special fee to private or governmental entities, consistent with rules ~~((and regulations))~~ adopted by the state board for community and technical colleges: PROVIDED, That the whole of such special fee shall go to the college district and be not less than the full instructional costs of such services including any salary increases authorized by the legislature for community and technical college employees during the term of the agreement: PROVIDED FURTHER, That enrollments generated hereunder shall not be counted toward the official enrollment level of the college district for state funding purposes;

(17) Notwithstanding any other provision of law, may offer educational services on a contractual basis, charging tuition and fees as set forth in chapter 28B.15 RCW, counting such enrollments for state funding purposes, and may additionally charge a special supplemental fee when necessary to cover the full instructional costs of such services: PROVIDED, That such contracts shall be subject to review by the state board for community and technical colleges and to such rules as the state board may adopt for that purpose in order to assure that the sum of the supplemental fee and the normal state funding shall not exceed the projected total cost of offering the educational service: PROVIDED FURTHER, That enrollments generated by courses offered on the basis of contracts requiring payment of a share of the normal costs of the course will be discounted to the percentage provided by the college;

(18) Shall be authorized to pay dues to any association of trustees that may be formed by the various boards of trustees; such association may expend any or all of such funds to submit biennially, or more often if necessary, to the governor and to the legislature, the recommendations of the association regarding changes which would affect the efficiency of such association;

(19) May participate in higher education centers and consortia that involve any four-year public or independent college or university: PROVIDED, That new degree programs or off-campus programs offered by a four-year public or independent college or university in collaboration with a community or technical college are subject to approval by the higher education coordinating board under RCW 28B.76.230; and

(20) Shall perform any other duties and responsibilities imposed by law or rule (~~(and regulation)~~) of the state board.

Sec. 10. RCW 28B.15.069 and 2003 c 232 s 5 are each amended to read as follows:

(1) The building fee for each academic year shall be a percentage of total tuition fees. This percentage shall be calculated by the higher education coordinating board and be based on the actual percentage the building fee is of total tuition for each tuition category in the 1994-95 academic year, rounded up to the nearest half percent.

(2) The governing boards of each institution of higher education, except for the technical colleges, shall charge to and collect from each student a services and activities fee. A governing board may increase the existing fee annually, consistent with budgeting procedures set forth in RCW 28B.15.045, by a percentage not to exceed the annual percentage increase in student tuition fees for resident undergraduate students: PROVIDED, That such percentage increase shall not apply to that portion of the services and activities fee previously committed to the repayment of bonded debt. These rate adjustments may exceed the fiscal growth factor. For the 2003-04 academic year, the services and activities fee shall be based upon the resident undergraduate services and activities fee in 2002-03. The services and activities fee committee provided for in RCW 28B.15.045 may initiate a request to the governing board for a fee increase.

(3) Tuition and services and activities fees consistent with subsection (2) of this section shall be set by the state board for community and technical colleges for community college summer school students unless the community college charges fees in accordance with RCW 28B.15.515.

(4) Subject to the limitations of RCW 28B.15.910, each governing board of a community college may charge such fees for ungraded courses, noncredit courses, community services courses, and self-supporting courses as it, in its discretion, may determine, consistent with the rules of the state board for community and technical colleges.

(5) The governing board of a college offering an applied baccalaureate degree program under section 6 of this act may charge tuition fees for those courses above the associate degree level at rates consistent with rules adopted by the state board for community and technical colleges, not to exceed tuition fee rates at the regional universities.

Sec. 11. RCW 28B.76.230 and 2004 c 275 s 9 are each amended to read as follows:

(1) The board shall develop a comprehensive and ongoing assessment process to analyze the need for additional degrees and programs, additional off-campus centers and locations for degree programs, and consolidation or elimination of programs by the four-year institutions.

(2) As part of the needs assessment process, the board shall examine:

(a) Projections of student, employer, and community demand for education and degrees, including liberal arts degrees, on a regional and statewide basis;

(b) Current and projected degree programs and enrollment at public and private institutions of higher education, by location and mode of service delivery; and

(c) Data from the work force training and education coordinating board and the state board for community and technical colleges on the supply and demand for work force education and certificates and associate degrees.

(3) Every two years the board shall produce, jointly with the state board for community and technical colleges and the work force training and education coordinating board, an assessment of the number and type of higher education and training credentials required to match employer demand for a skilled and educated work force. The assessment shall include the number of forecasted net job openings at each level of higher education and training and the number of credentials needed to match the forecast of net job openings.

(4) The board shall determine whether certain major lines of study or types of degrees, including applied degrees or research-oriented degrees, shall be assigned uniquely to some institutions or institutional sectors in order to create centers of excellence that focus resources and expertise.

(5) The following activities are subject to approval by the board:

(a) New degree programs by a four-year institution;

(b) Creation of any off-campus program by a four-year institution;

(c) Purchase or lease of major off-campus facilities by a four-year institution or a community or technical college;

(d) Creation of higher education centers and consortia; ~~((and))~~

(e) New degree programs and creation of off-campus programs by an independent college or university in collaboration with a community or technical college; and

(f) Applied baccalaureate degree programs developed by colleges under section 6 of this act.

(6) Institutions seeking board approval under this section must demonstrate that the proposal is justified by the needs assessment developed under this section. Institutions must also demonstrate how the proposals align with or implement the statewide strategic master plan for higher education under RCW 28B.76.200.

(7) The board shall develop clear guidelines and objective decision-making criteria regarding approval of proposals under this section, which must include review and consultation with the institution and other interested agencies and individuals.

(8) The board shall periodically recommend consolidation or elimination of programs at the four-year institutions, based on the needs assessment analysis.

NEW SECTION. Sec. 12. A new section is added to chapter 28B.50 RCW to read as follows:

(1) One strategy to accomplish expansion of baccalaureate capacity in underserved regions of the state is to allocate state funds for student enrollment to a community and technical college and authorize the college to enter into agreements with a regional university or state college as defined in RCW 28B.10.016 or a branch campus under chapter 28B.45 RCW, to offer baccalaureate degree programs.

(2) Subject to legislative appropriation for the purpose described in this section, the college board shall select and allocate funds to three community or technical colleges for the purpose of entering into an agreement with one or more regional universities, branch campuses, or the state college to offer baccalaureate degree programs on the college campus.

(3) The college board shall select the community or technical college based on analysis of gaps in service delivery, capacity, and student and employer demand for programs. Before taking effect, the agreement under this section must be approved by the higher education coordinating board.

(4) Students enrolled in programs under this section are considered students of the regional university, branch campus, or state college for all purposes including tuition and reporting of state-funded enrollments.

NEW SECTION. Sec. 13. (1) The legislature finds that access to baccalaureate and graduate degree programs continues to be limited for residents of North Snohomish, Island, and Skagit counties. Studies conducted by the state board for community and technical colleges, the higher education coordinating board, and the council of presidents confirm that enrollment in higher education in this geographic region lags enrollment in other parts of the state, particularly for upper division courses leading to advanced degrees. The higher education consortium created to serve the region has not been able to successfully address the region's access needs. The university center model of service delivery, centered on a community college campus with a single point of accountability, has proven more effective in developing degree programs and attracting students.

(2) Therefore the legislature intends to refocus the consortium by assigning management and leadership responsibility for consortium operations to Everett Community College. Everett Community College shall collaborate with community and business leaders, other local community colleges, the public four-year institutions of higher education, and the higher education coordinating board to develop an educational plan for the North Snohomish, Island, and Skagit county region based on the university center model. The plan should provide for projections of student enrollment demand, coordinated delivery of lower and upper division courses, expanded availability of baccalaureate degree programs and high demand degree and certificate programs in the region, and a timeline and cost estimates for moving the physical location of the consortium to the college campus. The college shall submit preliminary recommendations to the higher education and fiscal committees of the legislature by December 1, 2005.

NEW SECTION. Sec. 14. (1) The higher education coordinating board shall define potential outcomes resulting from this act and develop performance measures for those outcomes, including but not limited to increased numbers of baccalaureate degrees awarded; expansion of upper division and graduate capacity at the University of Washington Bothell and Tacoma and Washington State University Tri-Cities and Vancouver; enhanced regional access to baccalaureate programs; and creation and award of applied baccalaureate degrees. The board shall provide a progress report on the outcomes to the higher education committees of the senate and the house of representatives by December 1, 2008.

(2) This section expires July 1, 2009.

Passed by the House April 18, 2005.

Passed by the Senate April 7, 2005.

Approved by the Governor May 4, 2005.

Filed in Office of Secretary of State May 4, 2005.

CHAPTER 259

[Senate Bill 5311]

AUTISM TASK FORCE

AN ACT Relating to creating an autism task force; and creating new sections.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that:

(1) Autism is a complex developmental disability that typically appears during the first three years of life;

(2) As many as one million five hundred thousand Americans are believed to have some form of autism;

(3) The number of children with autism is increasing;

(4) Autistic behaviors not only make life difficult for people with autism but also make life hard for their families, health care providers, and teachers;

(5) Families coping with this devastating illness are searching for answers about its causes, diagnosis, prevention, and treatment;

(6) Presently, there is no effective means to prevent, fully treat, or cure the disorder;

(7) Early intervention is critical for affected children to gain maximum benefit from current therapies;

(8) Strategies about how to best prevent, identify, treat, and accommodate the needs of individuals with autism and their families are urgently needed.

NEW SECTION. Sec. 2. (1) The caring for Washington individuals with autism task force is created to study and make recommendations to the legislature regarding the growing incidence of autism and ways to improve the delivery and coordination of autism services in the state.

(2) The task force shall consist of fourteen members: Four members of the legislature, including two members of the senate appointed by the president of the senate, one of the majority party and one of the minority party, and two members of the house of representatives appointed by the speaker of the house of representatives, including one of the majority party and one of the minority party; and ten additional members appointed by the governor, who shall include at least:

(a) Two parents of children with autism;

(b) A representative of the autism center at the University of Washington;

(c) A representative of the department of health;

(d) A representative of the department of social and health services;

(e) A representative of the office of the superintendent of public instruction;

(f) A representative of a local school district;

(g) A representative of an educational service district; and

(h) An expert in the field of early intervention services.

(3) The task force shall:

(a) Review the available literature and consult with experts to gain an understanding of the causes of the disorder and its incidence in Washington;

(b) Assess the availability of services currently provided for early screening, diagnosis, and treatment of the disorder;

(c) Assess the availability of services to assist families of individuals with autism;

(d) Review the effectiveness of programs and services provided to individuals with autism and their families;

(e) Review other issues and concerns that the task force believes would be helpful in arriving at sound policy recommendations; and

(f) Complete its review and submit its recommendations to the appropriate policy and fiscal committees of the legislature and the governor by December 1, 2006.

(4) The department of health shall be the lead agency in providing staff needed for the performance of the work of the task force. The department may seek additional staff assistance from the office of the superintendent of public instruction and the committee staff of the legislature.

(5) Legislative members of the task force shall be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

Passed by the Senate April 16, 2005.

Passed by the House April 5, 2005.

Approved by the Governor May 4, 2005.

Filed in Office of Secretary of State May 4, 2005.

CHAPTER 260

[Substitute Senate Bill 5058]

FUEL TAXES—PAYMENT DATE

AN ACT Relating to changing the payment date of motor vehicle fuel tax and special fuel tax when paying by electronic funds transfer; amending RCW 82.36.035 and 82.38.160; repealing RCW 82.36.405 and 82.38.289; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 82.36.035 and 1998 c 176 s 12 are each amended to read as follows:

(1) The tax imposed by this chapter shall be computed by multiplying the tax rate per gallon provided in this chapter by the number of gallons of motor vehicle fuel subject to the motor vehicle fuel tax.

(2) Except as provided in subsection (3) of this section, tax reports shall be accompanied by a remittance payable to the state treasurer covering the tax amount determined to be due for the reporting period.

(3) If the tax is paid by electronic funds transfer, the tax shall be paid on or before the ~~((tenth))~~ twenty-sixth calendar day of the month ~~((that is the second month))~~ immediately following the reporting period. ~~((When the reporting period is May, the tax shall be paid on the last business day of June))~~ If the payment due date falls on a Saturday, Sunday, or legal holiday the next business day will be the payment date.

(4) The tax shall be paid by electronic funds transfer whenever the amount due is fifty thousand dollars or more.

(5) A motor vehicle fuel distributor shall remit tax on motor vehicle fuel purchased from a motor vehicle fuel supplier, and due to the state for that reporting period, to the motor vehicle fuel supplier.

(6) At the election of the distributor, the payment of the motor vehicle fuel tax owed on motor vehicle fuel purchased from a supplier shall be remitted to the supplier on terms agreed upon between the distributor and supplier or no later than ~~((two business days before the last business))~~ seven business days before the twenty-sixth day of the following month. This election shall be subject to a condition that the distributor's remittances of all amounts of motor vehicle fuel tax due to the supplier shall be paid by electronic funds transfer. The distributor's election may be terminated by the supplier if the distributor does not make timely payments to the supplier as required by this section. This section shall not apply if the distributor is required by the supplier to pay cash or cash equivalent for motor vehicle fuel purchases.

Sec. 2. RCW 82.38.160 and 1998 c 176 s 68 are each amended to read as follows:

(1) The tax imposed by this chapter shall be computed by multiplying the tax rate per gallon provided in this chapter by the number of gallons of special fuel subject to the special fuel tax.

(2) A special fuel distributor shall remit tax on special fuel purchased from a special fuel supplier, and due to the state for that reporting period, to the special fuel supplier.

(3) At the election of the distributor, the payment of the special fuel tax owed on special fuel purchased from a supplier shall be remitted to the supplier on terms agreed upon between the distributor and the supplier or no later than ~~((two business days before the last business))~~ seven business days before the twenty-sixth day of the following month. This election shall be subject to a condition that the distributor's remittances of all amounts of special fuel tax due to the supplier shall be paid by electronic funds transfer. The distributor's election may be terminated by the supplier if the distributor does not make timely payments to the supplier as required by this section. This section shall not apply if the distributor is required by the supplier to pay cash or cash equivalent for special fuel purchases.

(4) Except as provided in subsection (5) of this section, the tax return shall be accompanied by a remittance payable to the state treasurer covering the tax amount determined to be due for the reporting period.

(5) If the tax is paid by electronic funds transfer, the tax shall be paid on or before the ~~((tenth))~~ twenty-sixth calendar day of the month ~~((that is the second month))~~ immediately following the reporting period. ~~((When the reporting period is May, the tax shall be paid on the last state business day of June))~~ If the payment due date falls on a Saturday, Sunday, or legal holiday the next business day will be the payment date. If the tax is paid by electronic funds transfer and the reporting period ends on a day other than the last day of a calendar month as provided in RCW 82.38.150, the tax shall be paid on or before the last state business day of the thirty-day period following the end of the reporting period.

(6) The tax shall be paid by electronic funds transfer whenever the amount due is fifty thousand dollars or more.

NEW SECTION. Sec. 3. The following acts or parts of acts are each repealed:

- (1) RCW 82.36.405 (Liability, payment, and report of taxes due before March 2000—Inventory report—Penalties, interest) and 1998 c 176 s 47; and
- (2) RCW 82.38.289 (Liability, payment, and report of taxes due before March 2000—Inventory report—Penalties, interest) and 1998 c 176 s 82.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005.

Passed by the Senate March 15, 2005.

Passed by the House April 13, 2005.

Approved by the Governor May 4, 2005.

Filed in Office of Secretary of State May 4, 2005.

CHAPTER 261

[Substitute Senate Bill 5064]

HEALTH INFORMATION INFRASTRUCTURE ADVISORY BOARD

AN ACT Relating to electronic medical records and health information technologies; creating new sections; and providing an expiration date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) The Washington state health care authority shall appoint a Washington health information infrastructure advisory board composed of seven to twelve members.

(2) Membership shall include representatives of the provider community, including hospitals, information technology experts, health care policy experts, health plan representatives, consumers, the director of the department of information services or the director's designee, and the agency medical directors group.

(3) The authority shall appoint the chair of the advisory board.

(4) The members of the advisory board shall receive no compensation, but shall be reimbursed for expenses under RCW 43.03.050 and 43.03.060.

NEW SECTION. Sec. 2. (1) The Washington state health care authority, in collaboration with the advisory board, shall develop a strategy for the adoption and use of electronic medical records and health information technologies that are consistent with emerging national standards and promote interoperability of health information systems. The strategy should:

(a) Be informed by research into, and identification of the best practices in, electronic medical records systems and health information technologies, including system design, implementation, operation, and evaluation;

(b) Be designed to encourage greater adoption of electronic medical record and health information technologies among the state's health care providers that reduce medical errors and enable patients to make better decisions about their own health care by promoting secure access to medical records online; and

(c) Seek to promote standards and systems that are compatible with current adopters of electronic medical record systems in Washington.

(2) The authority, in collaboration with the advisory board, shall identify obstacles to the implementation of an effective health information infrastructure

in the state and provide policy recommendations to remove or minimize those obstacles and identify state health care purchasing strategies that can provide incentives to providers and organizations that adopt effective health information technologies.

(3) The authority shall advise appropriate parties within the legislature and the executive branch on issues related to the development and implementation of a health information infrastructure.

(4) The authority, in collaboration with the advisory board, shall ensure that the strategy and plan preserve the privacy and security of health information, as required by state and federal law.

(5) As used in this section, "health information technologies" means a computerized system that provides access to patients' medical records in an electronic format, including e-mail communication, clinical alerts and reminders, and other information technologies as prescribed by the administrator.

****NEW SECTION. Sec. 3. (1) The Washington state health care authority shall provide staff support to the advisory board. In addition, all agencies under the control of the governor are directed, and all other agencies are requested, to render full assistance and cooperation to the advisory board.***

(2) The authority may enter into contracts that are necessary or proper to carry out this act to support the advisory board and the authority in the performance of their duties. Such contracts may be awarded for purposes including, but not limited to, the following:

(a) Assessing the existing information technology systems of health care providers, state agencies, and third-party payers;

(b) Identifying current national trends in the development of health information systems and standards;

(c) Determining the feasibility of integrating and connecting existing systems with emerging and recommended health information standards and technologies; and

(d) Identifying available government or private grants for the study of or implementation of health information systems.

*Sec. 3 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 4. The authority, in collaboration with the advisory board, shall submit an interim status report on its preliminary findings by December 1, 2005. A final report of findings and recommendations shall be submitted by December 1, 2006.

NEW SECTION. Sec. 5. This act expires December 1, 2006.

Passed by the Senate April 18, 2005.

Passed by the House April 6, 2005.

Approved by the Governor May 4, 2005, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 4, 2005.

Note: Governor's explanation of partial veto is as follows:

"I am returning, without my approval as to Section 3, Substitute Senate Bill No. 5064 entitled:

"AN ACT Relating to electronic medical records and health information technologies."

This bill creates the Washington Health Information Advisory Board (WHIAB), and encourages the use of health information technology to support high quality, cost-effective health care. Section 3 of the bill directs all agencies under the control of the Governor, including those not involved in health related issues, to render full assistance to the WHIAB, giving rise to an issue of governance.

For these reasons, I have vetoed Section 3 Substitute Senate Bill No. 5064.

I direct the Health Care Authority and WHIAB, however, to assess existing information technology systems of health care providers, state agencies, and third-party payers; identify current national trends in the development of information technology systems & standards; determine the feasibility of integrating and connecting existing systems; and identify available government or private grants for the study of or implementation of health information systems. The Health Care Authority may still enter into appropriate contracts and coordinate with agencies under existing statutes.

For these reasons, I have vetoed Substitute Senate Bill No. 5064.

With the exception of Section 3, Substitute Senate Bill No. 5064 is approved."

CHAPTER 262

[Substitute Senate Bill 5309]

SEXUAL MISCONDUCT WITH A MINOR

AN ACT Relating to sexual misconduct with a minor; and amending RCW 9A.44.010, 9A.44.093, and 9A.44.096.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 9A.44.010 and 2001 c 251 s 28 are each amended to read as follows:

As used in this chapter:

(1) "Sexual intercourse" (a) has its ordinary meaning and occurs upon any penetration, however slight, and

(b) Also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes, and

(c) Also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

(2) "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party.

(3) "Married" means one who is legally married to another, but does not include a person who is living separate and apart from his or her spouse and who has filed in an appropriate court for legal separation or for dissolution of his or her marriage.

(4) "Mental incapacity" is that condition existing at the time of the offense which prevents a person from understanding the nature or consequences of the act of sexual intercourse whether that condition is produced by illness, defect, the influence of a substance or from some other cause.

(5) "Physically helpless" means a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(6) "Forcible compulsion" means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or

physical injury to herself or himself or another person, or in fear that she or he or another person will be kidnapped.

(7) "Consent" means that at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(8) "Significant relationship" means a situation in which the perpetrator is:

(a) A person who undertakes the responsibility, professionally or voluntarily, to provide education, health, welfare, or organized recreational activities principally for minors;

(b) A person who in the course of his or her employment supervises minors;
or

(c) A person who provides welfare, health or residential assistance, personal care, or organized recreational activities to frail elders or vulnerable adults, including a provider, employee, temporary employee, volunteer, or independent contractor who supplies services to long-term care facilities licensed or required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW, but not including a consensual sexual partner.

(9) "Abuse of a supervisory position" means:

(a) To use a direct or indirect threat or promise to ((use)) exercise authority to the detriment or benefit of a minor; or

(b) To exploit a significant relationship in order to obtain the consent of a minor.

(10) "Developmentally disabled," for purposes of RCW 9A.44.050(1)(c) and 9A.44.100(1)(c), means a person with a developmental disability as defined in RCW 71A.10.020.

(11) "Person with supervisory authority," for purposes of RCW 9A.44.050(1) (c) or (e) and 9A.44.100(1) (c) or (e), means any proprietor or employee of any public or private care or treatment facility who directly supervises developmentally disabled, mentally disordered, or chemically dependent persons at the facility.

(12) "Mentally disordered person" for the purposes of RCW 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person with a "mental disorder" as defined in RCW 71.05.020.

(13) "Chemically dependent person" for purposes of RCW 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person who is "chemically dependent" as defined in RCW 70.96A.020(4).

(14) "Health care provider" for purposes of RCW 9A.44.050 and 9A.44.100 means a person who is, holds himself or herself out to be, or provides services as if he or she were: (a) A member of a health care profession under chapter 18.130 RCW; or (b) registered under chapter 18.19 RCW or licensed under chapter 18.225 RCW, regardless of whether the health care provider is licensed, certified, or registered by the state.

(15) "Treatment" for purposes of RCW 9A.44.050 and 9A.44.100 means the active delivery of professional services by a health care provider which the health care provider holds himself or herself out to be qualified to provide.

(16) "Frail elder or vulnerable adult" means a person sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself. "Frail elder or vulnerable adult" also includes a person found

incapacitated under chapter 11.88 RCW, a person over eighteen years of age who has a developmental disability under chapter 71A.10 RCW, a person admitted to a long-term care facility that is licensed or required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and a person receiving services from a home health, hospice, or home care agency licensed or required to be licensed under chapter 70.127 RCW.

Sec. 2. RCW 9A.44.093 and 2001 2nd sp.s. c 12 s 357 are each amended to read as follows:

(1) A person is guilty of sexual misconduct with a minor in the first degree when: (a) The person has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in or cause another person under the age of eighteen to engage in sexual intercourse with the victim; ~~((or))~~ (b) the person is a school employee who has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with a registered student of the school who is at least sixteen years old and not married to the employee, if the employee is at least sixty months older than the student; or (c) the person is a foster parent who has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with his or her foster child who is at least sixteen.

(2) Sexual misconduct with a minor in the first degree is a class C felony.

(3) For the purposes of this section, "school employee" means an employee of a common school defined in RCW 28A.150.020, or a grade kindergarten through twelve employee of a private school under chapter 28A.195 RCW, who is not enrolled as a student of the common school or private school.

Sec. 3. RCW 9A.44.096 and 2001 2nd sp.s. c 12 s 358 are each amended to read as follows:

(1) A person is guilty of sexual misconduct with a minor in the second degree when: (a) The person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in or cause another person under the age of eighteen to engage in sexual contact with the victim; ~~((or))~~ (b) the person is a school employee who has, or knowingly causes another person under the age of eighteen to have, sexual contact with a registered student of the school who is at least sixteen years old and not married to the employee, if the employee is at least sixty months older than the student; or (c) the person is a foster parent who has, or knowingly causes another person under the age of eighteen to have, sexual contact with his or her foster child who is at least sixteen.

(2) Sexual misconduct with a minor in the second degree is a gross misdemeanor.

(3) For the purposes of this section, "school employee" means an employee of a common school defined in RCW 28A.150.020, or a grade kindergarten

through twelve employee of a private school under chapter 28A.195 RCW, who is not enrolled as a student of the common school or private school.

Passed by the Senate March 9, 2005.

Passed by the House April 14, 2005.

Approved by the Governor May 4, 2005.

Filed in Office of Secretary of State May 4, 2005.

CHAPTER 263

[Senate Bill 5461]

INCARCERATION COSTS

AN ACT Relating to costs of incarceration; and amending RCW 9.94A.760 and 10.01.160.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 9.94A.760 and 2004 c 121 s 3 are each amended to read as follows:

(1) Whenever a person is convicted in superior court, the court may order the payment of a legal financial obligation as part of the sentence. The court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law. On the same order, the court is also to set a sum that the offender is required to pay on a monthly basis towards satisfying the legal financial obligation. If the court fails to set the offender monthly payment amount, the department shall set the amount if the department has active supervision of the offender, otherwise the county clerk shall set the amount. Upon receipt of an offender's monthly payment, restitution shall be paid prior to any payments of other monetary obligations. After restitution is satisfied, the county clerk shall distribute the payment proportionally among all other fines, costs, and assessments imposed, unless otherwise ordered by the court.

(2) If the court determines that the offender, at the time of sentencing, has the means to pay for the cost of incarceration, the court may require the offender to pay for the cost of incarceration at a rate of fifty dollars per day of incarceration, if incarcerated in a prison, or the court may require the offender to pay the actual cost of incarceration per day of incarceration, if incarcerated in a county jail. In no case may the court require the offender to pay more than one hundred dollars per day for the cost of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision shall take precedence over the payment of the cost of incarceration ordered by the court. All funds recovered from offenders for the cost of incarceration in the county jail shall be remitted to the county and the costs of incarceration in a prison shall be remitted to the department.

(3) The court may add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction is to be issued immediately. If the court chooses not to order the immediate issuance of a notice of payroll deduction at sentencing, the court shall add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender if a monthly court-ordered legal financial obligation payment is

not paid when due, and an amount equal to or greater than the amount payable for one month is owed.

If a judgment and sentence or subsequent order to pay does not include the statement that a notice of payroll deduction may be issued or other income-withholding action may be taken if a monthly legal financial obligation payment is past due, the department or the county clerk may serve a notice on the offender stating such requirements and authorizations. Service shall be by personal service or any form of mail requiring a return receipt.

(4) Independent of the department or the county clerk, the party or entity to whom the legal financial obligation is owed shall have the authority to use any other remedies available to the party or entity to collect the legal financial obligation. These remedies include enforcement in the same manner as a judgment in a civil action by the party or entity to whom the legal financial obligation is owed. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. The judgment and sentence shall identify the party or entity to whom restitution is owed so that the state, party, or entity may enforce the judgment. If restitution is ordered pursuant to RCW 9.94A.750(6) or 9.94A.753(6) to a victim of rape of a child or a victim's child born from the rape, the Washington state child support registry shall be identified as the party to whom payments must be made. Restitution obligations arising from the rape of a child in the first, second, or third degree that result in the pregnancy of the victim may be enforced for the time periods provided under RCW 9.94A.750(6) and 9.94A.753(6). All other legal financial obligations for an offense committed prior to July 1, 2000, may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend the criminal judgment an additional ten years for payment of legal financial obligations including crime victims' assessments. All other legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The department may only supervise the offender's compliance with payment of the legal financial obligations during any period in which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is confined in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(5) In order to assist the court in setting a monthly sum that the offender must pay during the period of supervision, the offender is required to report to

the department for purposes of preparing a recommendation to the court. When reporting, the offender is required, under oath, to respond truthfully and honestly to all questions concerning present, past, and future earning capabilities and the location and nature of all property or financial assets. The offender is further required to bring all documents requested by the department.

(6) After completing the investigation, the department shall make a report to the court on the amount of the monthly payment that the offender should be required to make towards a satisfied legal financial obligation.

(7)(a) During the period of supervision, the department may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the department sets the monthly payment amount, the department may modify the monthly payment amount without the matter being returned to the court. During the period of supervision, the department may require the offender to report to the department for the purposes of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the department in order to prepare the collection schedule.

(b) Subsequent to any period of supervision, or if the department is not authorized to supervise the offender in the community, the county clerk may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the county clerk sets the monthly payment amount, or if the department set the monthly payment amount and the department has subsequently turned the collection of the legal financial obligation over to the county clerk, the clerk may modify the monthly payment amount without the matter being returned to the court. During the period of repayment, the county clerk may require the offender to report to the clerk for the purpose of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the county clerk in order to prepare the collection schedule.

(8) After the judgment and sentence or payment order is entered, the department is authorized, for any period of supervision, to collect the legal financial obligation from the offender. Subsequent to any period of supervision or, if the department is not authorized to supervise the offender in the community, the county clerk is authorized to collect unpaid legal financial obligations from the offender. Any amount collected by the department shall be remitted daily to the county clerk for the purpose of disbursements. The department and the county clerks are authorized, but not required, to accept credit cards as payment for a legal financial obligation, and any costs incurred related to accepting credit card payments shall be the responsibility of the offender.

(9) The department or any obligee of the legal financial obligation may seek a mandatory wage assignment for the purposes of obtaining satisfaction for the legal financial obligation pursuant to RCW 9.94A.7701. Any party obtaining a

wage assignment shall notify the county clerk. The county clerks shall notify the department, or the administrative office of the courts, whichever is providing the monthly billing for the offender.

(10) The requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a condition or requirement of a sentence and the offender is subject to the penalties for noncompliance as provided in RCW 9.94A.634, 9.94A.737, or 9.94A.740.

(11)(a) Until January 1, 2004, the department shall mail individualized monthly billings to the address known by the department for each offender with an unsatisfied legal financial obligation.

(b) Beginning January 1, 2004, the administrative office of the courts shall mail individualized monthly billings to the address known by the office for each offender with an unsatisfied legal financial obligation.

(c) The billing shall direct payments, other than outstanding cost of supervision assessments under RCW 9.94A.780, parole assessments under RCW 72.04A.120, and cost of probation assessments under RCW 9.95.214, to the county clerk, and cost of supervision, parole, or probation assessments to the department.

(d) The county clerk shall provide the administrative office of the courts with notice of payments by such offenders no less frequently than weekly.

(e) The county clerks, the administrative office of the courts, and the department shall maintain agreements to implement this subsection.

(12) The department shall arrange for the collection of unpaid legal financial obligations during any period of supervision in the community through the county clerk. The department shall either collect unpaid legal financial obligations or arrange for collections through another entity if the clerk does not assume responsibility or is unable to continue to assume responsibility for collection pursuant to subsection (4) of this section. The costs for collection services shall be paid by the offender.

(13) The county clerk may access the records of the employment security department for the purposes of verifying employment or income, seeking any assignment of wages, or performing other duties necessary to the collection of an offender's legal financial obligations.

(14) Nothing in this chapter makes the department, the state, the counties, or any state or county employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations or for the acts of any offender who is no longer, or was not, subject to supervision by the department for a term of community custody, community placement, or community supervision, and who remains under the jurisdiction of the court for payment of legal financial obligations.

Sec. 2. RCW 10.01.160 and 1995 c 221 s 1 are each amended to read as follows:

(1) The court may require a defendant to pay costs. Costs may be imposed only upon a convicted defendant, except for costs imposed upon a defendant's entry into a deferred prosecution program or costs imposed upon a defendant for preparing and serving a warrant for failure to appear.

(2) Costs shall be limited to expenses specially incurred by the state in prosecuting the defendant or in administering the deferred prosecution program under chapter 10.05 RCW. They cannot include expenses inherent in providing

a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law. Expenses incurred for serving of warrants for failure to appear and jury fees under RCW 10.46.190 may be included in costs the court may require a defendant to pay. Costs for administering a deferred prosecution may not exceed one hundred fifty dollars. Costs for preparing and serving a warrant for failure to appear may not exceed one hundred dollars. Costs of incarceration imposed on a defendant convicted of a misdemeanor or a gross misdemeanor may not exceed ~~((fifty dollars per day))~~ the actual cost of incarceration. In no case may the court require the offender to pay more than one hundred dollars per day for the cost of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision take precedence over the payment of the cost of incarceration ordered by the court. All funds received from defendants for the cost of incarceration in the county or city jail must be remitted for criminal justice purposes to the county or city that is responsible for the defendant's jail costs. Costs imposed constitute a judgment against a defendant and survive a dismissal of the underlying action against the defendant. However, if the defendant is acquitted on the underlying action, the costs for preparing and serving a warrant for failure to appear do not survive the acquittal, and the judgment that such costs would otherwise constitute shall be vacated.

(3) The court shall not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been sentenced to pay costs and who is not in contumacious default in the payment thereof may at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.

Passed by the Senate March 15, 2005.

Passed by the House April 13, 2005.

Approved by the Governor May 4, 2005.

Filed in Office of Secretary of State May 4, 2005.

CHAPTER 264

[Substitute Senate Bill 5463]

RECREATIONAL VEHICLE APPURTENANCES

AN ACT Relating to recreational vehicle appurtenances; and adding a new section to chapter 46.44 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 46.44 RCW to read as follows:

Motor homes, travel trailers, and campers may exceed the maximum width established under RCW 46.44.010 if the excess width is attributable to

appurtenances that do not extend beyond the body of the vehicle by more than four inches, or if an awning, by more than six inches. As used in this section, "appurtenance" means an appendage that is installed by a factory or a vehicle dealer and is intended as an integral part of the motor home, travel trailer, or camper. "Appurtenance" does not include an item temporarily affixed or attached to the exterior of a vehicle for the purpose of transporting the item from one location to another. "Appurtenance" does not include an item that obstructs the driver's rearward vision.

Passed by the Senate March 8, 2005.

Passed by the House April 11, 2005.

Approved by the Governor May 4, 2005.

Filed in Office of Secretary of State May 4, 2005.

CHAPTER 265

[Senate Bill 5501]

JUVENILE COURT SERVICES—APPLICANT LIE DETECTOR TESTING

AN ACT Relating to subjecting juvenile court services employment applicants to lie detector tests; and amending RCW 49.44.120.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 49.44.120 and 2003 c 53 s 278 are each amended to read as follows:

(1) It shall be unlawful for any person, firm, corporation or the state of Washington, its political subdivisions or municipal corporations to require, directly or indirectly, that any employee or prospective employee take or be subjected to any lie detector or similar tests as a condition of employment or continued employment: PROVIDED, That this section shall not apply to persons making initial application for employment with any law enforcement agency or with the juvenile court services agency of any county: PROVIDED FURTHER, That this section shall not apply to either the initial application for employment or continued employment of persons who manufacture, distribute, or dispense controlled substances as defined in chapter 69.50 RCW, or to persons in sensitive positions directly involving national security.

(2) Nothing in this section shall be construed to prohibit the use of psychological tests as defined in RCW 18.83.010.

(3) Any person violating this section is guilty of a misdemeanor.

(4) As used in this section, "person" includes any individual, firm, corporation, or agency or political subdivision of the state.

(5) Nothing in this section may be construed as limiting any statutory or common law rights of any person illegally denied employment or continued employment under this section for purposes of any civil action or injunctive relief.

Passed by the Senate March 8, 2005.

Passed by the House April 14, 2005.

Approved by the Governor May 4, 2005.

Filed in Office of Secretary of State May 4, 2005.

CHAPTER 266

[Substitute Senate Bill 5552]

SCHOOL DISTRICT EMPLOYMENT—APPLICANT INFORMATION

AN ACT Relating to information required for school district employment applicants; and amending RCW 28A.400.301.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28A.400.301 and 2004 c 29 s 2 are each amended to read as follows:

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

(a) "Applicant" means an applicant for employment in a certificated or classified position who is currently or was previously employed by a school district.

(b) "Employer" means a school district employer.

(2) Before hiring an applicant, a school district shall request the applicant to sign a statement:

(a) Authorizing the applicant's current and past employers, including employers outside of Washington state, to disclose to the hiring school district sexual misconduct, if any, by the applicant and making available to the hiring school district copies of all documents in the previous employer's personnel, investigative, or other files relating to sexual misconduct by the applicant; and

(b) Releasing the applicant's current and past employers, and employees acting on behalf of that employer, from any liability for providing information described in (a) of this subsection, as provided in subsection (4) of this section.

(3) Before hiring an applicant, a school district shall request in writing, electronic or otherwise, the applicant's current and past employers, including out-of-state employers, to provide the information described in subsection (2)(a) of this section, if any. The request shall include a copy of the statement signed by the applicant under subsection (2) of this section.

(4) Not later than twenty business days after receiving a request under subsection (3) of this section, a school district shall provide the information requested and make available to the requesting school district copies of all documents in the applicant's personnel record relating to the sexual misconduct. The school district, or an employee acting on behalf of the school district, who in good faith discloses information under this section is immune from civil liability for the disclosure.

(5) A hiring district shall request from the office of the superintendent of public instruction verification of certification status, including information relating to sexual misconduct as established by the provisions of subsection (11) of this section, if any, for applicants for certificated employment.

(6) A school district shall not hire an applicant who does not sign the statement described in subsection (2) of this section.

(7) School districts may employ applicants on a conditional basis pending the district's review of information obtained under this section. When requests are sent to out-of-state employers under subsection (3) of this section, an applicant who has signed the statement described in subsection (2) of this section, shall not be prevented from gaining employment in Washington public schools if the laws or policies of that other state prevent documents from being

made available to Washington state school districts or if the out-of-state school district fails or refuses to cooperate with the request.

(8) Information received under this section shall be used by a school district only for the purpose of evaluating an applicant's qualifications for employment in the position for which he or she has applied. Except as otherwise provided by law, a board member or employee of a school district shall not disclose the information to any person, other than the applicant, who is not directly involved in the process of evaluating the applicant's qualifications for employment. A person who violates this subsection is guilty of a misdemeanor.

(9) Beginning September 1, 2004, the board or an official of a school district shall not enter into a collective bargaining agreement, individual employment contract, resignation agreement, severance agreement, or any other contract or agreement that has the effect of suppressing information about verbal or physical abuse or sexual misconduct by a present or former employee or of expunging information about that abuse or sexual misconduct from any documents in the previous employer's personnel, investigative, or other files relating to verbal or physical abuse or sexual misconduct by the applicant. Any provision of a contract or agreement that is contrary to this subsection is void and unenforceable, and may not be withheld from disclosure by the entry of any administrative or court order. This subsection does not restrict the expungement from a personnel file of information about alleged verbal or physical abuse or sexual misconduct that has not been substantiated.

(10) This section does not prevent a school district from requesting or requiring an applicant to provide information other than that described in this section.

(11) By September 1, 2004, the state board of education has the authority to and shall adopt rules defining "verbal abuse," "physical abuse," and "sexual misconduct" as used in this section for application to all classified and certificated employees. The definitions of verbal and physical abuse and sexual misconduct adopted by the state board of education must include the requirement that the school district has made a determination that there is sufficient information to conclude that the abuse or misconduct occurred and that the abuse or misconduct resulted in the employee's leaving his or her position at the school district.

(12) Except as limited by chapter 49.12 RCW, at the conclusion of a school district's investigation, a school employee has the right to review his or her entire personnel file, investigative file, or other file maintained by the school district relating to sexual misconduct as addressed in this section and to attach rebuttals to any documents as the employee deems necessary. Rebuttal documents shall be disclosed in the same manner as the documents to which they are attached. The provisions of this subsection do not supercede the protections provided individuals under the state whistleblower laws in chapter 42.41 RCW.

Passed by the Senate March 14, 2005.

Passed by the House April 11, 2005.

Approved by the Governor May 4, 2005.

Filed in Office of Secretary of State May 4, 2005.

CHAPTER 267

[Substitute Senate Bill 5558]

PRESCRIPTION DRUG ASSISTANCE FOUNDATION

AN ACT Relating to the prescription drug assistance foundation; and adding a new section to chapter 41.05 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 41.05 RCW to read as follows:

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

(a) "Federal poverty level" means the official poverty level based on family size established and adjusted under Section 673(2) of the omnibus budget reconciliation act of 1981 (P.L. 97-35; 42 U.S.C. Sec. 9902(2), as amended).

(b) "Foundation" means the prescription drug assistance foundation established in this section, a nonprofit corporation organized under the laws of this state to provide assistance in accessing prescription drugs to qualified uninsured individuals.

(c) "Health insurance coverage including prescription drugs" means prescription drug coverage under a private insurance plan, the medicaid program, the state children's health insurance program ("SCHIP"), the medicare program, the basic health plan, or any employer-sponsored health plan that includes a prescription drug benefit.

(d) "Qualified uninsured individual" means an uninsured person who is a resident of this state and has an income below three hundred percent of the federal poverty level.

(e) "Uninsured" means an individual who lacks health insurance coverage including prescription drugs.

(2)(a) The administrator shall establish the foundation as a nonprofit corporation, organized under the laws of this state. The foundation shall assist qualified uninsured individuals in obtaining prescription drugs at little or no cost.

(b) The foundation shall be administered in a manner that:

(i) Begins providing assistance to qualified uninsured individuals by January 1, 2006;

(ii) Defines the population that may receive assistance in accordance with this section; and

(iii) Complies with the eligibility requirements necessary to obtain and maintain tax-exempt status under federal law.

(c) The board of directors of the foundation consists of five members appointed by the governor to staggered terms of three years. The governor shall select as members of the board individuals who (i) will represent the interests of persons who lack prescription drug coverage; and (ii) have demonstrated expertise in business management and in the administration of a not-for-profit organization.

(d) The foundation shall apply for and comply with all federal requirements necessary to obtain and maintain tax-exempt status with respect to the federal tax obligations of the foundation's donors.

(e) The foundation is authorized, subject to the direction and ratification of the board, to receive, solicit, contract for, collect, and hold in trust for the purposes of this section, donations, gifts, grants, and bequests in the form of money paid or promised, services, materials, equipment, or other things tangible or intangible that may be useful for helping the foundation to achieve its purpose. The foundation may use all sources of public and private financing to support foundation activities. No general fund-state funds shall be used for the ongoing operation of the foundation.

(f) No liability on the part of, and no cause of action of any nature, shall arise against any member of the board of directors of the foundation or against an employee or agent of the foundation for any lawful action taken by them in the performance of their administrative powers and duties under this section.

Passed by the Senate April 19, 2005.

Passed by the House April 5, 2005.

Approved by the Governor May 4, 2005.

Filed in Office of Secretary of State May 4, 2005.

CHAPTER 268

[Engrossed Substitute Senate Bill 5599]

CENTRAL NURSING RESOURCE CENTER

AN ACT Relating to funding a central resource center for the nursing work force; amending RCW 43.70.110 and 43.70.250; adding a new section to chapter 18.79 RCW; creating a new section; repealing section 1, chapter . . . , Laws of 2005 (section 1 of this act); and repealing section 4, chapter . . . , Laws of 2005 (section 4 of this act).

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. Washington state is experiencing a critical shortage of registered nurses. To safeguard and promote patient safety and quality of care, the legislature finds that a central resource center for the nursing work force is critical and essential in addressing the nursing shortage and ensuring that the public continue to receive safe, quality care.

Sec. 2. RCW 43.70.110 and 1993 sp.s. c 24 s 918 are each amended to read as follows:

(1) The secretary shall charge fees to the licensee for obtaining a license. After June 30, 1995, municipal corporations providing emergency medical care and transportation services pursuant to chapter 18.73 RCW shall be exempt from such fees, provided that such other emergency services shall only be charged for their pro rata share of the cost of licensure and inspection, if appropriate. The secretary may waive the fees when, in the discretion of the secretary, the fees would not be in the best interest of public health and safety, or when the fees would be to the financial disadvantage of the state.

(2) Except as provided in section 4 of this act, until June 30, 2013, fees charged shall be based on, but shall not exceed, the cost to the department for the licensure of the activity or class of activities and may include costs of necessary inspection.

(3) Department of health advisory committees may review fees established by the secretary for licenses and comment upon the appropriateness of the level of such fees.

Sec. 3. RCW 43.70.250 and 1996 c 191 s 1 are each amended to read as follows:

It shall be the policy of the state of Washington that the cost of each professional, occupational, or business licensing program be fully borne by the members of that profession, occupation, or business. The secretary shall from time to time establish the amount of all application fees, license fees, registration fees, examination fees, permit fees, renewal fees, and any other fee associated with licensing or regulation of professions, occupations, or businesses administered by the department. In fixing said fees, the secretary shall set the fees for each program at a sufficient level to defray the costs of administering that program, except as provided in section 4 of this act until June 30, 2013. All such fees shall be fixed by rule adopted by the secretary in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

NEW SECTION. Sec. 4. A new section is added to chapter 18.79 RCW to read as follows:

(1) In addition to the licensing fee for registered nurses and licensed practical nurses licensed under this chapter, the department shall impose an additional surcharge of five dollars per year on all initial licenses and renewal licenses for registered nurses and licensed practical nurses issued under this chapter. Advanced registered nurse practitioners are only required to pay the surcharge on their registered nurse licenses.

(2) The department, in consultation with the commission and the work force training and education coordinating board, shall use the proceeds from the surcharge imposed under subsection (1) of this section to provide grants to a central nursing resource center. The grants may be awarded only to a not-for-profit central nursing resource center that is comprised of and led by nurses. The central nursing resource center will demonstrate coordination with relevant nursing constituents including professional nursing organizations, groups representing nursing educators, staff nurses, nurse managers or executives, and labor organizations representing nurses. The central nursing resource center shall have as its mission to contribute to the health and wellness of Washington state residents by ensuring that there is an adequate nursing work force to meet the current and future health care needs of the citizens of the state of Washington. The grants may be used to fund the following activities of the central nursing resource center:

(a) Maintain information on the current and projected supply and demand of nurses through the collection and analysis of data regarding the nursing work force, including but not limited to education level, race and ethnicity, employment settings, nursing positions, reasons for leaving the nursing profession, and those leaving Washington state to practice elsewhere. This data collection and analysis must complement other state activities to produce data on the nursing work force and the central nursing resource center shall work collaboratively with other entities in the data collection to ensure coordination and avoid duplication of efforts;

(b) Monitor and validate trends in the applicant pool for programs in nursing. The central nursing resource center must work with nursing leaders to identify approaches to address issues arising related to the trends identified, and collect information on other states' approaches to addressing these issues;

(c) Facilitate partnerships between the nursing community and other health care providers, licensing authority, business and industry, consumers, legislators, and educators to achieve policy consensus, promote diversity within the profession, and enhance nursing career mobility and nursing leadership development;

(d) Evaluate the effectiveness of nursing education and articulation among programs to increase access to nursing education and enhance career mobility, especially for populations that are under represented in the nursing profession;

(e) Provide consultation, technical assistance, data, and information related to Washington state and national nursing resources;

(f) Promote strategies to enhance patient safety and quality patient care including encouraging a safe and healthy workplace environment for nurses; and

(g) Educate the public including students in K-12 about opportunities and careers in nursing.

(3) The nursing resource center account is created in the custody of the state treasurer. All receipts from the surcharge in subsection (1) of this section must be deposited in the account. Expenditures from the account may be used only for grants to an organization to conduct the specific activities listed in subsection (2) of this section and to compensate the department for the reasonable costs associated with the collection and distribution of the surcharge and the administration of the grant provided for in subsection (2) of this section. No money from this account may be used by the recipient towards administrative costs of the central nursing resource center not associated with the specific activities listed in subsection (2) of this section. No money from this account may be used by the recipient toward lobbying. Only the secretary or the secretary'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. Grants will be awarded on an annual basis and funds will be distributed quarterly. The first distribution after awarding the first grant shall be made no later than six months after the effective date of this section. The central nursing resource center shall report to the department on meeting the grant objectives annually.

(4) The central nursing resource center shall submit a report of all progress, collaboration with other organizations and government entities, and activities conducted by the center to the relevant committees of the legislature by November 30, 2011. The department shall conduct a review of the program to collect funds to support the activities of a nursing resource center and make recommendations on the effectiveness of the program and whether it should continue. The review shall be paid for with funds from the nursing resource center account. The review must be completed by June 30, 2012.

(5) The department may adopt rules as necessary to implement this act.

NEW SECTION. Sec. 5. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 2013:

(1) Section 1, chapter . . . , Laws of 2005 (section 1 of this act); and

(2) Section 4, chapter . . . , Laws of 2005 (section 4 of this act).

Passed by the Senate April 18, 2005.

Passed by the House April 6, 2005.

Approved by the Governor May 4, 2005.
Filed in Office of Secretary of State May 4, 2005.

CHAPTER 269

[Substitute Senate Bill 5644]

DRIVER'S LICENSE SUSPENSIONS—DEFERRED PROSECUTIONS

AN ACT Relating to driver's license suspensions; and reenacting and amending RCW 46.20.308.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.20.308 and 2004 c 187 s 1 and 2004 c 95 s 2 are each reenacted and amended to read as follows:

(1) Any person who operates a motor vehicle within this state is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a test or tests of his or her breath or blood for the purpose of determining the alcohol concentration or presence of any drug in his or her breath or blood if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was in violation of RCW 46.61.503. Neither consent nor this section precludes a police officer from obtaining a search warrant for a person's breath or blood.

(2) The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or the person to have been driving or in actual physical control of a motor vehicle while having alcohol in a concentration in violation of RCW 46.61.503 in his or her system and being under the age of twenty-one. However, in those instances where the person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample or where the person is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility or where the officer has reasonable grounds to believe that the person is under the influence of a drug, a blood test shall be administered by a qualified person as provided in RCW 46.61.506(5). The officer shall inform the person of his or her right to refuse the breath or blood test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. The officer shall warn the driver, in substantially the following language, that:

(a) If the driver refuses to take the test, the driver's license, permit, or privilege to drive will be revoked or denied for at least one year; and

(b) If the driver refuses to take the test, the driver's refusal to take the test may be used in a criminal trial; and

(c) If the driver submits to the test and the test is administered, the driver's license, permit, or privilege to drive will be suspended, revoked, or denied for at least ninety days if the driver is age twenty-one or over and the test indicates the alcohol concentration of the driver's breath or blood is 0.08 or more, or if the driver is under age twenty-one and the test indicates the alcohol concentration of the driver's breath or blood is 0.02 or more, or if the driver is under age twenty-one and the driver is in violation of RCW 46.61.502 or 46.61.504.

(3) Except as provided in this section, the test administered shall be of the breath only. If an individual is unconscious or is under arrest for the crime of vehicular homicide as provided in RCW 46.61.520 or vehicular assault as provided in RCW 46.61.522, or if an individual is under arrest for the crime of driving while under the influence of intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest results from an accident in which there has been serious bodily injury to another person, a breath or blood test may be administered without the consent of the individual so arrested.

(4) Any person who is dead, unconscious, or who is otherwise in a condition rendering him or her incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection (1) of this section and the test or tests may be administered, subject to the provisions of RCW 46.61.506, and the person shall be deemed to have received the warnings required under subsection (2) of this section.

(5) If, following his or her arrest and receipt of warnings under subsection (2) of this section, the person arrested refuses upon the request of a law enforcement officer to submit to a test or tests of his or her breath or blood, no test shall be given except as authorized under subsection (3) or (4) of this section.

(6) If, after arrest and after the other applicable conditions and requirements of this section have been satisfied, a test or tests of the person's blood or breath is administered and the test results indicate that the alcohol concentration of the person's breath or blood is 0.08 or more if the person is age twenty-one or over, or 0.02 or more if the person is under the age of twenty-one, or the person refuses to submit to a test, the arresting officer or other law enforcement officer at whose direction any test has been given, or the department, where applicable, if the arrest results in a test of the person's blood, shall:

(a) Serve notice in writing on the person on behalf of the department of its intention to suspend, revoke, or deny the person's license, permit, or privilege to drive as required by subsection (7) of this section;

(b) Serve notice in writing on the person on behalf of the department of his or her right to a hearing, specifying the steps he or she must take to obtain a hearing as provided by subsection (8) of this section;

(c) Mark the person's Washington state driver's license or permit to drive, if any, in a manner authorized by the department;

(d) Serve notice in writing that the marked license or permit, if any, is a temporary license that is valid for sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or until the suspension, revocation, or denial of the person's license, permit, or privilege to drive is sustained at a hearing pursuant to subsection (8) of this section, whichever occurs first. No temporary license is valid to any greater degree than the license or permit that it replaces; and

(e) Immediately notify the department of the arrest and transmit to the department within seventy-two hours, except as delayed as the result of a blood test, a sworn report or report under a declaration authorized by RCW 9A.72.085 that states:

(i) That the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or was

under the age of twenty-one years and had been driving or was in actual physical control of a motor vehicle while having an alcohol concentration in violation of RCW 46.61.503;

(ii) That after receipt of the warnings required by subsection (2) of this section the person refused to submit to a test of his or her blood or breath, or a test was administered and the results indicated that the alcohol concentration of the person's breath or blood was 0.08 or more if the person is age twenty-one or over, or was 0.02 or more if the person is under the age of twenty-one; and

(iii) Any other information that the director may require by rule.

(7) The department of licensing, upon the receipt of a sworn report or report under a declaration authorized by RCW 9A.72.085 under subsection (6)(e) of this section, shall suspend, revoke, or deny the person's license, permit, or privilege to drive or any nonresident operating privilege, as provided in RCW 46.20.3101, such suspension, revocation, or denial to be effective beginning sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or when sustained at a hearing pursuant to subsection (8) of this section, whichever occurs first.

(8) A person receiving notification under subsection (6)(b) of this section may, within thirty days after the notice has been given, request in writing a formal hearing before the department. The person shall pay a fee of one hundred dollars as part of the request. If the request is mailed, it must be postmarked within thirty days after receipt of the notification. Upon timely receipt of such a request for a formal hearing, including receipt of the required one hundred dollar fee, the department shall afford the person an opportunity for a hearing. The department may waive the required one hundred dollar fee if the person is an indigent as defined in RCW 10.101.010. Except as otherwise provided in this section, the hearing is subject to and shall be scheduled and conducted in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest, except that all or part of the hearing may, at the discretion of the department, be conducted by telephone or other electronic means. The hearing shall be held within sixty days following the arrest or following the date notice has been given in the event notice is given by the department following a blood test, unless otherwise agreed to by the department and the person, in which case the action by the department shall be stayed, and any valid temporary license marked under subsection (6)(c) of this section extended, if the person is otherwise eligible for licensing. For the purposes of this section, the scope of the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more if the person was under the age of twenty-one, whether the person was placed under arrest, and (a) whether the person refused to submit to the test or tests upon request of the officer after having been informed that such refusal would result in the revocation of the person's license, permit, or privilege to drive, or (b) if a test or tests were administered, whether the applicable requirements of this section were satisfied before the administration of the test or tests, whether the person submitted to the test or tests, or whether a test was administered without express

consent as permitted under this section, and whether the test or tests indicated that the alcohol concentration of the person's breath or blood was 0.08 or more if the person was age twenty-one or over at the time of the arrest, or 0.02 or more if the person was under the age of twenty-one at the time of the arrest. The sworn report or report under a declaration authorized by RCW 9A.72.085 submitted by a law enforcement officer is prima facie evidence that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or the person had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more and was under the age of twenty-one and that the officer complied with the requirements of this section.

A hearing officer shall conduct the hearing, may issue subpoenas for the attendance of witnesses and the production of documents, and shall administer oaths to witnesses. The hearing officer shall not issue a subpoena for the attendance of a witness at the request of the person unless the request is accompanied by the fee required by RCW 5.56.010 for a witness in district court. The sworn report or report under a declaration authorized by RCW 9A.72.085 of the law enforcement officer and any other evidence accompanying the report shall be admissible without further evidentiary foundation and the certifications authorized by the criminal rules for courts of limited jurisdiction shall be admissible without further evidentiary foundation. The person may be represented by counsel, may question witnesses, may present evidence, and may testify. The department shall order that the suspension, revocation, or denial either be rescinded or sustained.

(9) If the suspension, revocation, or denial is sustained after such a hearing, the person whose license, privilege, or permit is suspended, revoked, or denied has the right to file a petition in the superior court of the county of arrest to review the final order of revocation by the department in the same manner as an appeal from a decision of a court of limited jurisdiction. Notice of appeal must be filed within thirty days after the date the final order is served or the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ 1.1, or other statutes or rules referencing de novo review, the appeal shall be limited to a review of the record of the administrative hearing. The appellant must pay the costs associated with obtaining the record of the hearing before the hearing officer. The filing of the appeal does not stay the effective date of the suspension, revocation, or denial. A petition filed under this subsection must include the petitioner's grounds for requesting review. Upon granting petitioner's request for review, the court shall review the department's final order of suspension, revocation, or denial as expeditiously as possible. The review must be limited to a determination of whether the department has committed any errors of law. The superior court shall accept those factual determinations supported by substantial evidence in the record: (a) That were expressly made by the department; or (b) that may reasonably be inferred from the final order of the department. The superior court may reverse, affirm, or modify the decision of the department or remand the case back to the department for further proceedings. The decision of the superior court must be in writing and filed in the clerk's office with the other papers in the case. The court shall state the reasons for the decision. If judicial relief is sought for a stay or other temporary remedy from the department's

action, the court shall not grant such relief unless the court finds that the appellant is likely to prevail in the appeal and that without a stay the appellant will suffer irreparable injury. If the court stays the suspension, revocation, or denial it may impose conditions on such stay.

(10)(a) If a person whose driver's license, permit, or privilege to drive has been or will be suspended, revoked, or denied under subsection (7) of this section, other than as a result of a breath or blood test refusal, and who has not committed an offense for which he or she was granted a deferred prosecution under chapter 10.05 RCW, petitions a court for a deferred prosecution on criminal charges arising out of the arrest for which action has been or will be taken under subsection (7) of this section, ~~((the court may direct the department to stay any actual or proposed suspension, revocation, or denial for at least forty-five days but not more than ninety days))~~ or notifies the department of licensing of the intent to seek such a deferred prosecution, then the license suspension or revocation shall be stayed pending entry of the deferred prosecution. The stay shall not be longer than one hundred fifty days after the date charges are filed, or two years after the date of the arrest, whichever time period is shorter. If the court stays the suspension, revocation, or denial, it may impose conditions on such stay. If the person is otherwise eligible for licensing, the department shall issue a temporary license, or extend any valid temporary license marked under subsection (6) of this section, for the period of the stay. If a deferred prosecution treatment plan is not recommended in the report made under RCW 10.05.050, or if treatment is rejected by the court, or if the person declines to accept an offered treatment plan, or if the person violates any condition imposed by the court, then the court shall immediately direct the department to cancel the stay and any temporary marked license or extension of a temporary license issued under this subsection.

(b) A suspension, revocation, or denial imposed under this section, other than as a result of a breath or blood test refusal, shall be stayed if the person is accepted for deferred prosecution as provided in chapter 10.05 RCW for the incident upon which the suspension, revocation, or denial is based. If the deferred prosecution is terminated, the stay shall be lifted and the suspension, revocation, or denial reinstated. If the deferred prosecution is completed, the stay shall be lifted and the suspension, revocation, or denial canceled.

(c) The provisions of (b) of this subsection relating to a stay of a suspension, revocation, or denial and the cancellation of any suspension, revocation, or denial do not apply to the suspension, revocation, denial, or disqualification of a person's commercial driver's license or privilege to operate a commercial motor vehicle.

(11) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended, revoked, or denied, the department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he or she has a license.

Passed by the Senate March 16, 2005.

Passed by the House April 11, 2005.

Approved by the Governor May 4, 2005.

Filed in Office of Secretary of State May 4, 2005.

CHAPTER 270

[Substitute Senate Bill 5729]

FERRY FARES

AN ACT Relating to ferry fares; and amending RCW 47.60.326.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 47.60.326 and 2003 c 374 s 4 are each amended to read as follows:

(1) In order to maintain an adequate, fair, and economically sound schedule of charges for the transportation of passengers, vehicles, and commodities on the Washington state ferries, the department of transportation each year shall conduct a full review of such charges.

(2) Prior to February 1st of each odd-numbered year the department shall transmit to the transportation commission a report of its review together with its recommendations for the revision of a schedule of charges for the ensuing biennium. The commission on or before July 1st of that year shall adopt as a rule, in the manner provided by the Washington administrative procedure act, a schedule of charges for the Washington state ferries for the ensuing biennium commencing July 1st. The schedule may initially be adopted as an emergency rule if necessary to take effect on, or as near as possible to, July 1st.

(3) The department in making its review and formulating recommendations and the commission in adopting a schedule of charges may consider any of the following factors:

(a) The amount of subsidy available to the ferry system for maintenance and operation;

(b) The time and distance of ferry runs;

(c) The maintenance and operation costs for ferry runs with a proper adjustment for higher costs of operating outmoded or less efficient equipment;

(d) The efficient distribution of traffic between cross-sound routes;

(e) The desirability of reasonable ~~((commutation))~~ rates for persons using the ferry system to commute daily to work and other frequent users who live in ferry-dependent communities;

(f) The effect of proposed fares in increasing walk-on and vehicular passenger use;

(g) The effect of proposed fares in promoting all types of ferry use during nonpeak periods;

(h) The estimated revenues that are projected to be earned by the ferry system from commercial advertisements, parking, contracts, leases, and other sources;

(i) The prepurchase of multiple fares, whether for a single rider or multiple riders;

(j) Such other factors as prudent managers of a major ferry system would consider.

(4) If at any time during the biennium it appears that projected revenues from the Puget Sound ferry operations account and any other operating subsidy available to the Washington state ferries will be less than the projected total cost of maintenance and operation of the Washington state ferries for the biennium, the department shall forthwith undertake a review of its schedule of charges to ascertain whether or not the schedule of charges should be revised. The

department shall, upon completion of its review report, submit its recommendation to the transportation commission which may in its sound discretion revise the schedule of charges as required to meet necessary maintenance and operation expenditures of the ferry system for the biennium or may defer action until the regular annual review and revision of ferry charges as provided in subsection (2) of this section.

(5) The provisions of RCW 47.60.330 relating to public participation shall apply to the process of revising ferry tolls under this section.

(6) Under RCW 43.135.055, the transportation commission may increase ferry tolls included in the schedule of charges adopted under this section by a percentage that exceeds the fiscal growth factor.

(7) Notwithstanding the provisions of this section and chapter 81.28 RCW, and using sound business judgment, 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 transportation commission a summary of the promotional, discounted, and special event fares offered during each fiscal year and the financial results from these activities.

Passed by the Senate March 12, 2005.

Passed by the House April 12, 2005.

Approved by the Governor May 4, 2005.

Filed in Office of Secretary of State May 4, 2005.

CHAPTER 271

[Substitute Senate Bill 5914]

SALMON RECOVERY FUNDING BOARD

AN ACT Relating to the salmon recovery funding board; and reenacting and amending RCW 77.85.130.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 77.85.130 and 2000 c 107 s 102 and 2000 c 15 s 1 are each reenacted and amended to read as follows:

(1) The salmon recovery funding board shall develop procedures and criteria for allocation of funds for salmon habitat projects and salmon recovery activities on a statewide basis to address the highest priorities for salmon habitat protection and restoration. To the extent practicable the board shall adopt an annual allocation of funding. The allocation should address both protection and restoration of habitat, and should recognize the varying needs in each area of the state on an equitable basis. The board has the discretion to partially fund, or to fund in phases, salmon habitat projects. The board may annually establish a maximum amount of funding available for any individual project, subject to available funding. No projects required solely as a mitigation or a condition of permitting are eligible for funding.

(2)(a) In evaluating, ranking, and awarding funds for projects and activities the board shall give preference to projects that:

(i) Are based upon the limiting factors analysis identified under RCW 77.85.060;

(ii) Provide a greater benefit to salmon recovery based upon the stock status information contained in the department of fish and wildlife salmonid stock inventory (SASSI), the salmon and steelhead habitat inventory and assessment project (SSHIAP), and any comparable science-based assessment when available;

(iii) Will benefit listed species and other fish species; and

(iv) Will preserve high quality salmonid habitat.

(b) In evaluating, ranking, and awarding funds for projects and activities the board shall also give consideration to projects that:

(i) Are the most cost-effective;

(ii) Have the greatest matched or in-kind funding; and

(iii) Will be implemented by a sponsor with a successful record of project implementation.

(3) The board may reject, but not add, projects from a habitat project list submitted by a lead entity for funding.

(4) For fiscal year 2000, the board may authorize the interagency review team to evaluate, rank, and make funding decisions for categories of projects or activities or from funding sources provided for categories of projects or activities. In delegating such authority the board shall consider the review team's staff resources, procedures, and technical capacity to meet the purposes and objectives of this chapter. The board shall maintain general oversight of the team's exercise of such authority.

(5) The board shall seek the guidance of the technical review team to ensure that scientific principles and information are incorporated into the allocation standards and into proposed projects and activities. If the technical review team determines that a habitat project list complies with the critical pathways methodology under RCW 77.85.060, it shall provide substantial weight to the list's project priorities when making determinations among applications for funding of projects within the area covered by the list.

(6) The board shall establish criteria for determining when block grants may be made to a lead entity or other recognized regional recovery entity consistent with one or more habitat project lists developed for that region. Where a lead entity has been established pursuant to RCW 77.85.050, the board may provide grants to the lead entity to assist in carrying out lead entity functions under this chapter, subject to available funding. The board shall determine an equitable minimum amount of funds for each region, and shall distribute the remainder of funds on a competitive basis.

(7) The board may waive or modify portions of the allocation procedures and standards adopted under this section in the award of grants or loans to conform to legislative appropriations directing an alternative award procedure or when the funds to be awarded are from federal or other sources requiring other allocation procedures or standards as a condition of the board's receipt of the funds. The board shall develop an integrated process to manage the allocation of funding from federal and state sources to minimize delays in the award of funding while recognizing the differences in state and legislative appropriation timing.

(8) The board may award a grant or loan for a salmon recovery project on private or public land when the landowner has a legal obligation under local, state, or federal law to perform the project, when expedited action provides a

clear benefit to salmon recovery, and there will be harm to salmon recovery if the project is delayed. For purposes of this subsection, a legal obligation does not include a project required solely as a mitigation or a condition of permitting.

(9) ~~((The board may condition a grant or loan to include the requirement that property may only be transferred to a federal agency if the agency that will acquire the property agrees to comply with all terms of the grant or loan to which the project sponsor was obligated.))~~ Property acquired or improved by a project sponsor may be conveyed to a federal agency ~~((, but only))~~ if: (a) The agency agrees to comply with all terms of the grant or loan to which the project sponsor was obligated; or (b) the board approves: (i) Changes in the terms of the grant or loan, and the revision or removal of binding deed of right instruments; and (ii) a memorandum of understanding or similar document ensuring that the facility or property will retain, to the extent feasible, adequate habitat protections; and (c) the appropriate legislative authority of the county or city with jurisdiction over the project area approves the transfer and provides notification to the board.

Passed by the Senate April 19, 2005.

Passed by the House April 7, 2005.

Approved by the Governor May 4, 2005.

Filed in Office of Secretary of State May 4, 2005.

CHAPTER 272

[Senate Bill 5926]

ADVANCED COLLEGE TUITION PAYMENT PROGRAM

AN ACT Relating to the advanced college tuition payment program; amending RCW 28B.95.020, 28B.95.030, 28B.95.090, 28B.95.110, and 6.15.010; and adding a new section to chapter 28B.95 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28B.95.020 and 2004 c 275 s 59 are each amended to read as follows:

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

(1) "Academic year" means the regular nine-month, three-quarter, or two-semester period annually occurring between ~~((July 1st and June 30th))~~ August 1st and July 31st.

(2) "Account" means the Washington advanced college tuition payment program account established for the deposit of all money received by the board from eligible purchasers and interest earnings on investments of funds in the account, as well as for all expenditures on behalf of eligible beneficiaries for the redemption of tuition units and for the development of any authorized college savings program pursuant to RCW 28B.95.150.

(3) "Board" means the higher education coordinating board as defined in chapter 28B.76 RCW.

(4) "Committee on advanced tuition payment" or "committee" means a committee of the following members: The state treasurer, the director of the office of financial management, the executive director of the higher education coordinating board, or their designees, and two members to be appointed by the governor, one representing program participants and one private business representative with marketing, public relations, or financial expertise.

(5) "Governing body" means the committee empowered by the legislature to administer the Washington advanced college tuition payment program.

(6) "Contractual obligation" means a legally binding contract of the state with the purchaser and the beneficiary establishing that purchases of tuition units will be worth the same number of tuition units at the time of redemption as they were worth at the time of the purchase.

(7) "Eligible beneficiary" means the person for whom the tuition unit will be redeemed for attendance at an institution of higher education. The beneficiary is that person named by the purchaser at the time that a tuition unit contract is accepted by the governing body. ~~((With the exception of tuition unit contracts purchased by))~~ Qualified organizations, as allowed under section 529 of the federal internal revenue code, purchasing tuition unit contracts as future scholarships, must reside in the state of Washington or otherwise be a resident of the state of Washington at the time the tuition unit contract is accepted by the governing body) need not designate a beneficiary at the time of purchase.

(8) "Eligible purchaser" means an individual or organization that has entered into a tuition unit contract with the governing body for the purchase of tuition units for an eligible beneficiary.

(9) "Full-time tuition charges" means resident tuition charges at a state institution of higher education for enrollments between ten credits and eighteen credit hours per academic term.

(10) "Institution of higher education" means an institution that offers education beyond the secondary level and is recognized by the internal revenue service under chapter 529 of the internal revenue code.

(11) "Investment board" means the state investment board as defined in chapter 43.33A RCW.

(12) "State institution of higher education" means institutions of higher education as defined in RCW 28B.10.016.

(13) "Tuition and fees" means undergraduate tuition and services and activities fees as defined in RCW 28B.15.020 and 28B.15.041 rounded to the nearest whole dollar. ~~((The maximum tuition and fees charges recognized for beneficiaries enrolled in a state technical college shall be equal to the tuition and fees for the community college system.))~~ For purposes of this chapter, services and activities fees do not include fees charged for the payment of bonds heretofore or hereafter issued for, or other indebtedness incurred to pay, all or part of the cost of acquiring, constructing, or installing any lands, buildings, or facilities.

(14) "Tuition unit contract" means a contract between an eligible purchaser and the governing body, or a successor agency appointed for administration of this chapter, for the purchase of tuition units for a specified beneficiary that may be redeemed at a later date for an equal number of tuition units.

(15) "Unit purchase price" means the minimum cost to purchase one tuition unit for an eligible beneficiary. Generally, the minimum purchase price is one percent of the undergraduate ~~((weighted average))~~ tuition and fees for the current year, rounded to the nearest whole dollar, adjusted for the costs of administration and adjusted to ensure the actuarial soundness of the account. The analysis for price setting shall also include, but not be limited to consideration of past and

projected patterns of tuition increases, program liability, past and projected investment returns, and the need for a prudent stabilization reserve.

~~((16) "Weighted average tuition" shall be calculated as the sum of the undergraduate tuition and services and activities fees for each four year state institution of higher education, multiplied by the respective full time equivalent student enrollment at each institution divided by the sum total of undergraduate full time equivalent student enrollments of all four year state institutions of higher education, rounded to the nearest whole dollar.~~

~~(17) "Weighted average tuition unit" is the value of the weighted average tuition and fees divided by one hundred. The weighted average is the basis upon which tuition benefits may be calculated as the basis for any refunds provided from the program.))~~

Sec. 2. RCW 28B.95.030 and 2000 c 14 s 3 are each amended to read as follows:

(1) The Washington advanced college tuition payment program shall be administered by the committee on advanced tuition payment which shall be chaired by the executive director of the board. The committee shall be supported by staff of the board.

(2)(a) The Washington advanced college tuition payment program shall consist of the sale of tuition units, which may be redeemed by the beneficiary at a future date for an equal number of tuition units regardless of any increase in the price of tuition, that may have occurred in the interval.

(b) Each purchase shall be worth a specific number of or fraction of tuition units at each state institution of higher education as determined by the governing body.

(c) The number of tuition units necessary to pay for a full year's, full-time undergraduate tuition and fee charges at a state institution of higher education shall be set by the governing body at the time a purchaser enters into a tuition unit contract.

(d) The governing body may limit the number of tuition units purchased by any one purchaser or on behalf of any one beneficiary, however, no limit may be imposed that is less than that necessary to achieve four years of full-time, undergraduate tuition charges at a state institution of higher education. The governing body also may, at its discretion, limit the number of participants, if needed, to ensure the actuarial soundness and integrity of the program.

(e) While the Washington advanced college tuition payment program is designed to help all citizens of the state of Washington, the governing body may determine residency requirements for eligible purchasers and eligible beneficiaries to ensure the actuarial soundness and integrity of the program.

(3)(a) No tuition unit may be redeemed until two years after the purchase of the unit. Units may be redeemed for enrollment at any institution of higher education that is recognized by the internal revenue service under chapter 529 of the internal revenue code.

(b) Units redeemed at a nonstate institution of higher education or for graduate enrollment shall be redeemed at the rate for state public institutions in effect at the time of redemption.

(4) The governing body shall determine the conditions under which the tuition benefit may be transferred to another family member. In permitting such transfers, the governing body may not allow the tuition benefit to be bought,

sold, bartered, or otherwise exchanged for goods and services by either the beneficiary or the purchaser.

(5) The governing body shall administer the Washington advanced college tuition payment program in a manner reasonably designed to be actuarially sound, such that the assets of the trust will be sufficient to defray the obligations of the trust including the costs of administration. The governing body may, at its discretion, discount the minimum purchase price for certain kinds of purchases such as those from families with young children, as long as the actuarial soundness of the account is not jeopardized.

(6) The governing body shall annually determine current value of a tuition unit (~~and the value of the weighted average tuition unit~~).

(7) The governing body shall promote, advertise, and publicize the Washington advanced college tuition payment program.

(8) In addition to any other powers conferred by this chapter, the governing body may:

(a) Impose reasonable limits on the number of tuition units or units that may be used in any one year;

(b) Determine and set any time limits, if necessary, for the use of benefits under this chapter;

(c) Impose and collect administrative fees and charges in connection with any transaction under this chapter;

(d) Appoint and use advisory committees as needed to provide program direction and guidance;

(e) Formulate and adopt all other policies and rules necessary for the efficient administration of the program;

(f) Consider the addition of an advanced payment program for room and board contracts and also consider a college savings program;

(g) Purchase insurance from insurers licensed to do business in the state, to provide for coverage against any loss in connection with the account's property, assets, or activities or to further insure the value of the tuition units;

(h) Make, execute, and deliver contracts, conveyances, and other instruments necessary to the exercise and discharge of its powers and duties under this chapter;

(i) Contract for the provision for all or part of the services necessary for the management and operation of the program with other state or nonstate entities authorized to do business in the state;

(j) Contract for other services or for goods needed by the governing body in the conduct of its business under this chapter;

(k) Contract with financial consultants, actuaries, auditors, and other consultants as necessary to carry out its responsibilities under this chapter;

(l) Solicit and accept cash donations and grants from any person, governmental agency, private business, or organization; and

(m) Perform all acts necessary and proper to carry out the duties and responsibilities of this program under this chapter.

Sec. 3. RCW 28B.95.090 and 1997 c 289 s 9 are each amended to read as follows:

(1) In the event that the state determines that the program is not financially feasible, or for any other reason, the state may declare the discontinuance of the

program. At the time of such declaration, the governing body will cease to accept any further tuition unit contracts or purchases.

(2) The remaining tuition units for all beneficiaries who have either enrolled in higher education or who are within four years of graduation from a secondary school shall be honored until such tuition units have been exhausted, or for ten fiscal years from the date that the program has been discontinued, whichever comes first. All other contract holders shall receive a refund equal to the value of the current (~~(weighted average)~~) tuition units in effect at the time that the program was declared discontinued.

(3) At the end of the ten-year period, any tuition units remaining unused by currently active beneficiaries enrolled in higher education shall be refunded at the value of the current (~~(weighted average)~~) tuition unit in effect at the end of that ten-year period.

(4) At the end of the ten-year period, all other funds remaining in the account not needed to make refunds or to pay for administrative costs shall be deposited to the state general fund.

(5) The governing body may make refunds under other exceptional circumstances as it deems fit, however, no tuition units may be honored after the end of the tenth fiscal year following the declaration of discontinuance of the program.

Sec. 4. RCW 28B.95.110 and 2001 c 184 s 3 are each amended to read as follows:

(1) The intent of the Washington advanced college tuition payment program is to redeem tuition units for attendance at an institution of higher education. Refunds shall be issued under specific conditions that may include the following:

(a) Certification that the beneficiary, who is eighteen years of age or older, will not attend an institution of higher education, will result in a refund not to exceed the current (~~(weighted average tuition and fees)~~) value, as determined by the governing body, in effect at the time of such certification minus a penalty at the rate established by the (~~(internal revenue service under chapter [section] 529 of the internal revenue code. No more than one hundred tuition units may be refunded per year to any individual making this certification)~~) governing body. The refund shall be made no sooner than ninety days after such certification, less any administrative processing fees assessed by the governing body;

(b) If there is certification of the death or disability of the beneficiary, the refund shall be equal to one hundred percent of any remaining unused tuition units at the current value, as determined by the governing body, at the time that such certification is submitted to the governing body, less any administrative processing fees assessed by the governing body;

(c) If there is certification by the student of graduation or program completion, the refund shall be as great as one hundred percent of any remaining unused tuition units at the current value, as determined by the governing body, at the time that such certification is submitted to the governing body, less any administrative processing fees assessed by the governing body. The governing body may, at its discretion, impose a penalty if needed to comply with federal tax rules;

(d) If there is certification of other tuition and fee scholarships, which will cover the cost of tuition for the eligible beneficiary. The refund shall be equal to

one hundred percent of the current value of tuition units, as determined by the governing body, in effect at the time of the refund request, less any administrative processing fees assessed by the governing body. The refund under this subsection may not exceed the value of the scholarship;

(e) Incorrect or misleading information provided by the purchaser or beneficiaries may result in a refund of the purchaser's investment, less any administrative processing fees assessed by the governing body. The value of the refund will not exceed the actual dollar value of the purchaser's contributions; and

(f) The governing body may determine other circumstances qualifying for refunds of remaining unused tuition units and may determine the value of that refund.

(2) With the exception of subsection (1)(b), (e), and (f) of this section no refunds may be made before the units have been held for two years.

NEW SECTION. Sec. 5. A new section is added to chapter 28B.95 RCW to read as follows:

In regard to bankruptcy filings and enforcement of judgments under Title 6 RCW, tuition units purchased more than two years prior to the date of filing or judgment will be considered excluded personal assets.

Sec. 6. RCW 6.15.010 and 2002 c 265 s 1 are each amended to read as follows:

Except as provided in RCW 6.15.050, the following personal property shall be exempt from execution, attachment, and garnishment:

(1) All wearing apparel of every individual and family, but not to exceed one thousand dollars in value in furs, jewelry, and personal ornaments for any individual.

(2) All private libraries of every individual, but not to exceed fifteen hundred dollars in value, and all family pictures and keepsakes.

(3) To each individual or, as to community property of spouses maintaining a single household as against a creditor of the community, to the community:

(a) The individual's or community's household goods, appliances, furniture, and home and yard equipment, not to exceed two thousand seven hundred dollars in value for the individual or five thousand four hundred dollars for the community, said amount to include provisions and fuel for the comfortable maintenance of the individual or community;

(b) Other personal property, except personal earnings as provided under RCW 6.15.050(1), not to exceed two thousand dollars in value, of which not more than two hundred dollars in value may consist of cash, and of which not more than two hundred dollars in value may consist of bank accounts, savings and loan accounts, stocks, bonds, or other securities;

(c) For an individual, a motor vehicle used for personal transportation, not to exceed two thousand five hundred dollars or for a community two motor vehicles used for personal transportation, not to exceed five thousand dollars in aggregate value;

(d) Any past due, current, or future child support paid or owed to the debtor, which can be traced;

(e) All professionally prescribed health aids for the debtor or a dependent of the debtor; and

(f) To any individual, the right to or proceeds of a payment not to exceed sixteen thousand one hundred fifty dollars on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or the right to or proceeds of a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor. The exemption under this subsection (3)(f) does not apply to the right of the state of Washington, or any agent or assignee of the state, as a lienholder or subrogee under RCW 43.20B.060.

(4) To each qualified individual, one of the following exemptions:

(a) To a farmer, farm trucks, farm stock, farm tools, farm equipment, supplies and seed, not to exceed five thousand dollars in value;

(b) To a physician, surgeon, attorney, clergyman, or other professional person, the individual's library, office furniture, office equipment and supplies, not to exceed five thousand dollars in value;

(c) To any other individual, the tools and instruments and materials used to carry on his or her trade for the support of himself or herself or family, not to exceed five thousand dollars in value.

For purposes of this section, "value" means the reasonable market value of the debtor's interest in an article or item at the time it is selected for exemption, exclusive of all liens and encumbrances thereon.

(5) Tuition units, under chapter 28B.95 RCW, purchased more than two years prior to the date of a bankruptcy filing or court judgment.

Passed by the Senate March 9, 2005.

Passed by the House April 11, 2005.

Approved by the Governor May 4, 2005.

Filed in Office of Secretary of State May 4, 2005.

CHAPTER 273

[House Bill 1000]

PUBLIC MEETINGS—ELECTRONIC MAIL NOTICE

AN ACT Relating to allowing special meetings to be called through electronic mail notice; and amending RCW 42.30.080.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 42.30.080 and 1971 ex.s. c 250 s 8 are each amended to read as follows:

A special meeting may be called at any time by the presiding officer of the governing body of a public agency or by a majority of the members of the governing body by delivering written notice personally ((~~or~~)), by mail ((~~written notice~~)), by fax, or by electronic mail to each member of the governing body; and to each local newspaper of general circulation and to each local radio or television station which has on file with the governing body a written request to be notified of such special meeting or of all special meetings. Such notice must be delivered personally ((~~or~~)), by mail, by fax, or by electronic mail at least twenty-four hours before the time of such meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and

the business to be transacted. Final disposition shall not be taken on any other matter at such meetings by the governing body. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the governing body a written waiver of notice. Such waiver may be given by telegram, by fax, or electronic mail. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. The notices provided in this section may be dispensed with in the event a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage.

Passed by the House February 25, 2005.

Passed by the Senate April 11, 2005.

Approved by the Governor May 4, 2005.

Filed in Office of Secretary of State May 4, 2005.

CHAPTER 274

[Substitute House Bill 1133]

PUBLIC RECORDS ACT

AN ACT Relating to creating the public records act by recodifying and making technical changes to existing law; amending RCW 2.64.111, 9.41.097, 9.41.129, 10.29.030, 10.29.090, 10.97.080, 10.97.140, 10.98.200, 10.99.090, 13.40.570, 15.19.080, 15.26.295, 15.28.315, 15.44.185, 15.58.060, 15.65.203, 15.66.105, 15.86.110, 15.88.170, 16.67.180, 18.27.120, 18.32.040, 18.39.450, 18.44.031, 18.51.290, 18.64.420, 18.71.0195, 18.71.340, 18.106.320, 18.130.085, 18.130.095, 18.130.110, 18.130.175, 19.28.171, 19.34.240, 19.80.065, 19.230.190, 21.20.855, 21.30.170, 22.09.640, 26.12.170, 26.23.120, 27.53.070, 28A.320.160, 28A.410.095, 28B.85.020, 28C.10.050, 29A.04.225, 29A.60.070, 29A.60.140, 30.04.075, 30.04.230, 30.04.410, 31.12.565, 31.45.030, 31.45.077, 31.45.090, 32.04.220, 32.32.228, 32.32.275, 33.04.110, 34.05.325, 35.02.130, 35.21.228, 35.21.759, 35.102.040, 35A.21.300, 36.01.210, 36.28A.060, 36.57.120, 36.57A.170, 36.70B.220, 36.70C.120, 36.102.200, 39.10.100, 40.07.040, 41.05.026, 41.06.160, 41.06.167, 41.06.450, 41.06.455, 42.17.245, 42.17.251, 42.17.260, 42.17.270, 42.17.305, 42.17.311, 42.17.340, 42.17.341, 42.17.348, 42.48.030, 42.52.050, 42.52.810, 43.06A.050, 43.21L.120, 43.22.434, 43.33A.025, 43.43.856, 43.52.570, 43.52.612, 43.70.050, 43.70.510, 44.05.080, 46.12.380, 46.12.390, 46.20.041, 46.20.118, 47.64.220, 48.02.065, 48.20.530, 48.21.330, 48.30A.060, 48.32A.185, 48.44.470, 48.46.540, 48.62.101, 48.94.010, 48.104.050, 50.13.015, 50.13.030, 50.13.040, 50.13.060, 50.13.080, 50.38.060, 51.36.120, 52.14.100, 69.41.044, 69.41.280, 69.45.090, 70.02.090, 70.38.095, 70.41.150, 70.44.315, 70.45.030, 70.47.150, 70.77.455, 70.95C.220, 70.102.020, 70.120.100, 70.148.060, 70.149.090, 70.168.070, 70.168.090, 70.190.060, 72.09.116, 72.09.225, 73.04.030, 74.09A.020, 74.13.500, 74.13.515, 74.13.525, 74.34.063, 74.39A.200, 74.46.820, 76.09.060, 80.04.095, 81.104.115, 81.112.180, 82.32.410, 84.08.210, 84.40.020, 90.14.068, and 90.80.135; reenacting and amending RCW 66.28.180, 71.05.390, 82.32.330, and 42.17.310; adding a new chapter to Title 42 RCW; creating new sections; recodifying RCW 42.17.250, 42.17.251, 42.17.255, 42.17.258, 42.17.260, 42.17.270, 42.17.280, 42.17.290, 42.17.295, 42.17.300, 42.17.305, 42.17.310, 42.17.311, 42.17.320, 42.17.325, 42.17.330, 42.17.340, 42.17.341, and 42.17.348; repealing RCW 42.17.312, 42.17.313, 42.17.314, 42.17.315, 42.17.316, 42.17.317, 42.17.318, 42.17.319, 42.17.31901, 42.17.31902, 42.17.31903, 42.17.31904, 42.17.31905, 42.17.31906, 42.17.31907, 42.17.31908, 42.17.31909, 42.17.31910, 42.17.31911, 42.17.31912, 42.17.31913, 42.17.31914, 42.17.31915, 42.17.31916, 42.17.31917, 42.17.31918, 42.17.31919, 42.17.31920, and 42.17.31921; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that chapter 42.17 RCW contains laws relating to several discrete subjects. Therefore, the purpose of this

act is to recodify some of those laws and create a new chapter in the Revised Code of Washington that contains laws pertaining to public records.

**PART I
PUBLIC RECORDS ACT**

NEW SECTION. **Sec. 101.** The definitions in RCW 42.17.020 apply throughout this chapter.

NEW SECTION. **Sec. 102.** This chapter may be known and cited as the public records act.

NEW SECTION. **Sec. 103.** The following sections are each recodified as a new chapter in Title 42 RCW:

- RCW 42.17.250
- RCW 42.17.251
- RCW 42.17.255
- RCW 42.17.258
- RCW 42.17.260
- RCW 42.17.270
- RCW 42.17.280
- RCW 42.17.290
- RCW 42.17.295
- RCW 42.17.300
- RCW 42.17.305
- RCW 42.17.310
- RCW 42.17.311
- RCW 42.17.320
- RCW 42.17.325
- RCW 42.17.330
- RCW 42.17.340
- RCW 42.17.341
- RCW 42.17.348

**PART II
TECHNICAL CORRECTIONS**

Sec. 201. RCW 2.64.111 and 1989 c 367 s 6 are each amended to read as follows:

All pleadings, papers, evidence records, and files of the commission, including complaints and the identity of complainants, compiled or obtained during the course of an investigation or initial proceeding involving the discipline or retirement of a judge or justice, are exempt from the public disclosure requirements of chapter ~~((42.17 RCW))~~ 42.—RCW (the new chapter created in section 103 of this act) during such investigation or initial proceeding. As of the date of a public hearing, all those records of the initial proceeding that were the basis of a finding of probable cause are subject to the public disclosure requirements of chapter ~~((42.17 RCW))~~ 42.—RCW (the new chapter created in section 103 of this act).

Sec. 202. RCW 9.41.097 and 1994 sp.s. c 7 s 412 are each amended to read as follows:

(1) The department of social and health services, mental health institutions, and other health care facilities shall, upon request of a court or law enforcement agency, supply such relevant information as is necessary to determine the eligibility of a person to possess a pistol or to be issued a concealed pistol license under RCW 9.41.070 or to purchase a pistol under RCW 9.41.090.

(2) Mental health information received by: (a) The department of licensing pursuant to RCW 9.41.047 or 9.41.170; (b) an issuing authority pursuant to RCW 9.41.047 or 9.41.070; (c) a chief of police or sheriff pursuant to RCW 9.41.090 or 9.41.170; (d) a court or law enforcement agency pursuant to subsection (1) of this section, shall not be disclosed except as provided in ~~((RCW 42.17.318))~~ section 404(4) of this act.

Sec. 203. RCW 9.41.129 and 1994 sp.s. c 7 s 417 are each amended to read as follows:

The department of licensing may keep copies or records of applications for concealed pistol licenses provided for in RCW 9.41.070, copies or records of applications for alien firearm licenses, copies or records of applications to purchase pistols provided for in RCW 9.41.090, and copies or records of pistol transfers provided for in RCW 9.41.110. The copies and records shall not be disclosed except as provided in ~~((RCW 42.17.318))~~ section 404(4) of this act.

Sec. 204. RCW 10.29.030 and 1980 c 146 s 3 are each amended to read as follows:

(1) The organized crime advisory board shall have the authority, by a three-fourths vote at a regularly constituted meeting, to petition the Washington state supreme court for an order appointing a special inquiry judge as prescribed by this section. Such vote may be on its own motion or pursuant to a request from the prosecuting attorney of any county. In the event of such request from a prosecuting attorney the board shall vote on the question promptly. A petition filed under this section shall state the general crimes or wrongs to be inquired into and shall state the reasons why said crimes or wrongs are such that a statewide special inquiry judge should be authorized to investigate. The supreme court may order the appointment of a statewide special inquiry judge, in accordance with the petition, for a term of six calendar months. Upon petition by the special prosecutor, and with the approval of the majority of the members of the organized crime advisory board, the supreme court, by order, may extend the term of the statewide special inquiry judge for three months. The term of the statewide special inquiry judge may subsequently be extended in the same manner for additional three-month periods.

(2) If the petition is granted, the supreme court shall designate a judge of a superior court to act as a special inquiry judge. The supreme court shall ensure that sufficient visiting judges are made available to the superior court from which the appointment is made in order to compensate for any loss of judicial time.

(3) All of the information and data collected and processed by the organized crime advisory board and the petition filed with the supreme court shall be confidential and not subject to examination or publication pursuant to chapter ~~((42.17 RCW (Initiative Measure No. 276), as now existing or hereafter amended))~~ 42.— RCW (the new chapter created in section 103 of this act),

except as provided by rules of the supreme court of Washington in the case of the petition.

Sec. 205. RCW 10.29.090 and 1980 c 146 s 9 are each amended to read as follows:

Within ten days of his or her appointment, a special prosecutor selected under this chapter shall submit to the organized crime advisory board an operating budget to fund the activities of his or her office. The budget may include, but shall not be limited to, funds for the hiring of assistant special prosecutors, investigators, and clerical staff. Upon the approval of the budget by a majority of the members of the board, the costs and expenses of the prosecutor's operating budget shall be paid for by the state out of the organized crime prosecution revolving fund. Further operating budgets shall be proposed, approved, and funded pursuant to this section if the term of a statewide special inquiry judge is extended pursuant to RCW 10.29.030.

Vouchers and other budget and accounting records of a special inquiry judge proceeding including such records of the special prosecutor shall be subject to audit by the state auditor but shall not be public records within the meaning of chapter ((42.17 RCW)) 42.— RCW (the new chapter created in section 103 of this act).

Sec. 206. RCW 10.97.080 and 1979 ex.s. c 36 s 3 are each amended to read as follows:

All criminal justice agencies shall permit an individual who is, or who believes that he may be, the subject of a criminal record maintained by that agency, to appear in person during normal business hours of that criminal justice agency and request to see the criminal history record information held by that agency pertaining to the individual. The individual's right to access and review of criminal history record information shall not extend to data contained in intelligence, investigative, or other related files, and shall not be construed to include any information other than that defined as criminal history record information by this chapter.

Every criminal justice agency shall adopt rules and make available forms to facilitate the inspection and review of criminal history record information by the subjects thereof, which rules may include requirements for identification, the establishment of reasonable periods of time to be allowed an individual to examine the record, and for assistance by an individual's counsel, interpreter, or other appropriate persons.

No person shall be allowed to retain or mechanically reproduce any nonconviction data except for the purpose of challenge or correction when the person who is the subject of the record asserts the belief in writing that the information regarding such person is inaccurate or incomplete. The provisions of chapter ((42.17 RCW)) 42.— RCW (the new chapter created in section 103 of this act) shall not be construed to require or authorize copying of nonconviction data for any other purpose.

The Washington state patrol shall establish rules for the challenge of records which an individual declares to be inaccurate or incomplete, and for the resolution of any disputes between individuals and criminal justice agencies pertaining to the accuracy and completeness of criminal history record information. The Washington state patrol shall also adopt rules for the

correction of criminal history record information and the dissemination of corrected information to agencies and persons to whom inaccurate or incomplete information was previously disseminated. Such rules may establish time limitations of not less than ninety days upon the requirement for disseminating corrected information.

Sec. 207. RCW 10.97.140 and 1999 c 326 s 4 are each amended to read as follows:

Nothing in RCW 40.14.060(~~(7)~~) or 40.14.070(~~(7)~~) or (~~(42.17.310)~~) chapter 42.— RCW (the new chapter created in section 103 of this act) precludes dissemination of criminal history record information, including nonconviction data, for the purposes of this chapter.

Sec. 208. RCW 10.98.200 and 2003 c 104 s 1 are each amended to read as follows:

(1) The legislature finds that each of the state's justice agencies and the courts have developed independent information systems to address independent management and planning needs, that the state's justice information system is fragmented, and that access to complete, accurate, and timely justice information is difficult and inefficient.

(2) The legislature declares that the purpose of chapter 104, Laws of 2003 is to develop and maintain, in a cost-effective manner, a statewide network of criminal justice information that enables sharing and integrated delivery of justice information maintained in the state's independent information systems and that will:

(a) Maximize standardization of data and communications technology among law enforcement agencies, jails, prosecuting attorneys, the courts, corrections, and licensing;

(b) Reduce redundant data collection and input efforts;

(c) Reduce or eliminate paper-based information exchanges;

(d) Improve work flow within the criminal justice system;

(e) Provide complete, accurate, and timely information to criminal justice agencies and courts in a single computer session; and

(f) Maintain security and privacy rights respecting criminal justice information.

(3) Statewide coordination of criminal justice information will improve:

(a) The safety of the public and the safety of law enforcement officers and other public servants, by making more complete, accurate, and timely information concerning offenders available to all criminal justice agencies and courts;

(b) Decision making, by increasing the availability of statistical measures for review, evaluation, and promulgation of public policy; and

(c) Access to complete, accurate, and timely information by the public, to the extent permitted pursuant to chapters 10.97 and (~~(42.17 RCW)~~) 42.— RCW (the new chapter created in section 103 of this act).

(4) The legislature encourages state and local criminal justice agencies and courts to collaborate in the development of justice information systems, as criminal justice agencies and courts collect the most complete, accurate, and timely information regarding offenders.

(5) The legislature finds that the implementation, operation, and continuing enhancement of a statewide justice information network that enables sharing and integrated delivery of information maintained in the state's independent information systems is critical to the complete, accurate, and timely performance of criminal background checks and to the effective communications between and among law enforcement, the courts, executive agencies, and political subdivisions of the state. The legislature further finds and declares that it is in the best interests of the citizens of the state and for the enhancement of public safety that the Washington integrated justice information board be created as soon as possible.

(6) The legislature finds that the intent, purpose, and goals of chapter 104, Laws of 2003 will be implemented most effectively by a board having the power, authority, and responsibility to develop, maintain, and enhance a statewide justice information network that enables sharing and integrated delivery of justice information maintained in the state's independent information systems.

Sec. 209. RCW 10.99.090 and 2004 c 18 s 3 are each amended to read as follows:

(1) By December 1, 2004, the association shall develop a written model policy on domestic violence committed or allegedly committed by sworn employees of agencies. In developing the policy, the association shall convene a work group consisting of representatives from the following entities and professions:

(a) Statewide organizations representing state and local enforcement officers;

(b) A statewide organization providing training and education for agencies having the primary responsibility of serving victims of domestic violence with emergency shelter and other services; and

(c) Any other organization or profession the association determines to be appropriate.

(2) Members of the work group shall serve without compensation.

(3) The model policy shall provide due process for employees and, at a minimum, meet the following standards:

(a) Provide prehire screening procedures reasonably calculated to disclose whether an applicant for a sworn employee position:

(i) Has committed or, based on credible sources, has been accused of committing an act of domestic violence;

(ii) Is currently being investigated for an allegation of child abuse or neglect or has previously been investigated for founded allegations of child abuse or neglect; or

(iii) Is currently or has previously been subject to any order under RCW 26.44.063, this chapter, chapter 10.14 or 26.50 RCW, or any equivalent order issued by another state or tribal court;

(b) Provide for the mandatory, immediate response to acts or allegations of domestic violence committed or allegedly committed by a sworn employee of an agency;

(c) Provide to a sworn employee, upon the request of the sworn employee or when the sworn employee has been alleged to have committed an act of domestic violence, information on programs under RCW 26.50.150;

(d) Provide for the mandatory, immediate reporting by employees when an employee becomes aware of an allegation of domestic violence committed or allegedly committed by a sworn employee of the agency employing the sworn employee;

(e) Provide procedures to address reporting by an employee who is the victim of domestic violence committed or allegedly committed by a sworn employee of an agency;

(f) Provide for the mandatory, immediate self-reporting by a sworn employee to his or her employing agency when an agency in any jurisdiction has responded to a domestic violence call in which the sworn employee committed or allegedly committed an act of domestic violence;

(g) Provide for the mandatory, immediate self-reporting by a sworn employee to his or her employing agency if the employee is currently being investigated for an allegation of child abuse or neglect or has previously been investigated for founded allegations of child abuse or neglect, or is currently or has previously been subject to any order under RCW 26.44.063, this chapter, chapter 10.14 or 26.50 RCW, or any equivalent order issued by another state or tribal court;

(h) Provide for the performance of prompt separate and impartial administrative and criminal investigations of acts or allegations of domestic violence committed or allegedly committed by a sworn employee of an agency;

(i) Provide for appropriate action to be taken during an administrative or criminal investigation of acts or allegations of domestic violence committed or allegedly committed by a sworn employee of an agency. The policy shall provide procedures to address, in a manner consistent with applicable law and the agency's ability to maintain public safety within its jurisdiction, whether to relieve the sworn employee of agency-issued weapons and other agency-issued property and whether to suspend the sworn employee's power of arrest or other police powers pending resolution of any investigation;

(j) Provide for prompt and appropriate discipline or sanctions when, after an agency investigation, it is determined that a sworn employee has committed an act of domestic violence;

(k) Provide that, when there has been an allegation of domestic violence committed or allegedly committed by a sworn employee, the agency immediately make available to the alleged victim the following information:

(i) The agency's written policy on domestic violence committed or allegedly committed by sworn employees;

(ii) Information, including but not limited to contact information, about public and private nonprofit domestic violence advocates and services; and

(iii) Information regarding relevant confidentiality policies related to the victim's information;

(l) Provide procedures for the timely response, consistent with chapters ~~((42.17))~~ 42.— (the new chapter created in section 103 of this act) and 10.97 RCW, to an alleged victim's inquiries into the status of the administrative investigation and the procedures the agency will follow in an investigation of domestic violence committed or allegedly committed by a sworn employee;

(m) Provide procedures requiring an agency to immediately notify the employing agency of a sworn employee when the notifying agency becomes aware of acts or allegations of domestic violence committed or allegedly

committed by the sworn employee within the jurisdiction of the notifying agency; and

(n) Provide procedures for agencies to access and share domestic violence training within their jurisdiction and with other jurisdictions.

(4) By June 1, 2005, every agency shall adopt and implement a written policy on domestic violence committed or allegedly committed by sworn employees of the agency that meet the minimum standards specified in this section. In lieu of developing its own policy, the agency may adopt the model policy developed by the association under this section. In developing its own policy, or before adopting the model policy, the agency shall consult public and private nonprofit domestic violence advocates and any other organizations and professions the agency finds appropriate.

(5)(a) Except as provided in this section, not later than June 30, 2006, every sworn employee of an agency shall be trained by the agency on the agency's policy required under this section.

(b) Sworn employees hired by an agency on or after March 1, 2006, shall, within six months of beginning employment, be trained by the agency on the agency's policy required under this section.

(6)(a) By June 1, 2005, every agency shall provide a copy of its policy developed under this section to the association and shall provide a statement notifying the association of whether the agency has complied with the training required under this section. The copy and statement shall be provided in electronic format unless the agency is unable to do so. The agency shall provide the association with any revisions to the policy upon adoption.

(b) The association shall maintain a copy of each agency's policy and shall provide to the governor and legislature not later than January 1, 2006, a list of those agencies that have not developed and submitted policies and those agencies that have not stated their compliance with the training required under this section.

(c) The association shall, upon request and within its resources, provide technical assistance to agencies in developing their policies.

Sec. 210. RCW 13.40.570 and 1999 c 72 s 1 are each amended to read as follows:

(1) When the secretary has reasonable cause to believe that sexual intercourse or sexual contact between an employee and an offender has occurred, notwithstanding any rule adopted under chapter 41.06 RCW the secretary shall immediately suspend the employee.

(2) The secretary shall immediately institute proceedings to terminate the employment of any person:

(a) Who is found by the department, based on a preponderance of the evidence, to have had sexual intercourse or sexual contact with the offender; or

(b) Upon a guilty plea or conviction for any crime specified in chapter 9A.44 RCW when the victim was an offender.

(3) When the secretary has reasonable cause to believe that sexual intercourse or sexual contact between the employee of a contractor and an offender has occurred, the secretary shall require the employee of a contractor to be immediately removed from any employment position which would permit the employee to have any access to any offender.

(4) The secretary shall disqualify for employment with a contractor in any position with access to an offender, any person:

(a) Who is found by the department, based on a preponderance of the evidence, to have had sexual intercourse or sexual contact with the offender; or

(b) Upon a guilty plea or conviction for any crime specified in chapter 9A.44 RCW when the victim was an offender.

(5) The secretary, when considering the renewal of a contract with a contractor who has taken action under subsection (3) or (4) of this section, shall require the contractor to demonstrate that there has been significant progress made in reducing the likelihood that any of its employees will have sexual intercourse or sexual contact with an offender. The secretary shall examine whether the contractor has taken steps to improve hiring, training, and monitoring practices and whether the employee remains with the contractor. The secretary shall not renew a contract unless he or she determines that significant progress has been made.

(6)(a) For the purposes of RCW 50.20.060, a person terminated under this section shall be considered discharged for misconduct.

(b)(i) The department may, within its discretion or upon request of any member of the public, release information to an individual or to the public regarding any person or contract terminated under this section.

(ii) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470 is immune from civil liability for damages for any discretionary release of relevant and necessary information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the public.

(iii) Except as provided in chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act), or elsewhere, nothing in this section shall impose any liability upon a public official, public employee, or public agency for failing to release information authorized under this section. Nothing in this section implies that information regarding persons designated in subsection (2) of this section is confidential except as may otherwise be provided by law.

(7) The department shall adopt rules to implement this section. The rules shall reflect the legislative intent that this section prohibits individuals who are employed by the department or a contractor of the department from having sexual intercourse or sexual contact with offenders. The rules shall also reflect the legislative intent that when a person is employed by the department or a contractor of the department, and has sexual intercourse or sexual contact with an offender against the employed person's will, the termination provisions of this section shall not be invoked.

(8) As used in this section:

(a) "Contractor" includes all subcontractors of a contractor;

(b) "Offender" means a person under the jurisdiction or supervision of the department; and

(c) "Sexual intercourse" and "sexual contact" have the meanings provided in RCW 9A.44.010.

Sec. 211. RCW 15.19.080 and 1998 c 154 s 28 are each amended to read as follows:

The department shall not disclose information obtained under this chapter regarding the purchases, sales, or production of an individual American ginseng grower or dealer, except for providing reports to the United States fish and wildlife service. This information is exempt from public disclosure required by chapter ((42.17-RCW)) 42.— RCW (the new chapter created in section 103 of this act).

Sec. 212. RCW 15.26.295 and 2002 c 313 s 67 are each amended to read as follows:

(1) Under ((RCW 42.17.31907)) section 418 of this act, certain agricultural business records, commission records, and department of agriculture records relating to the commission and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or the commission for the purpose of administering this chapter may be shared between the department and the commission. They may also be used, if required, in any suit or administrative hearing involving any provision of this chapter or a marketing order.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of persons subject to this chapter as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or the commission of the name of any person violating this chapter and a statement of the manner of the violation by that person.

Sec. 213. RCW 15.28.315 and 2002 c 313 s 68 are each amended to read as follows:

(1) Under ((RCW 42.17.31907)) section 418 of this act, certain agricultural business records, commission records, and department of agriculture records relating to the commission and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or the commission for the purpose of administering this chapter may be shared between the department and the commission. They may also be used, if required, in any suit or administrative hearing involving any provision of this chapter or a marketing order.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of persons subject to this chapter as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or the commission of the name of any person violating this chapter and a statement of the manner of the violation by that person.

Sec. 214. RCW 15.44.185 and 2002 c 313 s 69 are each amended to read as follows:

(1) Under ((RCW 42.17.31907)) section 418 of this act, certain agricultural business records, commission records, and department of agriculture records

relating to the commission and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or the commission for the purpose of administering this chapter may be shared between the department and the commission. They may also be used, if required, in any suit or administrative hearing involving any provision of this chapter or a marketing order.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of persons subject to this chapter as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or the commission of the name of any person violating this chapter and a statement of the manner of the violation by that person.

Sec. 215. RCW 15.58.060 and 1989 c 380 s 4 are each amended to read as follows:

(1) The applicant for registration shall file a statement with the department which shall include:

(a) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's;

(b) The name of the pesticide;

(c) The complete formula of the pesticide, including the active and inert ingredients: **PROVIDED**, That confidential business information of a proprietary nature is not made available to any other person and is exempt from disclosure as a public record, as provided by RCW 42.17.260 (as recodified by this act);

(d) Other necessary information required for completion of the department's application for registration form; and

(e) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions and precautions for use.

(2) The director may require a full description of the tests made and the results thereof upon which the claims are based.

(3) The director may prescribe other necessary information by rule.

Sec. 216. RCW 15.65.203 and 2002 c 313 s 18 are each amended to read as follows:

(1) Pursuant to (~~RCW 42.17.31907~~) section 418 of this act, certain agricultural business records, commodity board records, and department of agriculture records relating to commodity boards and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or a commodity board for the purpose of administering this chapter or a marketing order or agreement may be shared between the department and the applicable commodity board. They may also be used, if required, in any suit or administrative hearing involving this chapter or a marketing order or agreement.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of a number of persons subject to any marketing order or agreement as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or a commodity board of the name of any person violating any marketing order or agreement and a statement of the manner of the violation by that person.

Sec. 217. RCW 15.66.105 and 2002 c 313 s 50 are each amended to read as follows:

(1) Pursuant to (~~RCW 42.17.31907~~) section 418 of this act, certain agricultural business records, commodity commission records, and department of agriculture records relating to commodity commissions and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or a commodity commission for the purpose of administering this chapter or a marketing order may be shared between the department and the applicable commodity commission. They may also be used, if required, in any suit or administrative hearing involving any provision of this chapter or a marketing order.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of a number of persons subject to any marketing order as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or a commodity commission of the name of any person violating any marketing order and a statement of the manner of the violation by that person.

Sec. 218. RCW 15.86.110 and 1992 c 71 s 11 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the department shall keep confidential any business related information obtained under this chapter concerning an entity certified under this chapter or an applicant for such certification and such information shall be exempt from public inspection and copying under chapter (~~42.17 RCW~~) 42.— RCW (the new chapter created in section 103 of this act).

(2) Applications for certification under this chapter and laboratory analyses pertaining to that certification shall be available for public inspection and copying.

Sec. 219. RCW 15.88.170 and 2002 c 313 s 70 are each amended to read as follows:

(1) Under (~~RCW 42.17.31907~~) section 418 of this act, certain agricultural business records, commission records, and department of agriculture records relating to the commission and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or the commission for the purpose of administering this chapter may be shared between the department and the commission. They may also be used, if required, in any suit or administrative hearing involving any provision of this chapter or a marketing order.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of persons subject to this chapter as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or the commission of the name of any person violating this chapter and a statement of the manner of the violation by that person.

Sec. 220. RCW 16.67.180 and 2002 c 313 s 71 are each amended to read as follows:

(1) Under (~~RCW 42.17.31907~~) section 418 of this act, certain agricultural business records, commission records, and department of agriculture records relating to the commission and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or the commission for the purpose of administering this chapter may be shared between the department and the commission. They may also be used, if required, in any suit or administrative hearing involving any provision of this chapter or a marketing order.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of persons subject to this chapter as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or the commission of the name of any person violating this chapter and a statement of the manner of the violation by that person.

Sec. 221. RCW 18.27.120 and 1983 1st ex.s. c 2 s 20 are each amended to read as follows:

(1) The department shall compile a list of all contractors registered under this chapter and update the list at least bimonthly. The list shall be considered as public record information and shall be available to the public upon request: PROVIDED, That the department may charge a reasonable fee under RCW 42.17.300 (as recodified by this act).

(2) The department shall inform any person, firm, or corporation, if a contractor is registered, and if a contractor is bonded or insured, without charge except for a reasonable fee under RCW 42.17.300 (as recodified by this act) for copies made.

Sec. 222. RCW 18.32.040 and 1994 sp.s. c 9 s 211 are each amended to read as follows:

The commission shall require that every applicant for a license to practice dentistry shall:

(1) Present satisfactory evidence of graduation from a dental college, school, or dental department of an institution approved by the commission;

(2) Submit, for the files of the commission, a recent picture duly identified and attested; and

(3) Pass an examination prepared or approved by and administered under the direction of the commission. The dentistry licensing examination shall consist of practical and written tests upon such subjects and of such scope as the commission determines. The commission may accept, in lieu of all or part of a written examination, a certificate granted by a national or regional testing

organization approved by the commission. The commission shall set the standards for passing the examination. The secretary shall keep on file the examination papers and records of examination for at least one year. This file shall be open for inspection by the applicant or the applicant's agent unless the disclosure will compromise the examination process as determined by the commission or is exempted from disclosure under (~~RCW 42.17.250 through 42.17.340~~) chapter 42.— RCW (the new chapter created in section 103 of this act).

Sec. 223. RCW 18.39.450 and 1994 c 17 s 7 are each amended to read as follows:

(1) In the event of a finding of unprofessional conduct, the board shall prepare and serve findings of fact and an order as provided in chapter 34.05 RCW and the board shall notify the public, which notice must include press releases to appropriate local news media and the major news wire services. If the license, registration, endorsement, or permit holder or applicant is found to have not committed unprofessional conduct, the board shall immediately prepare and serve findings of fact and an order of dismissal of the charges. The board shall retain the findings of fact and order as a permanent record.

(2) The board shall report the issuance of statements of charges and final orders in cases processed by the board to:

(a) The person or agency who brought to the board's attention information that resulted in the initiation of the case;

(b) Appropriate organizations, public or private, that serve the professions; and

(c) Counterpart licensing boards in other states or associations of state licensing boards.

(3) This section does not require the reporting of information that is exempt from public disclosure under chapter (~~42.17 RCW~~) 42.— RCW (the new chapter created in section 103 of this act).

Sec. 224. RCW 18.44.031 and 1999 c 30 s 3 are each amended to read as follows:

An application for an escrow agent license shall be in writing in such form as is prescribed by the director, and shall be verified on oath by the applicant. An application for an escrow agent license shall include fingerprints for all officers, directors, owners, partners, and controlling persons, and, unless waived by the director, the following:

(1) The applicant's form of business organization and place of organization;

(2) If the applicant is a corporation or limited liability company, the address of its physical location, a list of officers, controlling persons, and directors of such corporation or company and their residential addresses, telephone numbers, and other identifying information as the director may determine by rule. If the applicant is a sole proprietorship or partnership, the address of its business location, a list of owners, partners, or controlling persons and their residential addresses, telephone numbers, and other identifying information as the director may determine by rule. Any information in the application regarding the personal residential address or telephone number of any officer, director, partner, owner, controlling person, or employee is exempt from the public records

disclosure requirements of chapter ((42.17 RCW)) 42.— RCW (the new chapter created in section 103 of this act);

(3) In the event the applicant is doing business under an assumed name, a copy of the master business license with the registered trade name shown;

(4) The qualifications and business history of the applicant and all of its officers, directors, owners, partners, and controlling persons;

(5) A personal credit report from a recognized credit reporting bureau satisfactory to the director on all officers, directors, owners, partners, and controlling persons of the applicant;

(6) Whether any of the officers, directors, owners, partners, or controlling persons have been convicted of any crime within the preceding ten years which relates directly to the business or duties of escrow agents, or have suffered a judgment within the preceding five years in any civil action involving fraud, misrepresentation, any unfair or deceptive act or practice, or conversion;

(7) The identity of the licensed escrow officer designated by the escrow agent as the designated escrow officer responsible for supervising the agent's escrow activity;

(8) Evidence of compliance with the bonding and insurance requirements of RCW 18.44.201; and

(9) Any other information the director may require by rule. The director may share any information contained within a license application, including fingerprints, with the federal bureau of investigation and other regulatory or law enforcement agencies.

Sec. 225. RCW 18.51.290 and 1980 c 184 s 4 are each amended to read as follows:

Any writing received, owned, used, or retained by the department in connection with the provisions of this chapter is a public record and, as such, is open to public inspection. Copies of such records provided for public inspection shall comply with RCW 42.17.260(1) (as recodified by this act). The names of duly authorized officers, employees, or agents of the department shall be included.

Sec. 226. RCW 18.64.420 and 1991 c 87 s 12 are each amended to read as follows:

All records, reports, and information obtained by the department from or on behalf of an entity licensed under chapter 48.20, 48.21, 48.44, or 48.46 RCW shall be confidential and exempt from inspection and copying under chapter ((42.17 RCW)) 42.— RCW (the new chapter created in section 103 of this act). Nothing in this section restricts the investigation or the proceedings of the board or the department so long as the board and the department comply with the provisions of chapter ((42.17 RCW)) 42.— RCW (the new chapter created in section 103 of this act). Nothing in this section or in chapter ((42.17 RCW)) 42.— RCW (the new chapter created in section 103 of this act) shall restrict the board or the department from complying with any mandatory reporting requirements that exist or may exist under federal law, nor shall the board or the department be restricted from providing to any person the name of any nonresident pharmacy that is or has been licensed or disciplined under RCW 18.64.350 through 18.64.400.

Sec. 227. RCW 18.71.0195 and 1998 c 132 s 2 are each amended to read as follows:

(1) The contents of any report filed under RCW 18.130.070 shall be confidential and exempt from public disclosure pursuant to chapter ((42-17 RCW)) 42.— RCW (the new chapter created in section 103 of this act), except that it may be reviewed (a) by the licensee involved or his or her counsel or authorized representative who may submit any additional exculpatory or explanatory statements or other information, which statements or other information shall be included in the file, or (b) by a representative of the commission, or investigator thereof, who has been assigned to review the activities of a licensed physician.

Upon a determination that a report is without merit, the commission's records may be purged of information relating to the report.

(2) Every individual, medical association, medical society, hospital, medical service bureau, health insurance carrier or agent, professional liability insurance carrier, professional standards review organization, agency of the federal, state, or local government, or the entity established by RCW 18.71.300 and its officers, agents, and employees are immune from civil liability, whether direct or derivative, for providing information to the commission under RCW 18.130.070, or for which an individual health care provider has immunity under the provisions of RCW 4.24.240, 4.24.250, or 4.24.260.

Sec. 228. RCW 18.71.340 and 1998 c 132 s 7 are each amended to read as follows:

All entity records are not subject to disclosure pursuant to chapter ((42-17 RCW)) 42.— RCW (the new chapter created in section 103 of this act).

Sec. 229. RCW 18.106.320 and 2002 c 82 s 5 are each amended to read as follows:

(1) Contractors shall accurately verify and attest to the trainee hours worked by plumbing trainees on behalf of the contractor and that all training hours were under the supervision of a certified plumber and within the proper ratio, and shall provide the supervising plumbers' names and certificate numbers. However, contractors are not required to identify which hours a trainee works with a specific certified plumber.

(2) The department may audit the records of a contractor that has verified the hours of experience submitted by a plumbing trainee to the department under RCW 18.106.030 in the following circumstances: Excessive hours were reported; hours were reported outside the normal course of the contractor's business; or for other similar circumstances in which the department demonstrates a likelihood of excessive or improper hours being reported. The department shall limit the audit to records necessary to verify hours. The department shall adopt rules implementing audit procedures. Information obtained from a contractor under the provisions of this section is confidential and is not open to public inspection under chapter ((42-17 RCW)) 42.— RCW (the new chapter created in section 103 of this act).

(3) Violation of this section by a contractor is an infraction.

Sec. 230. RCW 18.130.085 and 1993 c 360 s 1 are each amended to read as follows:

If the department communicates in writing to a complainant, or his or her representative, regarding his or her complaint, such communication shall not include the address or telephone number of the health care provider against whom he or she has complained. The department shall inform all applicants for a health care provider license of the provisions of this section and (~~RCW 42.17.310~~) chapter 42.— RCW (the new chapter created in section 103 of this act) regarding the release of address and telephone information.

Sec. 231. RCW 18.130.095 and 1997 c 270 s 1 are each amended to read as follows:

(1)(a) The secretary, in consultation with the disciplining authorities, shall develop uniform procedural rules to respond to public inquiries concerning complaints and their disposition, active investigations, statement of charges, findings of fact, and final orders involving a licensee, applicant, or unlicensed person. The uniform procedural rules adopted under this subsection apply to all adjudicative proceedings conducted under this chapter and shall include provisions for establishing time periods for initial assessment, investigation, charging, discovery, settlement, and adjudication of complaints, and shall include enforcement provisions for violations of the specific time periods by the department, the disciplining authority, and the respondent. A licensee must be notified upon receipt of a complaint, except when the notification would impede an effective investigation. At the earliest point of time the licensee must be allowed to submit a written statement about that complaint, which statement must be included in the file. Complaints filed after July 27, 1997, are exempt from public disclosure under chapter (~~42.17 RCW~~) 42.— RCW (the new chapter created in section 103 of this act) until the complaint has been initially assessed and determined to warrant an investigation by the disciplining authority. Complaints determined not to warrant an investigation by the disciplining authority are no longer considered complaints, but must remain in the records and tracking system of the department. Information about complaints that did not warrant an investigation, including the existence of the complaint, may be released only upon receipt of a written public disclosure request or pursuant to an interagency agreement as provided in (b) of this subsection. Complaints determined to warrant no cause for action after investigation are subject to public disclosure, must include an explanation of the determination to close the complaint, and must remain in the records and tracking system of the department.

(b) The secretary, on behalf of the disciplining authorities, shall enter into interagency agreements for the exchange of records, which may include complaints filed but not yet assessed, with other state agencies if access to the records will assist those agencies in meeting their federal or state statutory responsibilities. Records obtained by state agencies under the interagency agreements are subject to the limitations on disclosure contained in (a) of this subsection.

(2) The uniform procedures for conducting investigations shall provide that prior to taking a written statement:

(a) For violation of this chapter, the investigator shall inform such person, in writing of: (i) The nature of the complaint; (ii) that the person may consult with legal counsel at his or her expense prior to making a statement; and (iii) that any

statement that the person makes may be used in an adjudicative proceeding conducted under this chapter; and

(b) From a witness or potential witness in an investigation under this chapter, the investigator shall inform the person, in writing, that the statement may be released to the licensee, applicant, or unlicensed person under investigation if a statement of charges is issued.

(3) Only upon the authorization of a disciplining authority identified in RCW 18.130.040(2)(b), the secretary, or his or her designee, may serve as the presiding officer for any disciplinary proceedings of the disciplining authority authorized under this chapter. Except as provided in RCW 18.130.050(8), the presiding officer shall not vote on or make any final decision. All functions performed by the presiding officer shall be subject to chapter 34.05 RCW. The secretary, in consultation with the disciplining authorities, shall adopt procedures for implementing this subsection.

(4) The uniform procedural rules shall be adopted by all disciplining authorities listed in RCW 18.130.040(2), and shall be used for all adjudicative proceedings conducted under this chapter, as defined by chapter 34.05 RCW. The uniform procedural rules shall address the use of a presiding officer authorized in subsection (3) of this section to determine and issue decisions on all legal issues and motions arising during adjudicative proceedings.

Sec. 232. RCW 18.130.110 and 1989 c 175 s 70 are each amended to read as follows:

(1) In the event of a finding of unprofessional conduct, the disciplining authority shall prepare and serve findings of fact and an order as provided in chapter 34.05 RCW, the Administrative Procedure Act. If the license holder or applicant is found to have not committed unprofessional conduct, the disciplining authority shall forthwith prepare and serve findings of fact and an order of dismissal of the charges, including public exoneration of the licensee or applicant. The findings of fact and order shall be retained by the disciplining authority as a permanent record.

(2) The disciplining authority shall report the issuance of statements of charges and final orders in cases processed by the disciplining authority to:

(a) The person or agency who brought to the disciplining authority's attention information which resulted in the initiation of the case;

(b) Appropriate organizations, public or private, which serve the professions;

(c) The public. Notification of the public shall include press releases to appropriate local news media and the major news wire services; and

(d) Counterpart licensing boards in other states, or associations of state licensing boards.

(3) This section shall not be construed to require the reporting of any information which is exempt from public disclosure under chapter (~~42.47 RCW~~) 42.— RCW (the new chapter created in section 103 of this act).

Sec. 233. RCW 18.130.175 and 1998 c 132 s 10 are each amended to read as follows:

(1) In lieu of disciplinary action under RCW 18.130.160 and if the disciplining authority determines that the unprofessional conduct may be the result of substance abuse, the disciplining authority may refer the license holder

to a voluntary substance abuse monitoring program approved by the disciplining authority.

The cost of the treatment shall be the responsibility of the license holder, but the responsibility does not preclude payment by an employer, existing insurance coverage, or other sources. Primary alcoholism or other drug addiction treatment shall be provided by approved treatment programs under RCW 70.96A.020 or by any other provider approved by the entity or the commission. However, nothing shall prohibit the disciplining authority from approving additional services and programs as an adjunct to primary alcoholism or other drug addiction treatment. The disciplining authority may also approve the use of out-of-state programs. Referral of the license holder to the program shall be done only with the consent of the license holder. Referral to the program may also include probationary conditions for a designated period of time. If the license holder does not consent to be referred to the program or does not successfully complete the program, the disciplining authority may take appropriate action under RCW 18.130.160. The secretary shall adopt uniform rules for the evaluation by the disciplinary authority of a relapse or program violation on the part of a license holder in the substance abuse monitoring program. The evaluation shall encourage program participation with additional conditions, in lieu of disciplinary action, when the disciplinary authority determines that the license holder is able to continue to practice with reasonable skill and safety.

(2) In addition to approving substance abuse monitoring programs that may receive referrals from the disciplining authority, the disciplining authority may establish by rule requirements for participation of license holders who are not being investigated or monitored by the disciplining authority for substance abuse. License holders voluntarily participating in the approved programs without being referred by the disciplining authority shall not be subject to disciplinary action under RCW 18.130.160 for their substance abuse, and shall not have their participation made known to the disciplining authority, if they meet the requirements of this section and the program in which they are participating.

(3) The license holder shall sign a waiver allowing the program to release information to the disciplining authority if the licensee does not comply with the requirements of this section or is unable to practice with reasonable skill or safety. The substance abuse program shall report to the disciplining authority any license holder who fails to comply with the requirements of this section or the program or who, in the opinion of the program, is unable to practice with reasonable skill or safety. License holders shall report to the disciplining authority if they fail to comply with this section or do not complete the program's requirements. License holders may, upon the agreement of the program and disciplining authority, reenter the program if they have previously failed to comply with this section.

(4) The treatment and pretreatment records of license holders referred to or voluntarily participating in approved programs shall be confidential, shall be exempt from (~~RCW 42.17.250 through 42.17.450~~) chapter 42.— RCW (the new chapter created in section 103 of this act), and shall not be subject to discovery by subpoena or admissible as evidence except for monitoring records reported to the disciplining authority for cause as defined in subsection (3) of

this section. Monitoring records relating to license holders referred to the program by the disciplining authority or relating to license holders reported to the disciplining authority by the program for cause, shall be released to the disciplining authority at the request of the disciplining authority. Records held by the disciplining authority under this section shall be exempt from ~~((RCW 42.17.250 through 42.17.450))~~ chapter 42.— RCW (the new chapter created in section 103 of this act) and shall not be subject to discovery by subpoena except by the license holder.

(5) "Substance abuse," as used in this section, means the impairment, as determined by the disciplining authority, of a license holder's professional services by an addiction to, a dependency on, or the use of alcohol, legend drugs, or controlled substances.

(6) This section does not affect an employer's right or ability to make employment-related decisions regarding a license holder. This section does not restrict the authority of the disciplining authority to take disciplinary action for any other unprofessional conduct.

(7) A person who, in good faith, reports information or takes action in connection with this section is immune from civil liability for reporting information or taking the action.

(a) The immunity from civil liability provided by this section shall be liberally construed to accomplish the purposes of this section and the persons entitled to immunity shall include:

- (i) An approved monitoring treatment program;
- (ii) The professional association operating the program;
- (iii) Members, employees, or agents of the program or association;
- (iv) Persons reporting a license holder as being possibly impaired or providing information about the license holder's impairment; and
- (v) Professionals supervising or monitoring the course of the impaired license holder's treatment or rehabilitation.

(b) The courts are strongly encouraged to impose sanctions on clients and their attorneys whose allegations under this subsection are not made in good faith and are without either reasonable objective, substantive grounds, or both.

(c) The immunity provided in this section is in addition to any other immunity provided by law.

Sec. 234. RCW 19.28.171 and 2001 c 211 s 11 are each amended to read as follows:

The department may audit the records of an electrical contractor that has verified the hours of experience submitted by an electrical trainee to the department under RCW 19.28.161(2) in the following circumstances: Excessive hours were reported; hours reported outside the normal course of the contractor's business; the type of hours reported do not reasonably match the type of permits purchased; or for other similar circumstances in which the department demonstrates a likelihood of excessive hours being reported. The department shall limit the audit to records necessary to verify hours. The department shall adopt rules implementing audit procedures. Information obtained from an electrical contractor under the provisions of this section is confidential and is not open to public inspection under chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act).

Sec. 235. RCW 19.34.240 and 1997 c 27 s 11 are each amended to read as follows:

(1) By accepting a certificate issued by a licensed certification authority, the subscriber identified in the certificate assumes a duty to exercise reasonable care to retain control of the private key and prevent its disclosure to a person not authorized to create the subscriber's digital signature. The subscriber is released from this duty if the certificate expires or is revoked.

(2) A private key is the personal property of the subscriber who rightfully holds it.

(3) A private key in the possession of a state agency or local agency, as those terms are defined by RCW 42.17.020, is exempt from public inspection and copying under chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act).

Sec. 236. RCW 19.80.065 and 2000 c 171 s 59 are each amended to read as follows:

RCW 42.17.260(9) (as recodified by this act) does not apply to registrations made under this chapter.

Sec. 237. RCW 19.230.190 and 2003 c 287 s 21 are each amended to read as follows:

(1) Except as otherwise provided in subsection (2) of this section, all information or reports obtained by the director from an applicant, licensee, or authorized delegate and all information contained in, or related to, examination, investigation, operating, or condition reports prepared by, on behalf of, or for the use of the director, or financial statements, balance sheets, or authorized delegate information, are confidential and are not subject to disclosure under chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act).

(2) The director may disclose information not otherwise subject to disclosure under subsection (1) of this section to representatives of state or federal agencies who agree in writing to maintain the confidentiality of the information; or if the director finds that the release is reasonably necessary for the protection of the public and in the interests of justice.

(3) This section does not prohibit the director from disclosing to the public a list of persons licensed under this chapter or the aggregated financial data concerning those licensees.

Sec. 238. RCW 21.20.855 and 1988 c 244 s 16 are each amended to read as follows:

(1) Examination reports and information obtained by the director or the director's representatives in conducting examinations pursuant to RCW 21.20.700 shall not be subject to public disclosure under chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act).

(2) In any civil action in which the reports are sought to be discovered or used as evidence, any party may, upon notice to the director, petition the court for an in camera review of the report. The court may permit discovery and introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the director.

Sec. 239. RCW 21.30.170 and 1986 c 14 s 18 are each amended to read as follows:

(1) All information collected, assembled, or maintained by the director under this chapter is public information and is available for the examination of the public as provided by chapter (~~(42.17 RCW)~~ 42.— RCW (the new chapter created in section 103 of this act)) except the following:

(a) Information obtained in private investigations pursuant to RCW 21.30.100 or 21.30.110;

(b) Information exempt from public disclosure under chapter (~~(42.17 RCW)~~ 42.— RCW (the new chapter created in section 103 of this act)); and

(c) Information obtained from federal or state agencies which may not be disclosed under federal or state law.

(2) The director in the director's discretion may disclose any information made confidential under subsection (1)(a) of this section to persons identified in RCW 21.30.180.

(3) No provision of this chapter either creates or derogates from any privilege which exists at common law, by statute, or otherwise when any documentary or other evidence is sought under subpoena directed to the director or any employee of the director.

Sec. 240. RCW 22.09.640 and 1979 ex.s. c 238 s 25 are each amended to read as follows:

Notwithstanding the provisions of chapter (~~(42.17 RCW)~~ 42.— RCW (the new chapter created in section 103 of this act)), the department shall publish annually and distribute to interested parties, a list of licensed warehouses showing the location, county, capacity, and bond coverage for each company.

Sec. 241. RCW 26.12.170 and 1994 c 267 s 3 are each amended to read as follows:

To facilitate and promote the purposes of this chapter, family court judges and court commissioners may order or recommend family court services, parenting seminars, drug and alcohol abuse evaluations and monitoring of the parties through public or private treatment services, other treatment services, the aid of physicians, psychiatrists, other specialists, or other services or may recommend the aid of the pastor or director of any religious denomination to which the parties may belong.

If the court has reasonable cause to believe that a child of the parties has suffered abuse or neglect it may file a report with the proper law enforcement agency or the department of social and health services as provided in RCW 26.44.040. Upon receipt of such a report the law enforcement agency or the department of social and health services will conduct an investigation into the cause and extent of the abuse or neglect. The findings of the investigation may be made available to the court if ordered by the court as provided in RCW ~~42.17.310((3))~~(2) (as recodified by this act). The findings shall be restricted to the issue of abuse and neglect and shall not be considered custody investigations.

Sec. 242. RCW 26.23.120 and 1998 c 160 s 4 are each amended to read as follows:

(1) Any information or records concerning individuals who owe a support obligation or for whom support enforcement services are being provided which are obtained or maintained by the Washington state support registry, the division of child support, or under chapter 74.20 RCW shall be private and confidential

and shall only be subject to public disclosure as provided in subsection (2) of this section.

(2) The secretary of the department of social and health services may adopt rules:

- (a) That specify what information is confidential;
- (b) That specify the individuals or agencies to whom this information and these records may be disclosed;
- (c) Limiting the purposes for which the information may be disclosed;
- (d) Establishing procedures to obtain the information or records; or
- (e) Establishing safeguards necessary to comply with federal law requiring safeguarding of information.

(3) The rules adopted under subsection (2) of this section shall provide for disclosure of the information and records, under appropriate circumstances, which shall include, but not be limited to:

(a) When authorized or required by federal statute or regulation governing the support enforcement program;

(b) To the person the subject of the records or information, unless the information is exempt from disclosure under (~~RCW 42.17.310~~) chapter 42. — RCW (the new chapter created in section 103 of this act);

(c) To government agencies, whether state, local, or federal, and including federally recognized tribes, law enforcement agencies, prosecuting agencies, and the executive branch, if the disclosure is necessary for child support enforcement purposes or required under Title IV-D of the federal social security act;

(d) To the parties in a judicial or adjudicative proceeding upon a specific written finding by the presiding officer that the need for the information outweighs any reason for maintaining the privacy and confidentiality of the information or records;

(e) To private persons, federally recognized tribes, or organizations if the disclosure is necessary to permit private contracting parties to assist in the management and operation of the department;

(f) Disclosure of address and employment information to the parties to an action for purposes relating to a child support order, subject to the limitations in subsections (4) and (5) of this section;

(g) Disclosure of information or records when necessary to the efficient administration of the support enforcement program or to the performance of functions and responsibilities of the support registry and the division of child support as set forth in state and federal statutes; or

(h) Disclosure of the information or records when authorized under RCW 74.04.060.

(4) Prior to disclosing the whereabouts of a physical custodian, custodial parent or a child to the other parent or party, a notice shall be mailed, if appropriate under the circumstances, to the parent or physical custodian whose whereabouts are to be disclosed, at that person's last known address. The notice shall advise the parent or physical custodian that a request for disclosure has been made and will be complied with unless the department:

(a) Receives a copy of a court order within thirty days which enjoins the disclosure of the information or restricts or limits the requesting party's right to contact or visit the parent or party whose address is to be disclosed or the child;

(b) Receives a hearing request within thirty days under subsection (5) of this section; or

(c) Has reason to believe that the release of the information may result in physical or emotional harm to the physical custodian whose whereabouts are to be released, or to the child.

(5) A person receiving notice under subsection (4) of this section may request an adjudicative proceeding under chapter 34.05 RCW, at which the person may show that there is reason to believe that release of the information may result in physical or emotional harm to the person or the child. The administrative law judge shall determine whether the whereabouts of the person or child should be disclosed based on subsection (4)(c) of this section, however no hearing is necessary if the department has in its possession a protective order or an order limiting visitation or contact.

(6) The notice and hearing process in subsections (4) and (5) of this section do not apply to protect the whereabouts of a noncustodial parent, unless that parent has requested notice before whereabouts information is released. A noncustodial parent may request such notice by submitting a written request to the division of child support.

(7) Nothing in this section shall be construed as limiting or restricting the effect of RCW 42.17.260(9) (as recodified by this act). Nothing in this section shall be construed to prevent the disclosure of information and records if all details identifying an individual are deleted or the individual consents to the disclosure.

(8) It shall be unlawful for any person or agency in violation of this section to solicit, publish, disclose, receive, make use of, or to authorize, knowingly permit, participate in or acquiesce in the use of any lists of names for commercial or political purposes or the use of any information for purposes other than those purposes specified in this section. A violation of this section shall be a gross misdemeanor as provided in chapter 9A.20 RCW.

Sec. 243. RCW 27.53.070 and 1975-'76 2nd ex.s. c 82 s 3 are each amended to read as follows:

It is the declared intention of the legislature that field investigations on privately owned lands should be discouraged except in accordance with both the provisions and spirit of this chapter and persons having knowledge of the location of archaeological sites or resources are encouraged to communicate such information to the Washington archaeological research center. Such information shall not constitute a public record which requires disclosure pursuant to the exception authorized in (~~RCW 42.17.310, as now or hereafter amended,~~) chapter 42.— RCW (the new chapter created in section 103 of this act) to avoid site depredation.

Sec. 244. RCW 28A.320.160 and 2004 c 29 s 3 are each amended to read as follows:

School districts must, at the first opportunity but in all cases within forty-eight hours of receiving a report alleging sexual misconduct by a school employee, notify the parents of a student alleged to be the victim, target, or recipient of the misconduct. School districts shall provide parents with information regarding their rights under the (~~Washington public disclosure~~) public records act, chapter (~~42.17 RCW~~) 42.— RCW (the new chapter created

in section 103 of this act), to request the public records regarding school employee discipline. This information shall be provided to all parents on an annual basis.

Sec. 245. RCW 28A.410.095 and 2004 c 134 s 1 are each amended to read as follows:

(1) The superintendent of public instruction may initiate and conduct investigations as may be reasonably necessary to establish the existence of any alleged violations of or noncompliance with this chapter or any rules adopted under it. For the purpose of any investigation or proceeding under this chapter, the superintendent or any officer designated by the superintendent may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records that the superintendent deems relevant and material to the inquiry.

(2) Investigations conducted by the superintendent of public instruction concerning alleged sexual misconduct towards a child shall be completed within one year of the initiation of the investigation or within thirty days of the completion of all proceedings, including court proceedings, resulting from an investigation conducted by law enforcement or child protective services if there is such an investigation. The superintendent of public instruction may take, for reasonable cause, additional time for completion of the investigation after informing the victim, the individual being investigated, and the school district that employs the individual being investigated of the reasons additional time is needed and the amount of additional time needed. Written notification must be provided to each of the parties who must be informed. The sole remedy for a failure to complete an investigation of sexual misconduct within the time allowed by this subsection is a civil penalty of fifty dollars per day for each day beyond the allowed time.

(3) If any person fails to obey a subpoena or obeys a subpoena but refuses to give evidence, any court of competent jurisdiction, upon application by the superintendent, may issue to that person an order requiring him or her to appear before the court and to show cause why he or she should not be compelled to obey the subpoena, and give evidence material to the matter under investigation. The failure to obey an order of the court may be punishable as contempt.

(4) Once an investigation has been initiated by the superintendent of public instruction, the investigation shall be completed regardless of whether the individual being investigated has resigned his or her position or allowed his or her teaching certificate to lapse. The superintendent shall make a written finding regarding each investigation indicating the actions taken, including a statement of the reasons why a complaint was dismissed or did not warrant further investigation or action by the superintendent, and shall provide such notice to each person who filed the complaint. Written findings under this section are subject to public disclosure under chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act).

(5) An investigation into sexual or physical abuse of a student by a school employee shall only be initiated by the superintendent of public instruction after the superintendent of public instruction verifies that the incident has been reported to the proper law enforcement agency or the department of social and health services as required under RCW 26.44.030.

Sec. 246. RCW 28B.85.020 and 2004 c 96 s 1 are each amended to read as follows:

(1) The board:

(a) Shall adopt by rule minimum standards for degree-granting institutions concerning granting of degrees, quality of education, unfair business practices, financial stability, and other necessary measures to protect citizens of this state against substandard, fraudulent, or deceptive practices. The rules may require that an institution be accredited or be making progress toward accreditation by an accrediting agency recognized by the United States department of education. The board shall adopt the rules in accordance with chapter 34.05 RCW;

(b) May investigate any entity the board reasonably believes to be subject to the jurisdiction of this chapter. In connection with the investigation, the board may administer oaths and affirmations, issue subpoenas and compel attendance, take evidence, and require the production of any books, papers, correspondence, memorandums, or other records which the board deems relevant or material to the investigation. The board, including its staff and any other authorized persons, may conduct site inspections, the cost of which shall be borne by the institution, and examine records of all institutions subject to this chapter;

(c) Shall develop an interagency agreement with the work force training and education coordinating board to regulate degree-granting private vocational schools with respect to degree and nondegree programs; and

(d) Shall develop and disseminate information to the public about entities that sell or award degrees without requiring appropriate academic achievement at the postsecondary level, including but not limited to, a description of the substandard and potentially fraudulent practices of these entities, and advice about how the public can recognize and avoid the entities. To the extent feasible, the information shall include links to additional resources that may assist the public in identifying specific institutions offering substandard or fraudulent degree programs.

(2) Financial disclosures provided to the board by degree-granting private vocational schools are not subject to public disclosure under chapter (~~42.17 RCW~~) 42.— RCW (the new chapter created in section 103 of this act).

Sec. 247. RCW 28C.10.050 and 2001 c 23 s 1 are each amended to read as follows:

(1) The agency shall adopt by rule minimum standards for entities operating private vocational schools. The minimum standards shall include, but not be limited to, requirements for each school to:

(a) Disclose to the agency information about its ownership and financial position and to demonstrate that it has sufficient financial resources to fulfill its commitments to students. Financial disclosures provided to the agency shall not be subject to public disclosure under chapter (~~42.17 RCW~~) 42.— RCW (the new chapter created in section 103 of this act);

(b) Follow a uniform statewide cancellation and refund policy as specified by the agency;

(c) Disclose through use of a school catalog, brochure, or other written material, necessary information to students so that students may make informed enrollment decisions. The agency shall specify what information is required;

(d) Use an enrollment contract or agreement that includes: (i) The cancellation and refund policy, (ii) a brief statement that the school is licensed

under this chapter and that inquiries may be made to the agency, and (iii) other necessary information as determined by the agency;

(e) Describe accurately and completely in writing to students before their enrollment prerequisites and requirements for (i) completing successfully the programs of study in which they are interested and (ii) qualifying for the fields of employment for which their education is designed;

(f) Comply with the requirements of RCW 28C.10.084;

(g) Assess the basic skills and relevant aptitudes of each potential student to determine that a potential student has the basic skills and relevant aptitudes necessary to complete and benefit from the program in which the student plans to enroll. Guidelines for such assessments shall be developed by the agency, in consultation with the schools. The method of assessment shall be reported to the agency. Assessment records shall be maintained in the student's file;

(h) Discuss with each potential student the potential student's obligations in signing any enrollment contract and/or incurring any debt for educational purposes. The discussion shall include the inadvisability of acquiring an excessive educational debt burden that will be difficult to repay given employment opportunities and average starting salaries in the potential student's chosen occupation.

(2) Any enrollment contract shall have an attachment in a format provided by the agency. The attachment shall be signed by both the school and the student. The attachment shall stipulate that the school has complied with subsection (1)(h) of this section and that the student understands and accepts his or her responsibilities in signing any enrollment contract or debt application. The attachment shall also stipulate that the enrollment contract shall not be binding for at least five days, excluding Sundays and holidays, following signature of the enrollment contract by both parties.

(3) The agency shall deny, revoke, or suspend the license of any school that does not meet or maintain the minimum standards.

Sec. 248. RCW 29A.04.225 and 2003 c 111 s 136 are each amended to read as follows:

Each county auditor or county elections official shall ensure that reports filed pursuant to chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act) are arranged, handled, indexed, and disclosed in a manner consistent with the rules of the public disclosure commission adopted under RCW 42.17.375.

Sec. 249. RCW 29A.60.070 and 2003 c 111 s 1507 are each amended to read as follows:

The county auditor shall produce cumulative and precinct returns for each primary and election and deliver them to the canvassing board for verification and certification. The precinct and cumulative returns of any primary or election are public records under chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act).

Sec. 250. RCW 29A.60.140 and 2003 c 111 s 1514 are each amended to read as follows:

(1) Members of the county canvassing board are the county auditor, who is the chair, the county prosecuting attorney, and the chair of the county legislative body. If a member of the board is not available to carry out the duties of the

board, then the auditor may designate a deputy auditor, the prosecutor may designate a deputy prosecuting attorney, and the chair of the county legislative body may designate another member of the county legislative body. Any such designation may be made on an election-by-election basis or may be on a permanent basis until revoked by the designating authority. Any such designation must be in writing, and if for a specific election, must be filed with the county auditor not later than the day before the first day duties are to be undertaken by the canvassing board. If the designation is permanent until revoked by the designating authority, then the designation must be on file in the county auditor's office no later than the day before the first day the designee is to undertake the duties of the canvassing board.

(2) The county canvassing board may adopt rules that delegate in writing to the county auditor or the county auditor's staff the performance of any task assigned by law to the canvassing board.

(3) The county canvassing board may not delegate the responsibility of certifying the returns of a primary or election, of determining the validity of challenged ballots, or of determining the validity of provisional ballots referred to the board by the county auditor.

(4) The county canvassing board shall adopt administrative rules to facilitate and govern the canvassing process in that jurisdiction.

(5) Meetings of the county canvassing board are public meetings under chapter 42.30 RCW. All rules adopted by the county canvassing board must be adopted in a public meeting under chapter 42.30 RCW, and once adopted must be available to the public to review and copy under chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act).

Sec. 251. RCW 30.04.075 and 1994 c 92 s 11 are each amended to read as follows:

(1) All examination reports and all information obtained by the director and the director's staff in conducting examinations of banks, trust companies, or alien banks, and information obtained by the director and the director's staff from other state or federal bank regulatory authorities with whom the director has entered into agreements pursuant to RCW 30.04.060(2), and information obtained by the director and the director's staff relating to examination and supervision of bank holding companies owning a bank in this state or subsidiaries of such holding companies, is confidential and privileged information and shall not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) Subsection (1) of this section notwithstanding, the director may furnish all or any part of examination reports prepared by the director's office to:

(a) Federal agencies empowered to examine state banks, trust companies, or alien banks;

(b) Bank regulatory authorities with whom the director has entered into agreements pursuant to RCW 30.04.060(2), and other bank regulatory authorities who are the primary regulatory authority or insurer of accounts for a bank holding company owning a bank, trust company, or national banking association the principal operations of which are conducted in this state or a subsidiary of such holding company; provided that the director shall first find that the reports of examination to be furnished shall receive protection from disclosure comparable to that accorded by this section;

(c) Officials empowered to investigate criminal charges subject to legal process, valid search warrant, or subpoena. If the director furnishes any examination report to officials empowered to investigate criminal charges, the director may only furnish that part of the report which is necessary and pertinent to the investigation, and the director may do this only after notifying the affected bank, trust company, or alien bank and any customer of the bank, trust company, or alien bank who is named in that part of the examination or report ordered to be furnished unless the officials requesting the report first obtain a waiver of the notice requirement from a court of competent jurisdiction for good cause;

(d) The examined bank, trust company, or alien bank, or holding company thereof;

(e) The attorney general in his or her role as legal advisor to the director;

(f) Liquidating agents of a distressed bank, trust company, or alien bank;

(g) A person or organization officially connected with the bank as officer, director, attorney, auditor, or independent attorney or independent auditor;

(h) The Washington public deposit protection commission as provided by RCW 39.58.105.

(3) All examination reports furnished under subsections (2) and (4) of this section shall remain the property of the department of financial institutions, and be confidential and no person, agency, or authority to whom reports are furnished or any officer, director, or employee thereof shall disclose or make public any of the reports or any information contained therein except in published statistical material that does not disclose the affairs of any individual or corporation: PROVIDED, That nothing herein shall prevent the use in a criminal prosecution of reports furnished under subsection (2) of this section.

(4) The examination report made by the department of financial institutions is designed for use in the supervision of the bank, trust company, or alien bank. The report shall remain the property of the director and will be furnished to the bank, trust company, or alien bank solely for its confidential use. Under no circumstances shall the bank, trust company, or alien bank or any of its directors, officers, or employees disclose or make public in any manner the report or any portion thereof, to any person or organization not connected with the bank as officer, director, employee, attorney, auditor, or candidate for executive office with the bank. The bank may also, after execution of an agreement not to disclose information in the report, disclose the report or relevant portions thereof to a party proposing to acquire or merge with the bank.

(5) Examination reports and information obtained by the director and the director's staff in conducting examinations, or obtained from other state and federal bank regulatory authorities with whom the director has entered into agreements pursuant to RCW 30.04.060(2), or relating to examination and supervision of bank holding companies owning a bank, trust company, or national banking association the principal operations of which are conducted in this state or a subsidiary of such holding company, or information obtained as a result of applications or investigations pursuant to RCW 30.04.230, shall not be subject to public disclosure under chapter ((42.17 RCW)) 42.— RCW (the new chapter created in section 103 of this act).

(6) In any civil action in which the reports are sought to be discovered or used as evidence, any party may, upon notice to the director, petition the court for an in camera review of the report. The court may permit discovery and

introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the director.

(7) This section shall not apply to investigation reports prepared by the director and the director's staff concerning an application for a new bank or trust company or an application for a branch of a bank, trust company, or alien bank: PROVIDED, That the director may adopt rules making confidential portions of the reports if in the director's opinion the public disclosure of the portions of the report would impair the ability to obtain the information which the director considers necessary to fully evaluate the application.

(8) Every person who violates any provision of this section shall be guilty of a gross misdemeanor.

Sec. 252. RCW 30.04.230 and 1994 c 92 s 22 are each amended to read as follows:

(1) A corporation or association organized under the laws of this state or licensed to transact business in the state may acquire any or all shares of stock of any bank, trust company, or national banking association. Nothing in this section shall be construed to prohibit the merger, consolidation, or reorganization of a bank or trust company in accordance with this title.

(2) Unless the terms of this section or RCW 30.04.232 are complied with, an out-of-state bank holding company shall not acquire more than five percent of the shares of the voting stock or all or substantially all of the assets of a bank, trust company, or national banking association the principal operations of which are conducted within this state.

(3) As used in this section a "bank holding company" means a company that is a bank holding company as defined by the Bank Holding Company Act of 1956, as amended (12 U.S.C. Sec. 1841 et seq.). An "out-of-state bank holding company" is a bank holding company that principally conducts its operations outside this state, as measured by total deposits held or controlled by its bank subsidiaries on the date on which it became a holding company. A "domestic bank holding company" is a bank holding company that principally conducts its operations within this state, as measured by total deposits held or controlled by its bank subsidiaries on the date on which it became a bank holding company.

(4) Any such acquisition referred to under subsection (2) of this section by an out-of-state bank holding company requires the express written approval of the director. Approval shall not be granted unless and until the following conditions are met:

(a) An out-of-state bank holding company desiring to make an acquisition referred to under subsection (2) of this section and the bank, trust company, national banking association, or domestic bank holding company parent thereof, if any, proposed to be acquired shall file an application in writing with the director. The director shall by rule establish the fee schedule to be collected from the applicant in connection with the application. The fee shall not exceed the cost of processing the application. The application shall contain such information as the director may prescribe by rule as necessary or appropriate for the purpose of making a determination under this section. The application and supporting information and all examination reports and information obtained by the director and the director's staff in conducting its investigation shall be confidential and privileged and not subject to public disclosure under chapter

~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act). The application and information may be disclosed to federal bank regulatory agencies and to officials empowered to investigate criminal charges, subject to legal process, valid search warrant, or subpoena. In any civil action in which such application or information is sought to be discovered or used as evidence, any party may, upon notice to the director and other parties, petition for an in camera review. The court may permit discovery and introduction of only those portions that are relevant and otherwise unobtainable by the requesting party. The application and information shall be discoverable in any judicial action challenging the approval of an acquisition by the director as arbitrary and capricious or unlawful.

(b) The director shall find that:

(i) The bank, trust company, or national banking association that is proposed to be acquired or the domestic bank holding company controlling such bank, trust company, or national banking association is in such a liquidity or financial condition as to be in danger of closing, failing, or insolvency. In making any such determination the director shall be guided by the criteria developed by the federal regulatory agencies with respect to emergency acquisitions under the provisions of 12 U.S.C. Sec. 1828(c);

(ii) There is no state bank, trust company, or national banking association doing business in the state of Washington or domestic bank holding company with sufficient resources willing to acquire the entire bank, trust company, or national banking association on at least as favorable terms as the out-of-state bank holding company is willing to acquire it;

(iii) The applicant out-of-state bank holding company has provided all information and documents requested by the director in relation to the application; and

(iv) The applicant out-of-state bank holding company has demonstrated an acceptable record of meeting the credit needs of its entire community, including low and moderate income neighborhoods, consistent with the safe and sound operation of such institution.

(c) The director shall consider:

(i) The financial institution structure of this state; and

(ii) The convenience and needs of the public of this state.

(5) Nothing in this section may be construed to prohibit, limit, restrict, or subject to further regulation the ownership by a bank of the stock of a bank service corporation or a banker's bank.

Sec. 253. RCW 30.04.410 and 1994 c 92 s 30 are each amended to read as follows:

(1) The director may disapprove the acquisition of a bank or trust company within thirty days after the filing of a complete application pursuant to RCW 30.04.405 or an extended period not exceeding an additional fifteen days if:

(a) The poor financial condition of any acquiring party might jeopardize the financial stability of the bank or might prejudice the interests of the bank depositors, borrowers, or shareholders;

(b) The plan or proposal of the acquiring party to liquidate the bank, to sell its assets, to merge it with any person, or to make any other major change in its business or corporate structure or management is not fair and reasonable to the bank's depositors, borrowers, or stockholders or is not in the public interest;

(c) The banking and business experience and integrity of any acquiring party who would control the operation of the bank indicates that approval would not be in the interest of the bank's depositors, borrowers, or shareholders;

(d) The information provided by the application is insufficient for the director to make a determination or there has been insufficient time to verify the information provided and conduct an examination of the qualification of the acquiring party; or

(e) The acquisition would not be in the public interest.

(2) An acquisition may be made prior to expiration of the disapproval period if the director issues written notice of intent not to disapprove the action.

(3) The director shall set forth the basis for disapproval of any proposed acquisition in writing and shall provide a copy of such findings and order to the applicants and to the bank involved. Such findings and order shall not be disclosed to any other party and shall not be subject to public disclosure under chapter ((42.17 RCW)) 42.—RCW (the new chapter created in section 103 of this act) unless the findings and/or order are appealed pursuant to chapter 34.05 RCW.

(4) Whenever such a change in control occurs, each party to the transaction shall report promptly to the director any changes or replacement of its chief executive officer, or of any director, that occurs in the next twelve-month period, including in its report a statement of the past and present business and professional affiliations of the new chief executive officer or directors.

Sec. 254. RCW 31.12.565 and 2001 c 83 s 28 are each amended to read as follows:

(1) The following are confidential and privileged and not subject to public disclosure under chapter ((42.17 RCW)) 42.—RCW (the new chapter created in section 103 of this act):

(a) Examination reports and information obtained by the director in conducting examinations and investigations under this chapter and chapter 31.13 RCW;

(b) Examination reports and related information from other financial institution regulators obtained by the director;

(c) Reports or parts of reports accepted in lieu of an examination under RCW 31.12.545; and

(d) Business plans and other proprietary information obtained by the director in connection with a credit union's application or notice to the director.

(2) Notwithstanding subsection (1) of this section, the director may furnish examination reports prepared by the director to:

(a) Federal agencies empowered to examine credit unions or other financial institutions;

(b) Officials empowered to investigate criminal charges. The director may furnish only that part of the report which is necessary and pertinent to the investigation, and only after notifying the affected credit union and members of the credit union who are named in that part of the examination report, or other person examined, that the report is being furnished to the officials, unless the officials requesting the report obtain a waiver of the notice requirement for good cause from a court of competent jurisdiction;

(c) The examined credit union or other person examined, solely for its confidential use;

- (d) The attorney general in his or her role as legal advisor to the director;
- (e) Prospective merger partners or conservators, receivers, or liquidating agents of a distressed credit union;
- (f) Credit union regulators in other states or foreign jurisdictions regarding an out-of-state or foreign credit union conducting business in this state under this chapter, or regarding a credit union conducting business in the other state or jurisdiction;
- (g) A person officially connected with the credit union or other person examined, as officer, director, supervisory committee member, attorney, auditor, accountant, independent attorney, independent auditor, or independent accountant;
- (h) Organizations that have bonded the credit union to the extent that information is relevant to the renewal of the bond coverage or to a claim under the bond coverage;
- (i) Organizations insuring or guaranteeing the shares of, or deposits in, the credit union; or
- (j) Other persons as the director may determine necessary to protect the public interest and confidence.

(3) Examination reports furnished under subsection (2) of this section remain the property of the director and no person to whom reports are furnished or any officer, director, or employee thereof may disclose or make public the reports or information contained in the reports except in published statistical information that does not disclose the affairs of a person, except that nothing prevents the use in a criminal prosecution of reports furnished under subsection (2)(b) of this section.

(4) In a civil action in which the reports or information are sought to be discovered or used as evidence, a party may, upon notice to the director, petition the court for an in-camera review of the reports or information. The court may permit discovery and introduction of only those portions of the report or information which are relevant and otherwise unobtainable by the requesting party. This subsection does not apply to an action brought or defended by the director.

(5) This section does not apply to investigation reports prepared by the director concerning an application for a new credit union or a notice of intent to establish a branch of a credit union, except that the director may adopt rules making portions of the reports confidential, if in the director's opinion the public disclosure of that portion of the report would impair the ability to obtain information the director considers necessary to fully evaluate the application.

(6) Any person who knowingly violates a provision of this section is guilty of a gross misdemeanor.

Sec. 255. RCW 31.45.030 and 2003 c 86 s 3 are each amended to read as follows:

(1) Except as provided in RCW 31.45.020, no check casher or seller may engage in business without first obtaining a license from the director in accordance with this chapter. A license is required for each location where a licensee engages in the business of cashing or selling checks or drafts.

(2) Each application for a license shall be in writing in a form prescribed by the director and shall contain the following information:

(a) The legal name, residence, and business address of the applicant and, if the applicant is a partnership, association, or corporation, of every member, officer, and director thereof;

(b) The location where the initial registered office of the applicant will be located in this state;

(c) The complete address of any other locations at which the applicant proposes to engage in business as a check casher or seller; and

(d) Such other data, financial statements, and pertinent information as the director may require with respect to the applicant, its directors, trustees, officers, members, or agents.

(3) Any information in the application regarding the personal residential address or telephone number of the applicant, and any trade secret as defined in RCW 19.108.010 including any financial statement that is a trade secret, is exempt from the public records disclosure requirements of chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act).

(4) The application shall be filed together with an investigation and supervision fee established by rule by the director. Such fees collected shall be deposited to the credit of the financial services regulation fund in accordance with RCW 43.320.110.

(5)(a) Before granting a license to sell checks, drafts, or money orders under this chapter, the director shall require that the licensee file with the director a surety bond running to the state of Washington, which bond shall be issued by a surety insurer which meets the requirements of chapter 48.28 RCW, and be in a format acceptable to the director. The director shall adopt rules to determine the penal sum of the bond that shall be filed by each licensee. The bond shall be conditioned upon the licensee paying all persons who purchase checks, drafts, or money orders from the licensee the face value of any check, draft, or money order which is dishonored by the drawee bank, savings bank, or savings and loan association due to insufficient funds or by reason of the account having been closed. The bond shall only be liable for the face value of the dishonored check, draft, or money order, and shall not be liable for any interest or consequential damages.

(b) Before granting a small loan endorsement under this chapter, the director shall require that the licensee file with the director a surety bond, in a format acceptable to the director, issued by a surety insurer that meets the requirements of chapter 48.28 RCW. The director shall adopt rules to determine the penal sum of the bond that shall be filed by each licensee. A licensee who wishes to engage in both check selling and making small loans may combine the penal sums of the bonding requirements and file one bond in a form acceptable to the director. The bond shall run to the state of Washington as obligee, and shall run to the benefit of the state and any person or persons who suffer loss by reason of the licensee's violation of this chapter or any rules adopted under this chapter. The bond shall only be liable for damages suffered by borrowers as a result of the licensee's violation of this chapter or rules adopted under this chapter, and shall not be liable for any interest or consequential damages.

(c) The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director and licensee of its intent to cancel the bond. The cancellation is effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued,

or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond shall not be liable for any liability of the licensee for tortious acts, whether or not such liability is imposed by statute or common law, or is imposed by contract. The bond shall not be a substitute or supplement to any liability or other insurance required by law or by the contract. If the surety desires to make payment without awaiting court action against it, the penal sum of the bond shall be reduced to the extent of any payment made by the surety in good faith under the bond.

(d) Any person who is a purchaser of a check, draft, or money order from the licensee having a claim against the licensee for the dishonor of any check, draft, or money order by the drawee bank, savings bank, or savings and loan association due to insufficient funds or by reason of the account having been closed, or who obtained a small loan from the licensee and was damaged by the licensee's violation of this chapter or rules adopted under this chapter, may bring suit upon such bond or deposit in the superior court of the county in which the check, draft, or money order was purchased, or in the superior court of a county in which the licensee maintains a place of business. Jurisdiction shall be exclusively in the superior court. Any such action must be brought not later than one year after the dishonor of the check, draft, or money order on which the claim is based. In the event valid claims against a bond or deposit exceed the amount of the bond or deposit, each claimant shall only be entitled to a pro rata amount, based on the amount of the claim as it is valid against the bond, or deposit, without regard to the date of filing of any claim or action.

(e) In lieu of the surety bond required by this section, the applicant for a check seller license may file with the director a deposit consisting of cash or other security acceptable to the director in an amount equal to the penal sum of the required bond. In lieu of the surety bond required by this section, the applicant for a small loan endorsement may file with the director a deposit consisting of cash or other security acceptable to the director in an amount equal to the penal sum of the required bond, or may demonstrate to the director net worth in excess of three times the amount of the penal sum of the required bond.

The director may adopt rules necessary for the proper administration of the security or to establish reporting requirements to ensure that the net worth requirements continue to be met. A deposit given instead of the bond required by this section is not an asset of the licensee for the purpose of complying with the liquid asset provisions of this chapter. A deposit given instead of the bond required by this section is a fund held in trust for the benefit of eligible claimants under this section and is not an asset of the estate of any licensee that seeks protection voluntarily or involuntarily under the bankruptcy laws of the United States.

(f) Such security may be sold by the director at public auction if it becomes necessary to satisfy the requirements of this chapter. Notice of the sale shall be served upon the licensee who placed the security personally or by mail. If notice is served by mail, service shall be addressed to the licensee at its address as it appears in the records of the director. Bearer bonds of the United States or the

state of Washington without a prevailing market price must be sold at public auction. Such bonds having a prevailing market price may be sold at private sale not lower than the prevailing market price. Upon any sale, any surplus above amounts due shall be returned to the licensee, and the licensee shall deposit with the director additional security sufficient to meet the amount required by the director. A deposit given instead of the bond required by this section shall not be deemed an asset of the licensee for the purpose of complying with the liquid asset provisions of this chapter.

Sec. 256. RCW 31.45.077 and 2003 c 86 s 9 are each amended to read as follows:

(1) Each application for a small loan endorsement to a check casher or check seller license must be in writing and in a form prescribed by the director and shall contain the following information:

(a) The legal name, residence, and business address of the applicant, and if the applicant is a partnership, corporation, or association, the name and address of every member, partner, officer, and director thereof;

(b) The street and mailing address of each location where the licensee will engage in the business of making small loans;

(c) A surety bond, or other security allowed under RCW 31.45.030, in the amount required; and

(d) Any other pertinent information, including financial statements, as the director may require with respect to the licensee and its directors, officers, trustees, members, or employees.

(2) Any information in the application regarding the licensee's personal residential address or telephone number, and any trade secrets of the licensee as defined under RCW 19.108.010 including any financial statement that is a trade secret, is exempt from the public records disclosure requirements of chapter ~~(42.17 RCW)~~ 42.—RCW (the new chapter created in section 103 of this act).

(3) The application shall be filed together with an investigation and review fee established by rule by the director. Fees collected shall be deposited to the credit of the financial services regulation fund in accordance with RCW 43.320.110.

Sec. 257. RCW 31.45.090 and 2003 c 86 s 15 are each amended to read as follows:

(1) Each licensee shall submit to the director, in a form approved by the director, a report containing financial statements covering the calendar year or, if the licensee has an established fiscal year, then for such fiscal year, within one hundred five days after the close of each calendar or fiscal year. The licensee shall also file such additional relevant information as the director may require. Any information provided by a licensee in an annual report that constitutes a trade secret under chapter 19.108 RCW is exempt from disclosure under chapter ~~(42.17 RCW)~~ 42.—RCW (the new chapter created in section 103 of this act), unless aggregated with information supplied by other licensees in such a manner that the licensee's individual information is not identifiable. Any information provided by the licensee that allows identification of the licensee may only be used for purposes reasonably related to the regulation of licensees to ensure compliance with this chapter.

(2) A licensee whose license has been suspended or revoked shall submit to the director, at the licensee's expense, within one hundred five days after the effective date of such surrender or revocation, a closing audit report containing audited financial statements as of such effective date for the twelve months ending with such effective date.

(3) The director shall adopt rules specifying the form and content of such audit reports and may require additional reporting as is necessary for the director to ensure compliance with this chapter.

Sec. 258. RCW 32.04.220 and 1994 c 92 s 301 are each amended to read as follows:

(1) All examination reports and all information obtained by the director and the director's staff in conducting examinations of mutual savings banks, and information obtained by the director and the director's staff from other state or federal bank regulatory authorities with whom the director has entered into agreements pursuant to RCW 32.04.211, and information obtained by the director and the director's staff relating to examination and supervision of holding companies owning a savings bank in this state or subsidiaries of such holding companies, is confidential and privileged information and shall not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) Subsection (1) of this section notwithstanding, the director may furnish all or any part of examination reports prepared by the director's office to:

(a) Federal agencies empowered to examine mutual savings banks;

(b) Bank regulatory authorities with whom the director has entered into agreements pursuant to RCW 32.04.211, and other bank regulatory authorities who are the primary regulatory authority or insurer of accounts for a holding company owning a savings bank the principal operations of which are conducted in this state or a subsidiary of such holding company; provided that the director shall first find that the reports of examination to be furnished shall receive protection from disclosure comparable to that accorded by this section;

(c) Officials empowered to investigate criminal charges subject to legal process, valid search warrant, or subpoena. If the director furnishes any examination report to officials empowered to investigate criminal charges, the director may only furnish that part of the report which is necessary and pertinent to the investigation, and the director may do this only after notifying the affected mutual savings bank and any customer of the mutual savings bank who is named in that part of the report of the order to furnish the part of the examination report unless the officials requesting the report first obtain a waiver of the notice requirement from a court of competent jurisdiction for good cause;

(d) The examined savings bank or holding company thereof;

(e) The attorney general in his or her role as legal advisor to the director;

(f) Liquidating agents of a distressed savings bank;

(g) A person or organization officially connected with the savings bank as officer, director, attorney, auditor, or independent attorney or independent auditor;

(h) The Washington public deposit protection commission as provided by RCW 39.58.105.

(3) All examination reports furnished under subsections (2) and (4) of this section shall remain the property of the department of financial institutions, and

be confidential, and no person, agency, or authority to whom reports are furnished or any officer, director, or employee thereof shall disclose or make public any of the reports or any information contained therein except in published statistical material that does not disclose the affairs of any individual or corporation: PROVIDED, That nothing herein shall prevent the use in a criminal prosecution of reports furnished under subsection (2) of this section.

(4) The examination report made by the department of financial institutions is designed for use in the supervision of the mutual savings bank, and the director may furnish a copy of the report to the mutual savings bank examined. The report shall remain the property of the director and will be furnished to the mutual savings bank solely for its confidential use. Under no circumstances shall the mutual savings bank or any of its trustees, officers, or employees disclose or make public in any manner the report or any portion thereof, to any person or organization not connected with the savings bank as officer, director, employee, attorney, auditor, or candidate for executive office with the bank. The savings bank may also, after execution of an agreement not to disclose information in the report, disclose the report or relevant portions thereof to a party proposing to acquire or merge with the savings bank.

(5) Examination reports and information obtained by the director and the director's staff in conducting examinations, or from other state and federal bank regulatory authorities with whom the director has entered into agreements pursuant to RCW 32.04.211, or relating to examination and supervision of holding companies owning a savings bank the principal operations of which are conducted in this state or a subsidiary of such holding company, shall not be subject to public disclosure under chapter ((42.17 RCW)) 42.— RCW (the new chapter created in section 103 of this act).

(6) In any civil action in which the reports are sought to be discovered or used as evidence, any party may, upon notice to the director, petition the court for an in camera review of the report. The court may permit discovery and introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the director.

(7) This section shall not apply to investigation reports prepared by the director and the director's staff concerning an application for a new mutual savings bank or an application for a branch of a mutual savings bank: PROVIDED, That the director may adopt rules making confidential portions of the reports if in the director's opinion the public disclosure of the portions of the report would impair the ability to obtain the information which the director considers necessary to fully evaluate the application.

(8) Every person who violates any provision of this section shall forfeit the person's office or employment and be guilty of a gross misdemeanor.

Sec. 259. RCW 32.32.228 and 1994 c 92 s 366 are each amended to read as follows:

(1) As used in this section, the following definitions apply:

(a) "Control" means directly or indirectly alone or in concert with others to own, control, or hold the power to vote twenty-five percent or more of the outstanding stock or voting power of the controlled entity;

(b) "Acquiring party" means the person acquiring control of a bank through the purchase of stock;

(c) "Person" means any individual, corporation, partnership, group acting in concert, association, business trust, or other organization.

(2)(a) It is unlawful for any person to acquire control of a converted savings bank until thirty days after filing with the director a completed application. The application shall be under oath or affirmation, and shall contain substantially all of the following information plus any additional information that the director may prescribe as necessary or appropriate in the particular instance for the protection of bank depositors, borrowers, or shareholders and the public interest:

(i) The identity and banking and business experience of each person by whom or on whose behalf acquisition is to be made;

(ii) The financial and managerial resources and future prospects of each person involved in the acquisition;

(iii) The terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(iv) The source and amount of the funds or other consideration used or to be used in making the acquisition, and a description of the transaction and the names of the parties if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition;

(v) Any plan or proposal which any person making the acquisition may have to liquidate the bank, to sell its assets, to merge it with any other bank, or to make any other major change in its business or corporate structure or management;

(vi) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on its behalf, who makes solicitations or recommendations to shareholders for the purpose of assisting in the acquisition and a brief description of the terms of the employment, retainer, or arrangement for compensation;

(vii) Copies of all invitations for tenders or advertisements making a tender offer to shareholders for the purchase of their stock to be used in connection with the proposed acquisition; and

(viii) Such additional information as shall be necessary to satisfy the director, in the exercise of the director's discretion, that each such person and associate meets the standards of character, responsibility, and general fitness established for incorporators of a savings bank under RCW 32.08.040.

(b) Notwithstanding any other provision of this section, a bank or bank holding company which has been in operation for at least three consecutive years or a converted mutual savings bank or the holding company of a mutual savings bank need only notify the director and the savings bank to be acquired of an intent to acquire control and the date of the proposed acquisition of control at least thirty days before the date of the acquisition of control.

(c) When a person, other than an individual or corporation, is required to file an application under this section, the director may require that the information required by (a) (i), (ii), (vi), and (viii) of this subsection be given with respect to each person, as defined in subsection (1)(c) of this section, who has an interest in or controls a person filing an application under this subsection.

(d) When a corporation is required to file an application under this section, the director may require that information required by (a) (i), (ii), (vi), and (viii) of this subsection be given for the corporation, each officer and director of the

corporation, and each person who is directly or indirectly the beneficial owner of twenty-five percent or more of the outstanding voting securities of the corporation.

(e) If any tender offer, request, or invitation for tenders or other agreements to acquire control is proposed to be made by means of a registration statement under the securities act of 1933 (48 Stat. 74, 15 U.S.C. Sec. 77(a)), as amended, or in circumstances requiring the disclosure of similar information under the securities exchange act of 1934 (48 Stat. 881, 15 U.S.C. Sec. 78(a)), as amended, the registration statement or application may be filed with the director in lieu of the requirements of this section.

(f) Any acquiring party shall also deliver a copy of any notice or application required by this section to the savings bank proposed to be acquired within two days after such notice or application is filed with the director.

(g) Any acquisition of control in violation of this section shall be ineffective and void.

(h) Any person who willfully or intentionally violates this section or any rule adopted under this section is guilty of a gross misdemeanor pursuant to chapter 9A.20 RCW. Each day's violation shall be considered a separate violation, and any person shall upon conviction be fined not more than one thousand dollars for each day the violation continues.

(3) The director may disapprove the acquisition of a savings bank within thirty days after the filing of a complete application pursuant to subsections (1) and (2) of this section or an extended period not exceeding an additional fifteen days if:

(a) The poor financial condition of any acquiring party might jeopardize the financial stability of the savings bank or might prejudice the interest of depositors, borrowers, or shareholders;

(b) The plan or proposal of the acquiring party to liquidate the savings bank, to sell its assets, to merge it with any person, or to make any other major change in its business or corporate structure or management is not fair and reasonable to its depositors, borrowers, or stockholders or is not in public interest;

(c) The banking and business experience and integrity of any acquiring party who would control the operation of the savings bank indicates that approval would not be in the interest of the savings bank's depositors, borrowers, or shareholders;

(d) The information provided by the application is insufficient for the director to make a determination or there has been insufficient time to verify the information provided and conduct an examination of the qualification of the acquiring party; or

(e) The acquisition would not be in the public interest.

An acquisition may be made prior to expiration of the disapproval period if the director issues written notice of intent not to disapprove the action.

The director shall set forth the basis for disapproval of any proposed acquisition in writing and shall provide a copy of such findings and order to the applicants and to the bank involved. Such findings and order shall not be disclosed to any other party and shall not be subject to public disclosure under chapter ~~((42.17 RCW))~~ 42.—RCW (the new chapter created in section 103 of this act) unless the findings and/or order are appealed pursuant to chapter 34.05 RCW.

Whenever such a change in control occurs, each party to the transaction shall report promptly to the director any changes or replacement of its chief executive officer or of any director occurring in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors.

(4)(a) For a period of ten years following the acquisition of control by any person, neither such acquiring party nor any associate shall receive any loan or the use of any of the funds of, nor purchase, lease, or otherwise receive any property from, nor receive any consideration from the sale, lease, or any other conveyance of property to, any savings bank in which the acquiring party has control except as provided in (b) of this subsection.

(b) Upon application by any acquiring party or associate subject to (a) of this subsection, the director may approve a transaction between a converted savings bank and such acquiring party, person, or associate, upon finding that the terms and conditions of the transaction are at least as advantageous to the savings bank as the savings bank would obtain in a comparable transaction with an unaffiliated person.

(5) Except with the consent of the director, no converted savings bank shall, for the purpose of enabling any person to purchase any or all shares of its capital stock, pledge or otherwise transfer any of its assets as security for a loan to such person or to any associate, or pay any dividend to any such person or associate. Nothing in this section shall prohibit a dividend of stock among shareholders in proportion to their shareholdings. In the event any clause of this section is declared to be unconstitutional or otherwise invalid, all remaining dependent and independent clauses of this section shall remain in full force and effect.

Sec. 260. RCW 32.32.275 and 1994 c 92 s 374 are each amended to read as follows:

Should the applicant desire to submit any information it deems to be of a confidential nature regarding any item or a part of any exhibit included in any application under this chapter, the information pertaining to the item or exhibit shall be separately bound and labeled "confidential", and a statement shall be submitted therewith briefly setting forth the grounds on which the information should be treated as confidential. Only general reference thereto need be made in that portion of the application which the applicant deems not to be confidential. Applications under this chapter shall be made available for inspection by the public, except for portions which are bound and labeled "confidential" and which the director determines to withhold from public availability under ~~((RCW 42.17.250 through 42.17.340))~~ chapter 42.— RCW (the new chapter created in section 103 of this act). The applicant shall be advised of any decision by the director to make public information designated as "confidential" by the applicant. Even though sections of the application are considered "confidential" as far as public inspection thereof is concerned, to the extent the director deems necessary the director may comment on the confidential submissions in any public statement in connection with the director's decision on the application without prior notice to the applicant.

Sec. 261. RCW 33.04.110 and 1994 c 92 s 425 are each amended to read as follows:

(1) Except as otherwise provided in this section, all examination reports and all information obtained by the director and the director's staff in conducting examinations of associations are confidential and privileged information and shall not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) Subsection (1) of this section notwithstanding, the director may furnish in whole or in part examination reports prepared by the director's office to federal agencies empowered to examine state associations, to savings and loan supervisory agencies of other states which have authority to examine associations doing business in this state, to the attorney general in his or her role as legal advisor to the director, to the examined association as provided in subsection (4) of this section, and to officials empowered to investigate criminal charges. If the director furnishes any examination report to officials empowered to investigate criminal charges, the director may only furnish that part of the report which is necessary and pertinent to the investigation, and the director may do this only after notifying the affected savings and loan association and any customer of the savings and loan association who is named in that part of the report of the order to furnish the part of the examination report unless the officials requesting the report first obtain a waiver of the notice requirement from a court of competent jurisdiction for good cause. The director may also furnish in whole or in part examination reports concerning any association in danger of insolvency to the directors or officers of a potential acquiring party when, in the director's opinion, it is necessary to do so in order to protect the interests of members, depositors, or borrowers of the examined association.

(3) All examination reports furnished under subsection (2) of this section shall remain the property of the department of financial institutions and, except as provided in subsection (4) of this section, no person, agency, or authority to whom reports are furnished or any officer, director, or employee thereof shall disclose or make public any of the reports or any information contained therein except in published statistical material that does not disclose the affairs of any individual or corporation: PROVIDED, That nothing herein shall prevent the use in a criminal prosecution of reports furnished under subsection (2) of this section.

(4) The examination report made by the department of financial institutions is designed for use in the supervision of the association, and the director may furnish a copy of the report to the savings and loan association examined. The report shall remain the property of the director and will be furnished to the association solely for its confidential use. Neither the association nor any of its directors, officers, or employees may disclose or make public in any manner the report or any portion thereof without permission of the board of directors of the examined association. The permission shall be entered in the minutes of the board.

(5) Examination reports and information obtained by the director and the director's staff in conducting examinations shall not be subject to public disclosure under chapter (~~42.17 RCW~~) 42.— RCW (the new chapter created in section 103 of this act).

(6) In any civil action in which the reports are sought to be discovered or used as evidence, any party may, upon notice to the director, petition the court for an in camera review of the report. The court may permit discovery and

introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the director.

(7) This section shall not apply to investigation reports prepared by the director and the director's staff concerning an application for a new association or an application for a branch of an association. The director may adopt rules making confidential portions of such reports if in the director's opinion the public disclosure of the portions of the report would impair the ability to obtain the information which the director considers necessary to fully evaluate the application.

(8) Every person who intentionally violates any provision of this section is guilty of a gross misdemeanor.

Sec. 262. RCW 34.05.325 and 1998 c 125 s 1 are each amended to read as follows:

(1) The agency shall make a good faith effort to insure that the information on the proposed rule published pursuant to RCW 34.05.320 accurately reflects the rule to be presented and considered at the oral hearing on the rule. Written comment about a proposed rule, including supporting data, shall be accepted by an agency if received no later than the time and date specified in the notice, or such later time and date established at the rule-making hearing.

(2) The agency shall provide an opportunity for oral comment to be received by the agency in a rule-making hearing.

(3) If the agency possesses equipment capable of receiving telefacsimile transmissions or recorded telephonic communications, the agency may provide in its notice of hearing filed under RCW 34.05.320 that interested parties may comment on proposed rules by these means. If the agency chooses to receive comments by these means, the notice of hearing shall provide instructions for making such comments, including, but not limited to, appropriate telephone numbers to be used; the date and time by which comments must be received; required methods to verify the receipt and authenticity of the comments; and any limitations on the number of pages for telefacsimile transmission comments and on the minutes of tape recorded comments. The agency shall accept comments received by these means for inclusion in the official record if the comments are made in accordance with the agency's instructions.

(4) The agency head, a member of the agency head, or a presiding officer designated by the agency head shall preside at the rule-making hearing. Rule-making hearings shall be open to the public. The agency shall cause a record to be made of the hearing by stenographic, mechanical, or electronic means. Regardless of whether the agency head has delegated rule-making authority, the presiding official shall prepare a memorandum for consideration by the agency head, summarizing the contents of the presentations made at the rule-making hearing, unless the agency head presided or was present at substantially all of the hearings. The summarizing memorandum is a public document and shall be made available to any person in accordance with chapter ~~((42.17 RCW))~~ 42. RCW (the new chapter created in section 103 of this act).

(5) Rule-making hearings are legislative in character and shall be reasonably conducted by the presiding official to afford interested persons the opportunity to present comment. Rule-making hearings may be continued to a

later time and place established on the record without publication of further notice under RCW 34.05.320.

(6)(a) Before it files an adopted rule with the code reviser, an agency shall prepare a concise explanatory statement of the rule:

(i) Identifying the agency's reasons for adopting the rule;

(ii) Describing differences between the text of the proposed rule as published in the register and the text of the rule as adopted, other than editing changes, stating the reasons for differences; and

(iii) Summarizing all comments received regarding the proposed rule, and responding to the comments by category or subject matter, indicating how the final rule reflects agency consideration of the comments, or why it fails to do so.

(b) The agency shall provide the concise explanatory statement to any person upon request or from whom the agency received comment.

Sec. 263. RCW 35.02.130 and 1997 c 361 s 11 are each amended to read as follows:

The city or town officially shall become incorporated at a date from one hundred eighty days to three hundred sixty days after the date of the election on the question of incorporation. An interim period shall exist between the time the newly elected officials have been elected and qualified and this official date of incorporation. During this interim period, the newly elected officials are authorized to adopt ordinances and resolutions which shall become effective on or after the official date of incorporation, and to enter into contracts and agreements to facilitate the transition to becoming a city or town and to ensure a continuation of governmental services after the official date of incorporation. Periods of time that would be required to elapse between the enactment and effective date of such ordinances, including but not limited to times for publication or for filing referendums, shall commence upon the date of such enactment as though the city or town were officially incorporated.

During this interim period, the city or town governing body may adopt rules establishing policies and procedures under the state environmental policy act, chapter 43.21C RCW, and may use these rules and procedures in making determinations under the state environmental policy act, chapter 43.21C RCW.

During this interim period, the newly formed city or town and its governing body shall be subject to the following as though the city or town were officially incorporated: RCW 4.24.470 relating to immunity; chapter 42.17 RCW relating to open government; chapter 42.— RCW (the new chapter created in section 103 of this act) relating to public records; chapter 40.14 RCW relating to the preservation and disposition of public records; chapters 42.20 and 42.23 RCW relating to ethics and conflicts of interest; chapters 42.30 and 42.32 RCW relating to open public meetings and minutes; RCW 35.22.288, 35.23.221, 35.27.300, 35A.12.160, as appropriate, and chapter 35A.65 RCW relating to the publication of notices and ordinances; RCW 35.21.875 and 35A.21.230 relating to the designation of an official newspaper; RCW 36.16.138 relating to liability insurance; RCW 35.22.620, 35.23.352, and 35A.40.210, as appropriate, and statutes referenced therein relating to public contracts and bidding; and chapter 39.34 RCW relating to interlocal cooperation. Tax anticipation or revenue anticipation notes or warrants and other short-term obligations may be issued and funds may be borrowed on the security of these instruments during this interim period, as provided in chapter 39.50 RCW. Funds also may be borrowed

from federal, state, and other governmental agencies in the same manner as if the city or town were officially incorporated.

RCW 84.52.020 and 84.52.070 shall apply to the extent that they may be applicable, and the governing body of such city or town may take appropriate action by ordinance during the interim period to adopt the property tax levy for its first full calendar year following the interim period.

The governing body of the new city or town may acquire needed facilities, supplies, equipment, insurance, and staff during this interim period as if the city or town were in existence. An interim city manager or administrator, who shall have such administrative powers and duties as are delegated by the governing body, may be appointed to serve only until the official date of incorporation. After the official date of incorporation the governing body of such a new city organized under the council manager form of government may extend the appointment of such an interim manager or administrator with such limited powers as the governing body determines, for up to ninety days. This governing body may submit ballot propositions to the voters of the city or town to authorize taxes to be collected on or after the official date of incorporation, or authorize an annexation of the city or town by a fire protection district or library district to be effective immediately upon the effective date of the incorporation as a city or town.

The boundaries of a newly incorporated city or town shall be deemed to be established for purposes of RCW 84.09.030 on the date that the results of the initial election on the question of incorporation are certified or the first day of January following the date of this election if the newly incorporated city or town does not impose property taxes in the same year that the voters approve the incorporation.

The newly elected officials shall take office immediately upon their election and qualification with limited powers during this interim period as provided in this section. They shall acquire their full powers as of the official date of incorporation and shall continue in office until their successors are elected and qualified at the next general municipal election after the official date of incorporation: PROVIDED, That if the date of the next general municipal election is less than twelve months after the date of the first election of councilmembers, those initially elected councilmembers shall serve until their successors are elected and qualified at the next following general municipal election as provided in RCW ((29.04.170)) 29A.20.040. For purposes of this section, the general municipal election shall be the date on which city and town general elections are held throughout the state of Washington, pursuant to RCW ((29.13.020)) 29A.04.330.

In any newly incorporated city that has adopted the council-manager form of government, the term of office of the mayor, during the interim period only, shall be set by the council, and thereafter shall be as provided by law.

The official date of incorporation shall be on a date from one hundred eighty to three hundred sixty days after the date of the election on the question of incorporation, as specified in a resolution adopted by the governing body during this interim period. A copy of the resolution shall be filed with the county legislative authority of the county in which all or the major portion of the newly incorporated city or town is located. If the governing body fails to adopt such a resolution, the official date of incorporation shall be three hundred sixty days

after the date of the election on the question of incorporation. The county legislative authority of the county in which all or the major portion of the newly incorporated city or town is located shall file a notice with the county assessor that the city or town has been authorized to be incorporated immediately after the favorable results of the election on the question of incorporation have been certified. The county legislative authority shall file a notice with the secretary of state that the city or town is incorporated as of the official date of incorporation.

Sec. 264. RCW 35.21.228 and 1999 c 202 s 1 are each amended to read as follows:

(1) Each city or town that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety and security program plan for that guideway to the state department of transportation by September 1, 1999, or at least three months before beginning operations or instituting revisions to its plan. This plan must describe the city's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plan must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the city or town shall revise its plan to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plan for review.

(2) Each city or town shall implement and comply with its system safety and security program plan. The city or town shall perform internal safety and security audits to evaluate its compliance with the plan, and submit its audit schedule to the department of transportation no later than December 15th each year. The city or town shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. This annual report must include the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plan.

(3) Each city or town shall notify the department of transportation within twenty-four hours of an occurrence of a reportable accident, unacceptable hazardous condition, or security breach. The department may adopt rules further defining a reportable accident, unacceptable hazardous condition, or security breach. The city or town shall investigate all reportable accidents, unacceptable hazardous conditions, or security breaches and provide a written investigation report to the department within forty-five calendar days after the reportable accident, unacceptable hazardous condition, or security breach.

(4) The security section of the safety and security plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter ~~((42-17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act). However, the activities and plans as described in subsections (1)(a), (b), and (c), (2), and (3) of this section are not subject to this exemption.

Sec. 265. RCW 35.21.759 and 1999 c 246 s 1 are each amended to read as follows:

A public corporation, commission, or authority created under this chapter, and officers and multimember governing body thereof, are subject to general laws regulating local governments, multimember governing bodies, and local governmental officials, including, but not limited to, the requirement to be audited by the state auditor and various accounting requirements provided under chapter 43.09 RCW, the open public record requirements of chapter (~~42.17 RCW~~) 42.— RCW (the new chapter created in section 103 of this act), the prohibition on using its facilities for campaign purposes under RCW 42.17.130, the open public meetings law of chapter 42.30 RCW, the code of ethics for municipal officers under chapter 42.23 RCW, and the local government whistleblower law under chapter 42.41 RCW.

Sec. 266. RCW 35.102.040 and 2003 c 79 s 4 are each amended to read as follows:

(1)(a) The cities, working through the association of Washington cities, shall form a model ordinance development committee made up of a representative sampling of cities that as of July 27, 2003, impose a business and occupation tax. This committee shall work through the association of Washington cities to adopt a model ordinance on municipal gross receipts business and occupation tax. The model ordinance and subsequent amendments shall be adopted using a process that includes opportunity for substantial input from business stakeholders and other members of the public. Input shall be solicited from statewide business associations and from local chambers of commerce and downtown business associations in cities that levy a business and occupation tax.

(b) The municipal research council shall contract to post the model ordinance on an internet web site and to make paper copies available for inspection upon request. The department of revenue and the department of licensing shall post copies of or links to the model ordinance on their internet web sites. Additionally, a city that imposes a business and occupation tax must make copies of its ordinance available for inspection and copying as provided in chapter (~~42.17 RCW~~) 42.— RCW (the new chapter created in section 103 of this act).

(c) The definitions and tax classifications in the model ordinance may not be amended more frequently than once every four years, however the model ordinance may be amended at any time to comply with changes in state law. Any amendment to a mandatory provision of the model ordinance must be adopted with the same effective date by all cities.

(2) A city that imposes a business and occupation tax must adopt the mandatory provisions of the model ordinance. The following provisions are mandatory:

(a) A system of credits that meets the requirements of RCW 35.102.060 and a form for such use;

(b) A uniform, minimum small business tax threshold of at least the equivalent of twenty thousand dollars in gross income annually. A city may elect to deviate from this requirement by creating a higher threshold or exemption but it shall not deviate lower than the level required in this subsection. If a city has a small business threshold or exemption in excess of that provided in this subsection as of January 1, 2003, and chooses to deviate

below the threshold or exemption level that was in place as of January 1, 2003, the city must notify all businesses licensed to do business within the city at least one hundred twenty days prior to the potential implementation of a lower threshold or exemption amount;

(c) Tax reporting frequencies that meet the requirements of RCW 35.102.070;

(d) Penalty and interest provisions that meet the requirements of RCW 35.102.080 and 35.102.090;

(e) Claim periods that meet the requirements of RCW 35.102.100;

(f) Refund provisions that meet the requirements of RCW 35.102.110; and

(g) Definitions, which at a minimum, must include the definitions enumerated in RCW 35.102.030 and 35.102.120. The definitions in chapter 82.04 RCW shall be used as the baseline for all definitions in the model ordinance, and any deviation in the model ordinance from these definitions must be described by a comment in the model ordinance.

(3) Except for the system of credits developed to address multiple taxation under subsection (2)(a) of this section, a city may adopt its own provisions for tax exemptions, tax credits, and tax deductions.

(4) Any city that adopts an ordinance that deviates from the nonmandatory provisions of the model ordinance shall make a description of such differences available to the public, in written and electronic form.

Sec. 267. RCW 35A.21.300 and 1999 c 202 s 2 are each amended to read as follows:

(1) Each code city that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety and security program plan for that guideway to the state department of transportation by September 1, 1999, or at least three months before beginning operations or instituting revisions to its plan. This plan must describe the code city's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plan must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the code city shall revise its plan to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plan for review.

(2) Each code city shall implement and comply with its system safety and security program plan. The code city shall perform internal safety and security audits to evaluate its compliance with the plan, and submit its audit schedule to the department of transportation no later than December 15th each year. The code city shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. This annual report must include the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plan.

(3) Each code city shall notify the department of transportation within twenty-four hours of an occurrence of a reportable accident, unacceptable hazardous condition, or security breach. The department may adopt rules further defining a reportable accident, unacceptable hazardous condition, or security breach. The code city shall investigate all reportable accidents, unacceptable hazardous conditions, or security breaches and provide a written investigation report to the department within forty-five calendar days after the reportable accident, unacceptable hazardous condition, or security breach.

(4) The security section of the safety and security plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter ~~(42.17 RCW)~~ 42.— RCW (the new chapter created in section 103 of this act). However, the activities and plans as described in subsections (1)(a), (b), and (c), (2), and (3) of this section are not subject to this exemption.

Sec. 268. RCW 36.01.210 and 1999 c 202 s 3 are each amended to read as follows:

(1) Each county functioning under chapter 36.56 RCW that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety and security program plan for that guideway to the state department of transportation by September 1, 1999, or at least three months before beginning operations or instituting revisions to its plan. This plan must describe the county's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plan must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the county shall revise its plan to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plan for review.

(2) Each county functioning under chapter 36.56 RCW shall implement and comply with its system safety and security program plan. The county shall perform internal safety and security audits to evaluate its compliance with the plan, and submit its audit schedule to the department of transportation no later than December 15th each year. The county shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. This annual report must include the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plan.

(3) Each county shall notify the department of transportation within twenty-four hours of an occurrence of a reportable accident, unacceptable hazardous condition, or security breach. The department may adopt rules further defining a reportable accident, unacceptable hazardous condition, or security breach. The county shall investigate all reportable accidents, unacceptable hazardous conditions, or security breaches and provide a written investigation report to the department within forty-five calendar days after the reportable accident, unacceptable hazardous condition, or security breach.

(4) The security section of the safety and security plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter ((42.17 RCW)) 42.— RCW (the new chapter created in section 103 of this act). However, the activities and plans as described in subsections (1)(a), (b), and (c), (2), and (3) of this section are not subject to this exemption.

Sec. 269. RCW 36.28A.060 and 2003 c 102 s 2 are each amended to read as follows:

(1) When funded, the Washington association of sheriffs and police chiefs shall create and operate a statewide first responder building mapping information system.

(2) All state agencies and local governments must utilize building mapping software that complies with the building mapping software standards established under RCW 36.28A.070 for any building mapped for this purpose after the statewide first responder building mapping information system is operational. If, prior to creation of the statewide building mapping information system, a local government has utilized building mapping software standards established under RCW 36.28A.070, the local government may continue to use its own building mapping system unless the Washington association of sheriffs and police chiefs provides funding to bring the local government's system in compliance with the standards established under RCW 36.28A.070.

(3) All state and local government-owned buildings that are occupied by state or local government employees must be mapped when funding is provided by the Washington association of sheriffs and police chiefs, or from other sources. Nothing in chapter 102, Laws of 2003 requires any state agency or local government to map a building unless the entire cost of mapping the building is provided by the Washington association of sheriffs and police chiefs, or from other sources.

(4) Once the statewide first responder building mapping information system is operational, all state and local government buildings that are mapped must forward their building mapping information data to the Washington association of sheriffs and police chiefs. All participating privately, federally, and tribally owned buildings may voluntarily forward their mapping and emergency information data to the Washington association of sheriffs and police chiefs. The Washington association of sheriffs and police chiefs may refuse any building mapping information that does not comply with the specifications described in RCW 36.28A.070.

(5) Consistent with the guidelines developed under RCW 36.28A.070, the Washington association of sheriffs and police chiefs shall electronically make the building mapping information available to all state, local, federal, and tribal law enforcement agencies, the military department of Washington state, and fire departments.

(6) Consistent with the guidelines developed under RCW 36.28A.070, the Washington association of sheriffs and police chiefs shall develop building mapping software standards that must be used to participate in the statewide first responder building mapping information system.

(7) The Washington association of sheriffs and police chiefs shall pursue federal funds to:

(a) Create the statewide first responder building mapping information system; and

(b) Develop grants for the mapping of all state and local government buildings in the order determined under RCW 36.28A.070.

(8) All tactical and intelligence information provided to the Washington association of sheriffs and police chiefs under chapter 102, Laws of 2003 is exempt from public disclosure as provided in (~~RCW 42.17.310(1)(d)~~) section 404 of this act.

Sec. 270. RCW 36.57.120 and 1999 c 202 s 4 are each amended to read as follows:

(1) Each county transportation authority that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety and security program plan for that guideway to the state department of transportation by September 1, 1999, or at least three months before beginning operations or instituting revisions to its plan. This plan must describe the county transportation authority's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plan must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the county transportation authority shall revise its plan to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plan for review.

(2) Each county transportation authority shall implement and comply with its system safety and security program plan. The county transportation authority shall perform internal safety and security audits to evaluate its compliance with the plan, and submit its audit schedule to the department of transportation no later than December 15th each year. The county transportation authority shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. This annual report must include the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plan.

(3) Each county transportation authority shall notify the department of transportation within twenty-four hours of an occurrence of a reportable accident, unacceptable hazardous condition, or security breach. The department may adopt rules further defining a reportable accident, unacceptable hazardous condition, or security breach. The county transportation authority shall investigate all reportable accidents, unacceptable hazardous conditions, or security breaches and provide a written investigation report to the department within forty-five calendar days after the reportable accident, unacceptable hazardous condition, or security breach.

(4) The security section of the safety and security plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter (~~42.17 RCW~~) 42.— RCW (the new chapter created in section 103 of this act). However, the activities and plans as described in subsections (1)(a), (b), and (c), (2), and (3) of this section are not subject to this exemption.

Sec. 271. RCW 36.57A.170 and 1999 c 202 s 5 are each amended to read as follows:

(1) Each public transportation benefit area that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety and security program plan for that guideway to the state department of transportation by September 1, 1999, or at least three months before beginning operations or instituting revisions to its plan. This plan must describe the public transportation benefit area's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plan must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the public transportation benefit area shall revise its plan to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plan for review.

(2) Each public transportation benefit area shall implement and comply with its system safety and security program plan. The public transportation benefit area shall perform internal safety and security audits to evaluate its compliance with the plan, and submit its audit schedule to the department of transportation no later than December 15th each year. The public transportation benefit area shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. This annual report must include the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plan.

(3) Each public transportation benefit area shall notify the department of transportation within twenty-four hours of an occurrence of a reportable accident, unacceptable hazardous condition, or security breach. The department may adopt rules further defining a reportable accident, unacceptable hazardous condition, or security breach. The public transportation benefit area shall investigate all reportable accidents, unacceptable hazardous conditions, or security breaches and provide a written investigation report to the department within forty-five calendar days after the reportable accident, unacceptable hazardous condition, or security breach.

(4) The security section of the safety and security plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter ~~(42-17-RCW)~~ 42.— RCW (the new chapter created in section 103 of this act). However, the activities and plans as described in subsections (1)(a), (b), and (c), (2), and (3) of this section are not subject to this exemption.

Sec. 272. RCW 36.70B.220 and 1996 c 206 s 9 are each amended to read as follows:

(1) Each county and city having populations of ten thousand or more that plan under RCW 36.70A.040 shall designate permit assistance staff whose function it is to assist permit applicants. An existing employee may be designated as the permit assistance staff.

(2) Permit assistance staff designated under this section shall:

(a) Make available to permit applicants all current local government regulations and adopted policies that apply to the subject application. The local government shall provide counter copies thereof and, upon request, provide copies according to chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act). The staff shall also publish and keep current one or more handouts containing lists and explanations of all local government regulations and adopted policies;

(b) Establish and make known to the public the means of obtaining the handouts and related information; and

(c) Provide assistance regarding the application of the local government's regulations in particular cases.

(3) Permit assistance staff designated under this section may obtain technical assistance and support in the compilation and production of the handouts under subsection (2) of this section from the municipal research council and the department of community, trade, and economic development.

Sec. 273. RCW 36.70C.120 and 1995 c 347 s 713 are each amended to read as follows:

(1) When the land use decision being reviewed was made by a quasi-judicial body or officer who made factual determinations in support of the decision and the parties to the quasi-judicial proceeding had an opportunity consistent with due process to make a record on the factual issues, judicial review of factual issues and the conclusions drawn from the factual issues shall be confined to the record created by the quasi-judicial body or officer, except as provided in subsections (2) through (4) of this section.

(2) For decisions described in subsection (1) of this section, the record may be supplemented by additional evidence only if the additional evidence relates to:

(a) Grounds for disqualification of a member of the body or of the officer that made the land use decision, when such grounds were unknown by the petitioner at the time the record was created;

(b) Matters that were improperly excluded from the record after being offered by a party to the quasi-judicial proceeding; or

(c) Matters that were outside the jurisdiction of the body or officer that made the land use decision.

(3) For land use decisions other than those described in subsection (1) of this section, the record for judicial review may be supplemented by evidence of material facts that were not made part of the local jurisdiction's record.

(4) The court may require or permit corrections of ministerial errors or inadvertent omissions in the preparation of the record.

(5) The parties may not conduct pretrial discovery except with the prior permission of the court, which may be sought by motion at any time after service of the petition. The court shall not grant permission unless the party requesting it makes a prima facie showing of need. The court shall strictly limit discovery to what is necessary for equitable and timely review of the issues that are raised under subsections (2) and (3) of this section. If the court allows the record to be supplemented, the court shall require the parties to disclose before the hearing or trial on the merits the specific evidence they intend to offer. If any party, or anyone acting on behalf of any party, requests records under chapter ~~((42.17~~

RCW) 42.—RCW (the new chapter created in section 103 of this act) relating to the matters at issue, a copy of the request shall simultaneously be given to all other parties and the court shall take such request into account in fashioning an equitable discovery order under this section.

Sec. 274. RCW 36.102.200 and 1997 c 220 s 119 are each amended to read as follows:

The public stadium authority may refuse to disclose financial information on the master tenant, concessioners, the team affiliate, or subleasee under ~~((RCW 42.17.310))~~ section 407 of this act.

Sec. 275. RCW 39.10.100 and 1994 c 132 s 10 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, all proceedings, records, contracts, and other public records relating to alternative public works transactions under this chapter shall be open to the inspection of any interested person, firm, or corporation in accordance with chapter ~~((42.17 RCW))~~ 42.—RCW (the new chapter created in section 103 of this act).

(2) Trade secrets, as defined in RCW 19.108.010, or other proprietary information submitted by a bidder, offeror, or contractor in connection with an alternative public works transaction under this chapter shall not be subject to chapter ~~((42.17 RCW))~~ 42.—RCW (the new chapter created in section 103 of this act) if the bidder, offeror, or contractor specifically states in writing the reasons why protection is necessary, and identifies the data or materials to be protected.

Sec. 276. RCW 40.07.040 and 1977 ex.s. c 232 s 4 are each amended to read as follows:

(1) The governor or the governor's designee shall take such other action as may be necessary to maximize the economy, efficiency, and effectiveness of state publications and to do so may eliminate, consolidate, or simplify state agency publications.

(2) Nothing in this chapter shall be construed in any way as restricting public access to public records or the public right to copy such records as provided by ~~((RCW 42.17.250 through 42.17.340 as now existing or hereafter amended))~~ chapter 42.—RCW (the new chapter created in section 103 of this act).

Sec. 277. RCW 41.05.026 and 2003 c 277 s 2 are each amended to read as follows:

(1) When soliciting proposals for the purpose of awarding contracts for goods or services, the administrator shall, upon written request by the bidder, exempt from public inspection and copying such proprietary data, trade secrets, or other information contained in the bidder's proposal that relate to the bidder's unique methods of conducting business or of determining prices or premium rates to be charged for services under terms of the proposal.

(2) When soliciting information for the development, acquisition, or implementation of state purchased health care services, the administrator shall, upon written request by the respondent, exempt from public inspection and copying such proprietary data, trade secrets, or other information submitted by the respondent that relate to the respondent's unique methods of conducting

business, data unique to the product or services of the respondent, or to determining prices or rates to be charged for services.

(3) Actuarial formulas, statistics, cost and utilization data, or other proprietary information submitted upon request of the administrator, board, or a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under this chapter by a contracting insurer, health care service contractor, health maintenance organization, vendor, or other health services organization may be withheld at any time from public inspection when necessary to preserve trade secrets or prevent unfair competition.

(4) The board, or a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under this chapter, may hold an executive session in accordance with chapter 42.30 RCW during any regular or special meeting to discuss information submitted in accordance with subsections (1) through (3) of this section.

(5) A person who challenges a request for or designation of information as exempt under this section is entitled to seek judicial review pursuant to chapter ((42.17 RCW)) 42.—RCW (the new chapter created in section 103 of this act).

Sec. 278. RCW 41.06.160 and 2002 c 354 s 211 are each amended to read as follows:

In preparing classification and salary schedules as set forth in RCW 41.06.150 the department of personnel shall give full consideration to prevailing rates in other public employment and in private employment in this state. For this purpose the department shall undertake comprehensive salary and fringe benefit surveys.

Salary and fringe benefit survey information collected from private employers which identifies a specific employer with the salary and fringe benefit rates which that employer pays to its employees shall not be subject to public disclosure under chapter ((42.17 RCW)) 42.—RCW (the new chapter created in section 103 of this act).

Sec. 279. RCW 41.06.167 and 2002 c 354 s 212 are each amended to read as follows:

The department of personnel shall undertake comprehensive compensation surveys for officers and entry-level officer candidates of the Washington state patrol, with such surveys to be conducted in the year prior to the convening of every other one hundred five day regular session of the state legislature. Salary and fringe benefit survey information collected from private employers which identifies a specific employer with the salary and fringe benefit rates which that employer pays to its employees shall not be subject to public disclosure under chapter ((42.17 RCW)) 42.—RCW (the new chapter created in section 103 of this act).

Sec. 280. RCW 41.06.450 and 2002 c 354 s 221 are each amended to read as follows:

(1) The director shall adopt rules applicable to each agency to ensure that information relating to employee misconduct or alleged misconduct is destroyed or maintained as follows:

(a) All such information determined to be false and all such information in situations where the employee has been fully exonerated of wrongdoing, shall be promptly destroyed;

(b) All such information having no reasonable bearing on the employee's job performance or on the efficient and effective management of the agency, shall be promptly destroyed;

(c) All other information shall be retained only so long as it has a reasonable bearing on the employee's job performance or on the efficient and effective management of the agency.

(2) Notwithstanding subsection (1) of this section, an agency may retain information relating to employee misconduct or alleged misconduct if:

(a) The employee requests that the information be retained; or

(b) The information is related to pending legal action or legal action may be reasonably expected to result.

(3) In adopting rules under this section, the director shall consult with the public disclosure commission to ensure that the public policy of the state, as expressed in chapters 42.17 and 42.— (the new chapter created in section 103 of this act) RCW, is adequately protected.

Sec. 281. RCW 41.06.455 and 1982 c 208 s 11 are each amended to read as follows:

RCW 41.06.450 does not prohibit an agency from destroying identifying information in records relating to employee misconduct or alleged misconduct if the agency deems the action is consistent with the policy expressed in RCW 41.06.450 and in chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act).

Sec. 282. RCW 42.17.245 and 1983 c 213 s 1 are each amended to read as follows:

After January 1st and before April 15th of each calendar year, the state treasurer, each county, public utility district, and port district treasurer, and each treasurer of an incorporated city or town whose population exceeds one thousand shall file with the commission:

(1) A statement under oath that no public funds under that treasurer's control were invested in any institution where the treasurer or, in the case of a county, a member of the county finance committee, held during the reporting period an office, directorship, partnership interest, or ownership interest; or

(2) A report disclosing for the previous calendar year: (a) The name and address of each financial institution in which the treasurer or, in the case of a county, a member of the county finance committee, held during the reporting period an office, directorship, partnership interest, or ownership interest which holds or has held during the reporting period public accounts of the governmental entity for which the treasurer is responsible; (b) the aggregate sum of time and demand deposits held in each such financial institution on December 31; and (c) the highest balance held at any time during such reporting period: PROVIDED, That the state treasurer shall disclose the highest balance information only upon request under ~~((RCW 42.17.250 through 42.17.330))~~ chapter 42.— RCW (the new chapter created in section 103 of this act). The statement or report required by this section shall be filed either with the statement required under RCW 42.17.240 or separately.

Sec. 283. RCW 42.17.251 and 1992 c 139 s 2 are each amended to read as follows:

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. (~~The public records subdivision of~~) This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy.

Sec. 284. RCW 42.17.260 and 1997 c 409 s 601 are each amended to read as follows:

(1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection (6) of this section, (~~RCW 42.17.310, 42.17.315~~) this chapter, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by (~~RCW 42.17.310 and 42.17.315~~) this chapter, an agency shall delete identifying details in a manner consistent with (~~RCW 42.17.310 and 42.17.315~~) this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.

(2) For informational purposes, each agency shall publish and maintain a current list containing every law, other than those listed in this chapter, that the agency believes exempts or prohibits disclosure of specific information or records of the agency. An agency's failure to list an exemption shall not affect the efficacy of any exemption.

(3) Each local agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after January 1, 1973:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the agency;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(4) A local agency need not maintain such an index, if to do so would be unduly burdensome, but it shall in that event:

(a) Issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations; and

(b) Make available for public inspection and copying all indexes maintained for agency use.

(5) Each state agency shall, by rule, establish and implement a system of indexing for the identification and location of the following records:

(a) All records issued before July 1, 1990, for which the agency has maintained an index;

(b) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW 34.05.010 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(c) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(d) Interpretive statements as defined in RCW 34.05.010 that were entered after June 30, 1990; and

(e) Policy statements as defined in RCW 34.05.010 that were entered after June 30, 1990.

Rules establishing systems of indexing shall include, but not be limited to, requirements for the form and content of the index, its location and availability to the public, and the schedule for revising or updating the index. State agencies that have maintained indexes for records issued before July 1, 1990, shall continue to make such indexes available for public inspection and copying. Information in such indexes may be incorporated into indexes prepared pursuant to this subsection. State agencies may satisfy the requirements of this subsection by making available to the public indexes prepared by other parties but actually used by the agency in its operations. State agencies shall make indexes available for public inspection and copying. State agencies may charge a fee to cover the actual costs of providing individual mailed copies of indexes.

(6) A public record may be relied on, used, or cited as precedent by an agency against a party other than an agency and it may be invoked by the agency for any other purpose only if(—):

(a) It has been indexed in an index available to the public; or

(b) Parties affected have timely notice (actual or constructive) of the terms thereof.

(7) Each agency shall establish, maintain, and make available for public inspection and copying a statement of the actual per page cost or other costs, if any, that it charges for providing photocopies of public records and a statement of the factors and manner used to determine the actual per page cost or other costs, if any.

(a) In determining the actual per page cost for providing photocopies of public records, an agency may include all costs directly incident to copying such public records including the actual cost of the paper and the per page cost for use of agency copying equipment. In determining other actual costs for providing photocopies of public records, an agency may include all costs directly incident to shipping such public records, including the cost of postage or delivery charges and the cost of any container or envelope used.

(b) In determining the actual per page cost or other costs for providing copies of public records, an agency may not include staff salaries, benefits, or other general administrative or overhead charges, unless those costs are directly related to the actual cost of copying the public records. Staff time to copy and mail the requested public records may be included in an agency's costs.

(8) An agency need not calculate the actual per page cost or other costs it charges for providing photocopies of public records if to do so would be unduly burdensome, but in that event: The agency may not charge in excess of fifteen cents per page for photocopies of public records or for the use of agency equipment to photocopy public records and the actual postage or delivery charge and the cost of any container or envelope used to mail the public records to the requestor.

(9) This chapter shall not be construed as giving authority to any agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall not do so unless specifically authorized or directed by law: PROVIDED, HOWEVER, That lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor: PROVIDED FURTHER, That such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter 34.05 RCW, the Administrative Procedure Act.

Sec. 285. RCW 42.17.270 and 1987 c 403 s 4 are each amended to read as follows:

Public records shall be available for inspection and copying, and agencies shall, upon request for identifiable public records, make them promptly available to any person. Agencies shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate RCW 42.17.260(~~((5))~~) (9) (as recodified by this act) or other statute which exempts or prohibits disclosure of specific information or records to certain persons. Agency facilities shall be made available to any person for the copying of public records except when and to the extent that this would unreasonably disrupt the operations of the agency. Agencies shall honor requests received by mail for identifiable public records unless exempted by provisions of this chapter.

Sec. 286. RCW 42.17.305 and 1995 c 341 s 3 are each amended to read as follows:

The provisions of RCW 42.17.260 (7) and (8) and 42.17.300 (each as recodified by this act) that establish or allow agencies to establish the costs charged for photocopies of public records do not supersede other statutory provisions, other than in this chapter, authorizing or governing fees for copying public records.

Sec. 287. RCW 42.17.311 and 1991 c 23 s 11 are each amended to read as follows:

Nothing in (~~RCW 42.17.310(1) (t) through (v)~~) sections 405 and 413 of this act shall affect a positive duty of an agency to disclose or a positive duty to withhold information which duty to disclose or withhold is contained in any other law.

Sec. 288. RCW 42.17.340 and 1992 c 139 s 8 are each amended to read as follows:

(1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.

(2) Upon the motion of any person who believes that an agency has not made a reasonable estimate of the time that the agency requires to respond to a public record request, the superior court in the county in which a record is maintained may require the responsible agency to show that the estimate it provided is reasonable. The burden of proof shall be on the agency to show that the estimate it provided is reasonable.

(3) Judicial review of all agency actions taken or challenged under RCW 42.17.250 through 42.17.320 (as recodified by this act) shall be de novo. Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Courts may examine any record in camera in any proceeding brought under this section. The court may conduct a hearing based solely on affidavits.

(4) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not less than five dollars and not to exceed one hundred dollars for each day that he was denied the right to inspect or copy said public record.

Sec. 289. RCW 42.17.341 and 1995 c 397 s 16 are each amended to read as follows:

The procedures in RCW 42.17.340 (as recodified by this act) govern denials of an opportunity to inspect or copy a public record by the office of the secretary of the senate or the office of the chief clerk of the house of representatives.

Sec. 290. RCW 42.17.348 and 1992 c 139 s 9 are each amended to read as follows:

The attorney general's office shall publish, and update when appropriate, a pamphlet, written in plain language, explaining (~~the provisions of the public records subdivision of~~) this chapter.

Sec. 291. RCW 42.48.030 and 1985 c 334 s 3 are each amended to read as follows:

In addition to the copying charges provided in RCW 42.17.300 (as recodified by this act), a state agency may impose a reasonable charge for costs incurred in providing assistance in the following research activities involving personal records:

(1) Manual or computer screening of personal records for scientific sampling purposes according to specifications provided by the research professional;

(2) Manual or computer extraction of information from a universe or sample of personal records according to specifications provided by the research professional;

(3) Statistical manipulation or analysis of personal record information, whether manually or by computer, according to specifications provided by the research professional.

The charges imposed by the agency may not exceed the amount necessary to reimburse the agency for its actual costs in providing requested research assistance.

Sec. 292. RCW 42.52.050 and 1996 c 213 s 4 are each amended to read as follows:

(1) No state officer or state employee may accept employment or engage in any business or professional activity that the officer or employee might reasonably expect would require or induce him or her to make an unauthorized disclosure of confidential information acquired by the official or employee by reason of the official's or employee's official position.

(2) No state officer or state employee may make a disclosure of confidential information gained by reason of the officer's or employee's official position or otherwise use the information for his or her personal gain or benefit or the gain or benefit of another, unless the disclosure has been authorized by statute or by the terms of a contract involving (a) the state officer's or state employee's agency and (b) the person or persons who have authority to waive the confidentiality of the information.

(3) No state officer or state employee may disclose confidential information to any person not entitled or authorized to receive the information.

(4) No state officer or state employee may intentionally conceal a record if the officer or employee knew the record was required to be released under chapter (~~42.17 RCW~~) 42.— RCW (the new chapter created in section 103 of this act), was under a personal obligation to release the record, and failed to do so. This subsection does not apply where the decision to withhold the record was made in good faith.

Sec. 293. RCW 42.52.810 and 2003 c 265 s 2 are each amended to read as follows:

(1) When soliciting charitable gifts, grants, or donations solely for the legislative international trade account created in RCW 44.04.270, the president of the senate is presumed not to be in violation of the solicitation and receipt of gift provisions in RCW 42.52.140.

(2) When soliciting charitable gifts, grants, or donations solely for the legislative international trade account created in RCW 44.04.270, state officers and state employees are presumed not to be in violation of the solicitation and receipt of gift provisions in RCW 42.52.140.

(3) An annual report of the legislative international trade account activities, including a list of receipts and expenditures, shall be published by the president of the senate and submitted to the house of representatives and the senate and be a public record for the purposes of RCW 42.17.260 (as recodified by this act).

Sec. 294. RCW 43.06A.050 and 1996 c 131 s 6 are each amended to read as follows:

The ombudsman shall treat all matters under investigation, including the identities of service recipients, complainants, and individuals from whom information is acquired, as confidential, except as far as disclosures may be necessary to enable the ombudsman to perform the duties of the office and to support any recommendations resulting from an investigation. Upon receipt of information that by law is confidential or privileged, the ombudsman shall maintain the confidentiality of such information and shall not further disclose or disseminate the information except as provided by applicable state or federal law. Investigative records of the office of the ombudsman are confidential and are exempt from public disclosure under chapter ~~((42.17-RCW))~~ 42.— RCW (the new chapter created in section 103 of this act).

Sec. 295. RCW 43.21L.120 and 2003 c 393 s 13 are each amended to read as follows:

(1) For all permit decisions being reviewed that were made by quasi-judicial bodies or permit agency officers who made factual determinations in support of the decisions, after the conduct of proceedings in which the parties had an opportunity consistent with due process to make records on the factual issues, board review of factual issues and the conclusions drawn from the factual issues shall be confined to the records created by the quasi-judicial bodies or permit agency officers, except as provided in subsections (2) through (4) of this section.

(2) For decisions described in subsection (1) of this section, the records may be supplemented by additional evidence only if the additional evidence relates to:

(a) Grounds for disqualification of a member of the body or of the officer that made the permit decision, when such grounds were unknown by the petitioner at the time the record was created;

(b) Matters that were improperly excluded from the record after being offered by a party to a permit decision proceeding; or

(c) Matters that were outside the jurisdiction of the body or officer that made the permit decision.

(3) For permit decisions other than those described in subsection (1) of this section, the board review of the permit decision shall be de novo on issues presented as error in the petition.

(4) The board may require or permit corrections of ministerial errors or inadvertent omissions in the preparation of the record.

(5)(a) The parties may not conduct pretrial discovery except with the prior permission of the board, which may be sought by motion, subject to any applicable rules adopted by the board, at any time after service of the petition. The board shall not grant permission unless the party requesting it makes a prima facie showing of need. The board shall strictly limit discovery to what is necessary for equitable and timely review of the issues.

(b) If the board allows the record to be supplemented, or in any de novo proceeding under subsection (3) of this section, the board shall require the parties to disclose before the hearing or trial on the merits the identity of witnesses and the specific evidence they intend to offer.

(c) If any party, or anyone acting on behalf of any party, requests records under chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act) relating to the matters at issue, a copy of the request shall simultaneously be given to all other parties, and the board shall take such request into account in fashioning an equitable discovery order under this section.

Sec. 296. RCW 43.22.434 and 2004 c 137 s 1 are each amended to read as follows:

(1) The director or the director's authorized representative may conduct such inspections, investigations, and audits as may be necessary to adopt or enforce manufactured and mobile home, commercial coach, conversion vending units, medical units, recreational vehicle, park trailer, factory built housing, and factory built commercial structure rules adopted under the authority of this chapter or to carry out the director's duties under this chapter.

(2) For purposes of enforcement of this chapter, persons duly designated by the director upon presenting appropriate credentials to the owner, operator, or agent in charge may:

(a) At reasonable times and without advance notice enter any factory, warehouse, or establishment in which manufactured and mobile homes, commercial coaches, conversion vending units, medical units, recreational vehicles, park trailers, factory built housing, and factory built commercial structures are manufactured, stored, or held for sale;

(b) At reasonable times, within reasonable limits, and in a reasonable manner inspect any factory, warehouse, or establishment as required to comply with the standards adopted by the secretary of housing and urban development under the national manufactured home construction and safety standards act of 1974. Each inspection shall be commenced and completed with reasonable promptness; and

(c) As requested by an owner of a conversion vending unit or medical unit, inspect an alteration.

(3) For purposes of determining compliance with this chapter's permitting requirements for alterations of mobile and manufactured homes, the department may audit the records of a contractor as defined in chapter 18.27 RCW or RCW 18.106.020(1) or an electrical contractor as defined in RCW 19.28.006 when the department has reason to believe that a violation of the permitting requirements has occurred. The department shall adopt rules implementing the auditing procedures. Information obtained from a contractor through an audit authorized by this subsection is confidential and not open to public inspection under chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act).

(4)(a) The department shall set a schedule of fees by rule which will cover the costs incurred by the department in the administration of RCW 43.22.335 through 43.22.490. The department may waive mobile/manufactured home alteration permit fees for indigent permit applicants.

(b)(i) Until April 1, 2009, subject to (a) of this subsection, the department may adopt by rule a temporary statewide fee schedule that decreases fees for

mobile/manufactured home alteration permits and increases fees for factory-built housing and commercial structures plan review and inspection services.

(ii) Effective April 1, 2009, the department must adopt a new fee schedule that is the same as the fee schedule that was in effect immediately prior to the temporary fee schedule authorized in (b)(i) of this subsection. However, the new fee schedule must be adjusted by the fiscal growth factors not applied during the period that the temporary fee schedule was in effect.

Sec. 297. RCW 43.33A.025 and 2000 c 188 s 1 are each amended to read as follows:

(1) Notwithstanding any provision of RCW 43.43.700 through 43.43.815, the state investment board shall require a criminal history record check for conviction records through the Washington state patrol criminal identification system, and through the federal bureau of investigation, for the purpose of conducting preemployment evaluations of each finalist candidate for a board staff position exempt from the provisions of chapter 41.06 RCW, or for any other position in which the employee will have authority for or access to: (a) Funds under the jurisdiction or responsibility of the investment board; or (b) data or security systems of the investment board or designs for such systems. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card, which shall be forwarded by the state patrol to the federal bureau of investigation.

(2) Information received by the investment board pursuant to this section shall be made available by the investment board only to board employees involved in the selection, hiring, background investigation, or job assignment of the person who is the subject of the record check, or to that subject person, and it shall be used only for the purposes of making, supporting, or defending decisions regarding the appointment or hiring of persons for these positions, or securing any necessary bonds or other requirements for such employment. Otherwise, the reports, and information contained therein, shall remain confidential and shall not be subject to the disclosure requirements of chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act).

(3) Fees charged by the Washington state patrol, or the federal bureau of investigation, for conducting these investigations and providing these reports shall be paid by the investment board.

Sec. 298. RCW 43.43.856 and 2003 c 53 s 230 are each amended to read as follows:

(1)(a) On and after April 26, 1973, it shall be unlawful for any person to divulge specific investigative information pertaining to activities related to organized crime which he or she has obtained by reason of public employment with the state of Washington or its political subdivisions unless such person is authorized or required to do so by operation of state or federal law.

(b) Any person violating (a) of this subsection is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(2) Except as provided in RCW 43.43.854, or pursuant to the rules of the supreme court of Washington, all of the information and data collected and processed by the organized crime intelligence unit shall be confidential and not subject to examination or publication pursuant to chapter ~~((42.17 RCW~~

~~(Initiative Measure No. 276))~~ 42.— RCW (the new chapter created in section 103 of this act).

(3) The chief of the Washington state patrol shall prescribe such standards and procedures relating to the security of the records and files of the organized crime intelligence unit, as he or she deems to be in the public interest with the advice of the governor and the board.

Sec. 299. RCW 43.52.570 and 1987 c 376 s 3 are each amended to read as follows:

For the awarding of a contract to purchase any item or items of materials, equipment, or supplies in an amount exceeding five thousand dollars but less than seventy-five thousand dollars, exclusive of sales tax, the managing director or a designee may, in lieu of sealed bids, secure telephone and/or written quotations from at least five vendors, where practical, and award contracts for purchase of materials, equipment, or supplies to the lowest responsible bidder. The agency shall establish a procurement roster, which shall consist of suppliers and manufacturers who may supply materials or equipment to the operating agency, and shall provide for solicitations which will equitably distribute opportunity for bids among suppliers and manufacturers on the roster. Immediately after the award is made, the bid quotations obtained shall be recorded and shall be posted or otherwise made available for public inspection and copying pursuant to chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act) at the office of the operating agency or any other officially designated location. Waiver of the deposit or bid bond required for sealed bids may be authorized by the operating agency in securing the bid quotations.

Sec. 300. RCW 43.52.612 and 1982 1st ex.s. c 44 s 5 are each amended to read as follows:

A joint operating agency shall require that bids upon any construction or improvement of any nuclear generating project and associated facilities shall be made upon the contract bid form supplied by the operating agency, and in no other manner. The operating agency may, before furnishing any person, firm, or corporation desiring to bid upon any work with a contract bid form, require from the person, firm, or corporation, answers to questions contained in a standard form of questionnaire and financial statement, including a complete statement of the financial ability and experience of the person, firm, or corporation in performing work. The questionnaire shall be sworn to before a notary public or other person authorized to take acknowledgement of deeds and shall be submitted once a year or at such other times as the operating agency may require. Whenever the operating agency is not satisfied with the sufficiency of the answers contained in the questionnaire and financial statement or whenever the operating agency determines that the person, firm, or corporation does not meet all of the requirements set forth in this section, it may refuse to furnish the person, firm, or corporation with a contract bid form and any bid of the person, firm, or corporation must be disregarded. The operating agency shall require that a person, firm, or corporation have all of the following requirements in order to obtain a contract form:

(1) Adequate financial resources, the ability to secure these resources, or the capability to secure a one hundred percent payment and performance bond;

(2) The necessary experience, organization, and technical qualifications to perform the proposed contract;

(3) The ability to comply with the required performance schedule taking into consideration all of its existing business commitments;

(4) A satisfactory record of performance, integrity, judgment, and skills; and

(5) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

The refusal shall be conclusive unless appealed to the superior court of the county where the operating agency is situated or Thurston county within fifteen days, which appeal shall be heard summarily within ten days after the appeal is made and on five days' notice thereof to the operating agency.

The prevailing party in such litigation shall be awarded its attorney fees and costs.

The operating agency shall not be required to make available for public inspection or copying under chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act) financial information provided under this section.

Sec. 301. RCW 43.70.050 and 1989 1st ex.s. c 9 s 107 are each amended to read as follows:

(1) The legislature intends that the department~~((;))~~ and board~~((;—and council))~~ promote and assess the quality, cost, and accessibility of health care throughout the state as their roles are specified in chapter 9, Laws of 1989 1st ex. sess. in accordance with the provisions of this chapter. In furtherance of this goal, the secretary shall create an ongoing program of data collection, storage, assessability, and review. The legislature does not intend that the department conduct or contract for the conduct of basic research activity. The secretary may request appropriations for studies according to this section from the legislature, the federal government, or private sources.

(2) All state agencies which collect or have access to population-based, health-related data are directed to allow the secretary access to such data. This includes, but is not limited to, data on needed health services, facilities, and personnel; future health issues; emerging bioethical issues; health promotion; recommendations from state and national organizations and associations; and programmatic and statutory changes needed to address emerging health needs. Private entities, such as insurance companies, health maintenance organizations, and private purchasers are also encouraged to give the secretary access to such data in their possession. The secretary's access to and use of all data shall be in accordance with state and federal confidentiality laws and ethical guidelines. Such data in any form where the patient or provider of health care can be identified shall not be disclosed, subject to disclosure according to chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act), discoverable or admissible in judicial or administrative proceedings. Such data can be used in proceedings in which the use of the data is clearly relevant and necessary and both the department and the patient or provider are parties.

(3) The department shall serve as the clearinghouse for information concerning innovations in the delivery of health care services, the enhancement of competition in the health care marketplace, and federal and state information affecting health care costs.

(4) The secretary shall review any data collected, pursuant to this chapter, to:

(a) Identify high-priority health issues that require study or evaluation. Such issues may include, but are not limited to:

(i) Identification of variations of health practice which indicate a lack of consensus of appropriateness;

(ii) Evaluation of outcomes of health care interventions to assess their benefit to the people of the state;

(iii) Evaluation of specific population groups to identify needed changes in health practices and services;

(iv) Evaluation of the risks and benefits of various incentives aimed at individuals and providers for both preventing illnesses and improving health services;

(v) Identification and evaluation of bioethical issues affecting the people of the state; and

(vi) Other such objectives as may be appropriate;

(b) Further identify a list of high-priority health study issues for consideration by the board (~~or council~~), within their authority, for inclusion in the state health report required by RCW 43.20.050. The list shall specify the objectives of each study, a study timeline, the specific improvements in the health status of the citizens expected as a result of the study, and the estimated cost of the study; and

(c) Provide background for the state health report required by RCW 43.20.050.

(5) Any data, research, or findings may also be made available to the general public, including health professions, health associations, the governor, professional boards and regulatory agencies and any person or group who has allowed the secretary access to data.

(6) The secretary may charge a fee to persons requesting copies of any data, research, or findings. The fee shall be no more than necessary to cover the cost to the department of providing the copy.

Sec. 302. RCW 43.70.510 and 2004 c 145 s 2 are each amended to read as follows:

(1)(a) Health care institutions and medical facilities, other than hospitals, that are licensed by the department, professional societies or organizations, health care service contractors, health maintenance organizations, health carriers approved pursuant to chapter 48.43 RCW, and any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the jurisdiction and regulation of any state agency or any subdivision thereof may maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice as set forth in RCW 70.41.200.

(b) All such programs shall comply with the requirements of RCW 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to reflect the structural organization of the institution, facility, professional societies or organizations, health care service contractors, health maintenance organizations, health carriers, or any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the jurisdiction and regulation of any state agency or any subdivision thereof, unless an alternative quality improvement

program substantially equivalent to RCW 70.41.200(1)(a) is developed. All such programs, whether complying with the requirement set forth in RCW 70.41.200(1)(a) or in the form of an alternative program, must be approved by the department before the discovery limitations provided in subsections (3) and (4) of this section and the exemption under (~~RCW 42.17.310(1)(h))~~ section 416(1)(c) of this act and subsection (5) of this section shall apply. In reviewing plans submitted by licensed entities that are associated with physicians' offices, the department shall ensure that the exemption under (~~RCW 42.17.310(1)(h))~~ section 416(1)(c) of this act and the discovery limitations of this section are applied only to information and documents related specifically to quality improvement activities undertaken by the licensed entity.

(2) Health care provider groups of five or more providers may maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice as set forth in RCW 70.41.200. All such programs shall comply with the requirements of RCW 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to reflect the structural organization of the health care provider group. All such programs must be approved by the department before the discovery limitations provided in subsections (3) and (4) of this section and the exemption under (~~RCW 42.17.310(1)(h))~~ section 416(1)(c) of this act and subsection (5) of this section shall apply.

(3) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (6) of this section is not subject to an action for civil damages or other relief as a result of the activity or its consequences. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(4) Information and documents, including complaints and incident reports, created specifically for, and collected, and maintained by a quality improvement committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts that form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that

individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action challenging the termination of a contract by a state agency with any entity maintaining a coordinated quality improvement program under this section if the termination was on the basis of quality of care concerns, introduction into evidence of information created, collected, or maintained by the quality improvement committees of the subject entity, which may be under terms of a protective order as specified by the court; (e) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (f) in any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department of health to be made regarding the care and treatment received.

(5) Information and documents created specifically for, and collected and maintained by a quality improvement committee are exempt from disclosure under chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act).

(6) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or with RCW 70.41.200 or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (4) of this section and RCW 4.24.250.

(7) The department of health shall adopt rules as are necessary to implement this section.

Sec. 303. RCW 44.05.080 and 1983 c 16 s 8 are each amended to read as follows:

In addition to other duties prescribed by law, the commission shall:

(1) Adopt rules pursuant to the Administrative Procedure Act, chapter 34.05 RCW, to carry out the provisions of Article II, section 43 of the state Constitution and of this chapter, which rules shall provide that three voting members of the commission constitute a quorum to do business, and that the votes of three of the voting members are required for any official action of the commission;

(2) Act as the legislature's recipient of the final redistricting data and maps from the United States Bureau of the Census;

(3) Comply with requirements to disclose and preserve public records as specified in chapters 40.14 and (~~42.17 RCW~~) 42.— RCW (the new chapter created in section 103 of this act);

(4) Hold open meetings pursuant to the open public meetings act, chapter 42.30 RCW;

(5) Prepare and disclose its minutes pursuant to RCW 42.32.030;

(6) Be subject to the provisions of RCW 42.17.240;

(7) Prepare and publish a report with the plan; the report will be made available to the public at the time the plan is published. The report will include but will not be limited to: (a) The population and percentage deviation from the average district population for every district; (b) an explanation of the criteria used in developing the plan with a justification of any deviation in a district from the average district population; (c) a map of all the districts; and (d) the estimated cost incurred by the counties for adjusting precinct boundaries.

Sec. 304. RCW 46.12.380 and 1995 c 254 s 10 are each amended to read as follows:

(1) Notwithstanding the provisions of chapter (~~42.17 RCW~~) 42.— RCW (the new chapter created in section 103 of this act), the name or address of an individual vehicle owner shall not be released by the department, county auditor, or agency or firm authorized by the department except under the following circumstances:

(a) The requesting party is a business entity that requests the information for use in the course of business;

(b) The request is a written request that is signed by the person requesting disclosure that contains the full legal name and address of the requesting party, that specifies the purpose for which the information will be used; and

(c) The requesting party enters into a disclosure agreement with the department in which the party promises that the party will use the information only for the purpose stated in the request for the information; and that the party does not intend to use, or facilitate the use of, the information for the purpose of making any unsolicited business contact with a person named in the disclosed information. The term "unsolicited business contact" means a contact that is intended to result in, or promote, the sale of any goods or services to a person named in the disclosed information. The term does not apply to situations where the requesting party and such person have been involved in a business transaction prior to the date of the disclosure request and where the request is made in connection with the transaction.

(2) The disclosing entity shall retain the request for disclosure for three years.

(3) Whenever the disclosing entity grants a request for information under this section by an attorney or private investigator, the disclosing entity shall provide notice to the vehicle owner, to whom the information applies, that the request has been granted. The notice also shall contain the name and address of the requesting party.

(4) Any person who is furnished vehicle owner information under this section shall be responsible for assuring that the information furnished is not used for a purpose contrary to the agreement between the person and the department.

(5) This section shall not apply to requests for information by governmental entities or requests that may be granted under any other provision of this title expressly authorizing the disclosure of the names or addresses of vehicle owners.

(6) This section shall not apply to title history information under RCW 19.118.170.

Sec. 305. RCW 46.12.390 and 1990 c 232 s 3 are each amended to read as follows:

(1) The department may review the activities of a person who receives vehicle record information to ensure compliance with the limitations imposed on the use of the information. The department shall suspend or revoke for up to five years the privilege of obtaining vehicle record information of a person found to be in violation of chapter (~~(42.17 RCW)~~) 42.— RCW (the new chapter created in section 103 of this act), this chapter, or a disclosure agreement executed with the department.

(2) In addition to the penalty in subsection (1) of this section:

(a) The unauthorized disclosure of information from a department vehicle record; or

(b) The use of a false representation to obtain information from the department's vehicle records; or

(c) The use of information obtained from the department vehicle records for a purpose other than what is stated in the request for information or in the disclosure agreement executed with the department; or

(d) The sale or other distribution of any vehicle owner name or address to another person not disclosed in the request or disclosure agreement is a gross misdemeanor punishable by a fine not to exceed ten thousand dollars, or by imprisonment in a county jail not to exceed one year, or by both such fine and imprisonment for each violation.

Sec. 306. RCW 46.20.041 and 1999 c 274 s 12 are each amended to read as follows:

(1) If the department has reason to believe that a person is suffering from a physical or mental disability or disease that may affect that person's ability to drive a motor vehicle, the department must evaluate whether the person is able to safely drive a motor vehicle. As part of the evaluation:

(a) The department shall permit the person to demonstrate personally that notwithstanding the disability or disease he or she is able to safely drive a motor vehicle.

(b) The department may require the person to obtain a statement signed by a licensed physician or other proper authority designated by the department certifying the person's condition.

(i) The statement is for the confidential use of the director and the chief of the Washington state patrol and for other public officials designated by law. It is exempt from public inspection and copying notwithstanding chapter (~~(42.17 RCW)~~) 42.— RCW (the new chapter created in section 103 of this act).

(ii) The statement may not be offered as evidence in any court except when appeal is taken from the order of the director canceling or withholding a person's driving privilege. However, the department may make the statement available to the director of the department of retirement systems for use in determining

eligibility for or continuance of disability benefits and it may be offered and admitted as evidence in any administrative proceeding or court action concerning the disability benefits.

(2) On the basis of the evaluation the department may:

(a) Issue or renew a driver's license to the person without restrictions;

(b) Cancel or withhold the driving privilege from the person; or

(c) Issue a restricted driver's license to the person. The restrictions must be suitable to the licensee's driving ability. The restrictions may include:

(i) Special mechanical control devices on the motor vehicle operated by the licensee;

(ii) Limitations on the type of motor vehicle that the licensee may operate; or

(iii) Other restrictions determined by the department to be appropriate to assure the licensee's safe operation of a motor vehicle.

(3) The department may either issue a special restricted license or may set forth the restrictions upon the usual license form.

(4) The department may suspend or revoke a restricted license upon receiving satisfactory evidence of any violation of the restrictions. In that event the licensee is entitled to a driver improvement interview and a hearing as provided by RCW 46.20.322 or 46.20.328.

(5) Operating a motor vehicle in violation of the restrictions imposed in a restricted license is a traffic infraction.

Sec. 307. RCW 46.20.118 and 1990 c 250 s 37 are each amended to read as follows:

The department shall maintain a negative file. It shall contain negatives of all pictures taken by the department of licensing as authorized by RCW 46.20.070 through 46.20.119. Negatives in the file shall not be available for public inspection and copying under chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act). The department may make the file available to official governmental enforcement agencies to assist in the investigation by the agencies of suspected criminal activity. The department may also provide a print to the driver's next of kin in the event the driver is deceased.

Sec. 308. RCW 47.64.220 and 1999 c 256 s 1 are each amended to read as follows:

(1) Prior to collective bargaining, the marine employees' commission shall conduct a salary survey. The results of the survey shall be published in a report which shall be a public document comparing wages, hours, employee benefits, and conditions of employment of involved ferry employees with those of public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia doing directly comparable but not necessarily identical work, giving consideration to factors peculiar to the area and the classifications involved. Such survey report shall be for the purpose of disclosing generally prevailing levels of compensation, benefits, and conditions of employment. It shall be used to guide generally but not to define or limit collective bargaining between the parties. The commission shall make such other findings of fact as the parties may request during bargaining or impasse.

(2) Except as provided in subsection (3) of this section, salary and employee benefit information collected from private employers that identifies a specific employer with the salary and employee benefit rates which that employer pays to its employees is not subject to public disclosure under chapter ~~((42.17 RCW))~~ 42.—RCW (the new chapter created in section 103 of this act).

(3) A person or entity, having reason to believe that the salary survey results are inaccurate, may submit a petition to the state auditor requesting an audit of the data upon which the salary survey results are based. The state auditor shall review and analyze all data collected for the salary survey, including proprietary information, but is prohibited from disclosing the salary survey data to any other person or entity, except by court order.

Sec. 309. RCW 48.02.065 and 2001 c 57 s 1 are each amended to read as follows:

(1) Documents, materials, or other information as described in subsection (5) of this section are confidential by law and privileged, are not subject to public disclosure under chapter ~~((42.17 RCW))~~ 42.—RCW (the new chapter created in section 103 of this act), and are not subject to subpoena directed to the commissioner or any person who received documents, materials, or other information while acting under the authority of the commissioner. The commissioner is authorized to use such documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The confidentiality and privilege created by this section and ~~((RCW 42.17.31916))~~ section 420(9) of this act applies only to the commissioner, any person acting under the authority of the commissioner, the national association of insurance commissioners and its affiliates and subsidiaries, regulatory and law enforcement officials of other states and nations, the federal government, and international authorities.

(2) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner is permitted or required to testify in any private civil action concerning any confidential and privileged documents, materials, or information subject to subsection (1) of this section.

(3) The commissioner:

(a) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (1) of this section, with (i) the national association of insurance commissioners and its affiliates and subsidiaries, and (ii) regulatory and law enforcement officials of other states and nations, the federal government, and international authorities, if the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

(b) May receive documents, materials, or information, including otherwise either confidential or privileged, or both, documents, materials, or information, from (i) the national association of insurance commissioners and its affiliates and subsidiaries, and (ii) regulatory and law enforcement officials of other states and nations, the federal government, and international authorities and shall maintain as confidential and privileged any document, material, or information received that is either confidential or privileged, or both, under the laws of the jurisdiction that is the source of the document, material, or information; and

(c) May enter into agreements governing the sharing and use of information consistent with this subsection.

(4) No waiver of an existing privilege or claim of confidentiality in the documents, materials, or information may occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (3) of this section.

(5) Documents, materials, or information, which is either confidential or privileged, or both, which has been provided to the commissioner by (a) the national association of insurance commissioners and its affiliates and subsidiaries, (b) regulatory or law enforcement officials of other states and nations, the federal government, or international authorities, or (c) agencies of this state, is confidential and privileged only if the documents, materials, or information is protected from disclosure by the applicable laws of the jurisdiction that is the source of the document, material, or information.

Sec. 310. RCW 48.20.530 and 1991 c 87 s 7 are each amended to read as follows:

For the purposes of this chapter, a nonresident pharmacy is defined as any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an enrolled participant or his/her representative, controlled substances, legend drugs, or devices into this state.

After October 1, 1991, an insurer providing coverage of prescription drugs from nonresident pharmacies may only provide coverage from licensed nonresident pharmacies. The insurers shall obtain proof of current licensure in conformity with this section and RCW 18.64.350 through 18.64.400 from the nonresident pharmacy and keep that proof of licensure on file.

The department of health may request from the insurer the proof of current licensure for all nonresident pharmacies through which the insurer is providing coverage for prescription drugs to residents of the state of Washington. This information, which may constitute a full or partial customer list, shall be confidential and exempt from public disclosure, and from the requirements of chapter ~~((42.17 RCW))~~ 42.—RCW (the new chapter created in section 103 of this act). The board or the department shall not be restricted in the disclosure of the name of a nonresident pharmacy that is or has been licensed under RCW 18.64.360 or 18.64.370 or of the identity of a nonresident pharmacy disciplined under RCW 18.64.350 through 18.64.400.

Sec. 311. RCW 48.21.330 and 1991 c 87 s 8 are each amended to read as follows:

For the purposes of this chapter, a nonresident pharmacy is defined as any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an enrolled participant or his/her representative, controlled substances, legend drugs, or devices into this state.

After October 1, 1991, an insurer providing coverage of prescription drugs from nonresident pharmacies may only provide coverage from licensed nonresident pharmacies. The insurers shall obtain proof of current licensure in conformity with this section and RCW 18.64.350 through 18.64.400 from the nonresident pharmacy and keep that proof of licensure on file.

The department may request from the insurer the proof of current licensure for all nonresident pharmacies through which the insurer is providing coverage

for prescription drugs for residents of the state of Washington. This information, which may constitute a full or partial customer list, shall be confidential and exempt from public disclosure, and from the requirements of chapter ((42.17 RCW)) 42.— RCW (the new chapter created in section 103 of this act). The board or the department shall not be restricted in the disclosure of the name of a nonresident pharmacy that is or has been licensed under RCW 18.64.360 or 18.64.370 or of the identity of a nonresident pharmacy disciplined under RCW 18.64.350 through 18.64.400.

Sec. 312. RCW 48.30A.060 and 1995 c 285 s 12 are each amended to read as follows:

Each insurer shall annually provide to the insurance commissioner a summary report on actions taken under its antifraud plan to prevent and combat insurance fraud. The report must also include, but not be limited to, measures taken to protect and ensure the integrity of electronic data processing-generated data and manually compiled data, statistical data on the amount of resources committed to combatting fraud, and the amount of fraud identified and recovered during the reporting period. The antifraud plans and summary of the insurer's antifraud activities are not public records and are exempt from chapter ((42.17 RCW)) 42.— RCW (the new chapter created in section 103 of this act), are proprietary, are not subject to public examination, and are not discoverable or admissible in civil litigation.

Sec. 313. RCW 48.32A.185 and 2001 c 50 s 19 are each amended to read as follows:

(1) No person, including an insurer, agent, or affiliate of an insurer may make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement, written or oral, which uses the existence of the insurance guaranty association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the Washington life and disability insurance guaranty association act. However, this section does not apply to the Washington life and disability insurance guaranty association or any other entity which does not sell or solicit insurance.

(2) Within one hundred eighty days after July 22, 2001, the association shall prepare a summary document describing the general purposes and current limitations of this chapter and complying with subsection (3) of this section. This document must be submitted to the commissioner for approval. The document must also be available upon request by a policy owner. The distribution, delivery, contents, or interpretation of this document does not guarantee that either the policy or the contract or the owner of the policy or contract is covered in the event of the impairment or insolvency of a member insurer. The description document must be revised by the association as amendments to this chapter may require. Failure to receive this document does not give the policy owner, contract owner, certificate holder, or insured any greater rights than those stated in this chapter.

(3) The document prepared under subsection (2) of this section must contain a clear and conspicuous disclaimer on its face. The commissioner shall establish the form and content of the disclaimer. The disclaimer must:

(a) State the name and address of the life and disability insurance guaranty association and insurance department;

(b) Prominently warn the policy or contract owner that the life and disability insurance guaranty association may not cover the policy or, if coverage is available, it is subject to substantial limitations and exclusions and conditioned on continued residence in this state;

(c) State the types of policies for which guaranty funds provide coverage;

(d) State that the insurer and its agents are prohibited by law from using the existence of the life and disability insurance guaranty association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;

(e) State that the policy or contract owner should not rely on coverage under the life and disability insurance guaranty association when selecting an insurer;

(f) Explain rights available and procedures for filing a complaint to allege a violation of any provisions of this chapter; and

(g) Provide other information as directed by the commissioner including but not limited to, sources for information about the financial condition of insurers provided that the information is not proprietary and is subject to disclosure under chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act).

(4) A member insurer must retain evidence of compliance with subsection (2) of this section for as long as the policy or contract for which the notice is given remains in effect.

Sec. 314. RCW 48.44.470 and 1991 c 87 s 9 are each amended to read as follows:

For the purposes of this chapter, a nonresident pharmacy is defined as any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an enrolled participant or his/her representative, controlled substances, legend drugs, or devices into this state.

After October 1, 1991, a health care service contractor providing coverage of prescription drugs from nonresident pharmacies may only provide coverage from licensed nonresident pharmacies. The health care service contractors shall obtain proof of current licensure in conformity with this section and RCW 18.64.350 through 18.64.400 from the nonresident pharmacy and keep that proof of licensure on file.

The department may request from the health care service contractor the proof of current licensure for all nonresident pharmacies through which the insurer is providing coverage for prescription drugs for residents of the state of Washington. This information, which may constitute a full or partial customer list, shall be confidential and exempt from public disclosure, and from the requirements of chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act). The board or the department shall not be restricted in the disclosure of the name of a nonresident pharmacy that is or has been licensed under RCW 18.64.360 or 18.64.370 or of the identity of a nonresident pharmacy disciplined under RCW 18.64.350 through 18.64.400.

Sec. 315. RCW 48.46.540 and 1991 c 87 s 10 are each amended to read as follows:

For the purposes of this chapter, a nonresident pharmacy is defined as any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an enrolled participant or his/her representative, controlled substances, legend drugs, or devices into this state.

After October 1, 1991, a health maintenance organization providing coverage of prescription drugs from nonresident pharmacies may only provide coverage from licensed nonresident pharmacies. The health maintenance organizations shall obtain proof of current licensure in conformity with this section and RCW 18.64.350 through 18.64.400 from the nonresident pharmacy and keep that proof of licensure on file.

The department may request from the health maintenance organization the proof of current licensure for all nonresident pharmacies through which the insurer is providing coverage for prescription drugs for residents of the state of Washington. This information, which may constitute a full or partial customer list, shall be confidential and exempt from public disclosure, and from the requirements of chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act). The board or the department shall not be restricted in the disclosure of the name of a nonresident pharmacy that is or has been licensed under RCW 18.64.360 or 18.64.370 or of the identity of a nonresident pharmacy disciplined under RCW 18.64.350 through 18.64.400.

Sec. 316. RCW 48.62.101 and 1991 sp.s. c 30 s 10 are each amended to read as follows:

(1) All self-insurance programs governed by this chapter may provide for executive sessions in accordance with chapter 42.30 RCW to consider litigation and settlement of claims when it appears that public discussion of these matters would impair the program's ability to conduct its business effectively.

(2) Notwithstanding any provision to the contrary contained in the public ~~((disclosure))~~ records act, chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act), in a claim or action against the state or a local government entity, no person is entitled to discover that portion of any funds or liability reserve established for purposes of satisfying a claim or cause of action, except that the reserve is discoverable in a supplemental or ancillary proceeding to enforce a judgment. All other records of individual or joint self-insurance programs are subject to disclosure in accordance with chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act).

(3) In accordance with chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act), bargaining groups representing local government employees shall have reasonable access to information concerning the experience and performance of any health and welfare benefits program established for the benefit of such employees.

Sec. 317. RCW 48.94.010 and 1993 c 462 s 24 are each amended to read as follows:

(1) No person, firm, association, or corporation may act as a reinsurance intermediary-broker in this state if the person, firm, association, or corporation maintains an office either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation:

(a) In this state, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-broker in this state; or

(b) In another state, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-broker in this state or another state having a regulatory scheme substantially similar to this chapter.

(2) No person, firm, association, or corporation may act as a reinsurance intermediary-manager:

(a) For a reinsurer domiciled in this state, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-manager in this state;

(b) In this state, if the person, firm, association, or corporation maintains an office either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation in this state, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-manager in this state;

(c) In another state for a nondomestic reinsurer, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-manager in this state or another state having a substantially similar regulatory scheme.

(3) The commissioner may require a reinsurance intermediary-manager subject to subsection (2) of this section to:

(a) File a bond in an amount and from an insurer acceptable to the commissioner for the protection of the reinsurer; and

(b) Maintain an errors and omissions policy in an amount acceptable to the commissioner.

(4)(a) The commissioner may issue a reinsurance intermediary license to a person, firm, association, or corporation who has complied with the requirements of this chapter. Any such license issued to a firm or association authorizes all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons may be named in the application and any supplements to it. Any such license issued to a corporation authorizes all of the officers, and any designated employees and directors of it, to act as reinsurance intermediaries on behalf of the corporation, and all such persons must be named in the application and any supplements to it.

(b) If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as agent for service of process in the manner, and with the same legal effect, provided for by this title for designation of service of process upon unauthorized insurers, and also shall furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting the nonresident reinsurance intermediary may be served. The licensee shall promptly notify the commissioner in writing of every change in its designated agent for service of process, but the change does not become effective until acknowledged by the commissioner.

(5) The commissioner may refuse to issue a reinsurance intermediary license if, in his or her judgment, the applicant, anyone named on the application, or a member, principal, officer, or director of the applicant, is not trustworthy, or that a controlling person of the applicant is not trustworthy to act

as a reinsurance intermediary, or that any of the foregoing has given cause for revocation or suspension of the license, or has failed to comply with a prerequisite for the issuance of such license. Upon written request, the commissioner will furnish a summary of the basis for refusal to issue a license, which document is privileged and not subject to chapter ((42.17 RCW)) 42.— RCW (the new chapter created in section 103 of this act).

(6) Licensed attorneys at law of this state when acting in their professional capacity as such are exempt from this section.

Sec. 318. RCW 48.104.050 and 1999 c 8 s 5 are each amended to read as follows:

(1) To facilitate the work of the Holocaust survivor assistance office, the insurance commissioner may establish and maintain a central registry containing records and information relating to insurance policies, as described in RCW 48.104.060, of victims, living and deceased, of the Holocaust. The registry shall be known as the Holocaust insurance company registry. The insurance commissioner shall establish standards and procedures to make the information in the registry available to the public to the extent necessary and appropriate to determine the existence of insurance policies and to identify beneficiaries, successors in interest, or other persons entitled to the proceeds of such policies, and to enable such persons to claim proceeds to which they may be entitled, while protecting the privacy of policyholders, their survivors, and their family members. All information received by the Holocaust insurance company registry or Holocaust survivor assistance office from any insurer, related company, or foreign government or regulator shall be considered and deemed to be matters and information relating to an examination and part of an examination report that the insurance commissioner may treat as confidential and withhold from public inspection under RCW 48.03.040(6)(c) and 48.03.050. To the extent necessary and appropriate to secure access to documents and information located in or subject to the jurisdiction of other states and countries, the insurance commissioner is authorized to enter into agreements or to provide assurances that any or all documents and information received from an entity regulated by or subject to the laws of such other state or country, or received from any agency of the government of any such state or country, will be treated as confidential by the insurance commissioner and will not be disclosed to any person except with the approval of the appropriate authority of such state or country or except as permitted or authorized by the laws of such state or country, and any such agreement shall be binding and enforceable notwithstanding chapter ((42.17 RCW)) 42.— RCW (the new chapter created in section 103 of this act). To the extent necessary and appropriate to secure access to documents and information from or in the possession of the international commission as to which the international commission has given assurances of confidentiality or privacy, the insurance commissioner is authorized to enter into agreements or to provide assurances that any or all such documents and information will be treated as confidential by the insurance commissioner and will not be disclosed to any person except with the approval of the international commission or as permitted by any agreement or assurances given by the international commission, and any such agreement shall be binding and enforceable notwithstanding chapter ((42.17 RCW)) 42.— RCW (the new chapter created in section 103 of this act).

(2) The insurance commissioner may cooperate and exchange information with other states establishing similar registries and with the international commission, and may enter into agreements whereby a single registry may be established on behalf of, and to provide services to the citizens and residents of, several states.

Sec. 319. RCW 50.13.015 and 1989 c 92 s 3 are each amended to read as follows:

(1) If information provided to the department by another governmental agency is held private and confidential by state or federal laws, the department may not release such information.

(2) Information provided to the department by another governmental entity conditioned upon privacy and confidentiality is to be held private and confidential according to the agreement between the department and other governmental agency.

(3) The department may hold private and confidential information obtained for statistical analysis, research, or study purposes if the information was supplied voluntarily, conditioned upon maintaining confidentiality of the information.

(4) Persons requesting disclosure of information held by the department under subsection (1) or (2) of this section shall request such disclosure from the agency providing the information to the department rather than from the department.

(5) This section supersedes any provisions of chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act) to the contrary.

Sec. 320. RCW 50.13.030 and 1977 ex.s. c 153 s 3 are each amended to read as follows:

The commissioner ~~((of the department of employment security))~~ shall have the authority to adopt, amend, or rescind rules interpreting and implementing the provisions of this chapter. In particular, these rules shall specify the procedure to be followed to obtain information or records to which the public has access under this chapter or chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act).

Sec. 321. RCW 50.13.040 and 1993 c 483 s 6 are each amended to read as follows:

(1) An individual shall have access to all records and information concerning that individual held by the ~~((department of))~~ employment security department, unless the information is exempt from disclosure under ~~((RCW 42.17.340))~~ section 421 of this act.

(2) An employing unit shall have access to its own records and to any records and information relating to a benefit claim by an individual if the employing unit is either the individual's last employer or is the individual's base year employer.

(3) An employing unit shall have access to any records and information relating to any decision to allow or deny benefits if:

(a) The decision is based on employment or an offer of employment with the employing unit; or

(b) If the decision is based on material information provided by the employing unit.

(4) An employing unit shall have access to general summaries of benefit claims by individuals whose benefits are chargeable to the employing unit's experience rating or reimbursement account.

Sec. 322. RCW 50.13.060 and 2003 c 165 s 3 are each amended to read as follows:

(1) Governmental agencies, including law enforcement agencies, prosecuting agencies, and the executive branch, whether state, local, or federal shall have access to information or records deemed private and confidential under this chapter if the information or records are needed by the agency for official purposes and:

(a) The agency submits an application in writing to the employment security department for the records or information containing a statement of the official purposes for which the information or records are needed and specific identification of the records or information sought from the department; and

(b) The director, commissioner, chief executive, or other official of the agency has verified the need for the specific information in writing either on the application or on a separate document; and

(c) The agency requesting access has served a copy of the application for records or information on the individual or employing unit whose records or information are sought and has provided the department with proof of service. Service shall be made in a manner which conforms to the civil rules for superior court. The requesting agency shall include with the copy of the application a statement to the effect that the individual or employing unit may contact the public records officer of the employment security department to state any objections to the release of the records or information. The employment security department shall not act upon the application of the requesting agency until at least five days after service on the concerned individual or employing unit. The employment security department shall consider any objections raised by the concerned individual or employing unit in deciding whether the requesting agency needs the information or records for official purposes.

(2) The requirements of subsections (1) and (9) of this section shall not apply to the state legislative branch. The state legislature shall have access to information or records deemed private and confidential under this chapter, if the legislature or a legislative committee finds that the information or records are necessary and for official purposes. If the employment security department does not make information or records available as provided in this subsection, the legislature may exercise its authority granted by chapter 44.16 RCW.

(3) In cases of emergency the governmental agency requesting access shall not be required to formally comply with the provisions of subsection (1) of this section at the time of the request if the procedures required by subsection (1) of this section are complied with by the requesting agency following the receipt of any records or information deemed private and confidential under this chapter. An emergency is defined as a situation in which irreparable harm or damage could occur if records or information are not released immediately.

(4) The requirements of subsection (1)(c) of this section shall not apply to governmental agencies where the procedures would frustrate the investigation of possible violations of criminal laws or to the release of employing unit names, addresses, number of employees, and aggregate employer wage data for the purpose of state governmental agencies preparing small business economic

impact statements under chapter 19.85 RCW or preparing cost-benefit analyses under RCW 34.05.328(1) (c) and (d). Information provided by the department and held to be private and confidential under state or federal laws must not be misused or released to unauthorized parties. A person who misuses such information or releases such information to unauthorized parties is subject to the sanctions in RCW 50.13.080.

(5) Governmental agencies shall have access to certain records or information, limited to such items as names, addresses, social security numbers, and general information about benefit entitlement or employer information possessed by the department, for comparison purposes with records or information possessed by the requesting agency to detect improper or fraudulent claims, or to determine potential tax liability or employer compliance with registration and licensing requirements. In those cases the governmental agency shall not be required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section must be satisfied.

(6) Governmental agencies may have access to certain records and information, limited to employer information possessed by the department for purposes authorized in chapter 50.38 RCW. Access to these records and information is limited to only those individuals conducting authorized statistical analysis, research, and evaluation studies. Only in cases consistent with the purposes of chapter 50.38 RCW are government agencies not required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section must be satisfied. Information provided by the department and held to be private and confidential under state or federal laws shall not be misused or released to unauthorized parties subject to the sanctions in RCW 50.13.080.

(7) Disclosure to governmental agencies of information or records obtained by the employment security department from the federal government shall be governed by any applicable federal law or any agreement between the federal government and the employment security department where so required by federal law. When federal law does not apply to the records or information state law shall control.

(8) The department may provide information for purposes of statistical analysis and evaluation of the WorkFirst program or any successor state welfare program to the department of social and health services, the office of financial management, and other governmental entities with oversight or evaluation responsibilities for the program in accordance with RCW 43.20A.080. The confidential information provided by the department shall remain the property of the department and may be used by the authorized requesting agencies only for statistical analysis, research, and evaluation purposes as provided in RCW 74.08A.410 and 74.08A.420. The department of social and health services, the office of financial management, or other governmental entities with oversight or evaluation responsibilities for the program are not required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section and applicable federal laws and regulations must be satisfied. The confidential information used for evaluation and analysis of welfare reform supplied to the authorized requesting entities with regard to the WorkFirst program or any successor state welfare program are exempt from

public inspection and copying under ((RCW 42.17.310)) chapter 42.— RCW (the new chapter created in section 103 of this act).

(9) The disclosure of any records or information by a governmental agency which has obtained the records or information under this section is prohibited unless the disclosure is directly connected to the official purpose for which the records or information were obtained.

(10) In conducting periodic salary or fringe benefit studies pursuant to law, the department of personnel shall have access to records of the employment security department as may be required for such studies. For such purposes, the requirements of subsection (1)(c) of this section need not apply.

(11)(a) To promote the reemployment of job seekers, the commissioner may enter into data-sharing contracts with partners of the one-stop career development system. The contracts shall provide for the transfer of data only to the extent that the transfer is necessary for the efficient provisions of work force programs, including but not limited to public labor exchange, unemployment insurance, worker training and retraining, vocational rehabilitation, vocational education, adult education, transition from public assistance, and support services. The transfer of information under contracts with one-stop partners is exempt from subsection (1)(c) of this section.

(b) An individual who applies for services from the department and whose information will be shared under (a) of this subsection (11) must be notified that his or her private and confidential information in the department's records will be shared among the one-stop partners to facilitate the delivery of one-stop services to the individual. The notice must advise the individual that he or she may request that private and confidential information not be shared among the one-stop partners and the department must honor the request. In addition, the notice must:

(i) Advise the individual that if he or she requests that private and confidential information not be shared among one-stop partners, the request will in no way affect eligibility for services;

(ii) Describe the nature of the information to be shared, the general use of the information by one-stop partner representatives, and among whom the information will be shared;

(iii) Inform the individual that shared information will be used only for the purpose of delivering one-stop services and that further disclosure of the information is prohibited under contract and is not subject to disclosure under ((RCW 42.17.310)) chapter 42.— RCW (the new chapter created in section 103 of this act); and

(iv) Be provided in English and an alternative language selected by the one-stop center or job service center as appropriate for the community where the center is located.

If the notice is provided in-person, the individual who does not want private and confidential information shared among the one-stop partners must immediately advise the one-stop partner representative of that decision. The notice must be provided to an individual who applies for services telephonically, electronically, or by mail, in a suitable format and within a reasonable time after applying for services, which shall be no later than ten working days from the department's receipt of the application for services. A one-stop representative

must be available to answer specific questions regarding the nature, extent, and purpose for which the information may be shared.

(12) To facilitate improved operation and evaluation of state programs, the commissioner may enter into data-sharing contracts with other state agencies only to the extent that such transfer is necessary for the efficient operation or evaluation of outcomes for those programs. The transfer of information by contract under this subsection is exempt from subsection (1)(c) of this section.

(13) The misuse or unauthorized release of records or information by any person or organization to which access is permitted by this chapter subjects the person or organization to a civil penalty of five thousand dollars and other applicable sanctions under state and federal law. Suit to enforce this section shall be brought by the attorney general and the amount of any penalties collected shall be paid into the employment security department administrative contingency fund. The attorney general may recover reasonable attorneys' fees for any action brought to enforce this section.

Sec. 323. RCW 50.13.080 and 1996 c 79 s 2 are each amended to read as follows:

(1) The employment security department shall have the right to disclose information or records deemed private and confidential under this chapter to any private person or organization when such disclosure is necessary to permit private contracting parties to assist in the operation and management of the department in instances where certain departmental functions may be delegated to private parties to increase the department's efficiency or quality of service to the public. The private persons or organizations shall use the information or records solely for the purpose for which the information was disclosed and shall be bound by the same rules of privacy and confidentiality as employment security department employees.

(2) Nothing in this section shall be construed as limiting or restricting the effect of RCW 42.17.260(9) *(as recodified by this act)*.

(3) The misuse or unauthorized release of records or information deemed private and confidential under this chapter by any private person or organization to which access is permitted by this section shall subject the person or organization to a civil penalty of five thousand dollars and other applicable sanctions under state and federal law. Suit to enforce this section shall be brought by the attorney general and the amount of any penalties collected shall be paid into the employment security department administrative contingency fund. The attorney general may recover reasonable attorneys' fees for any action brought to enforce this section.

Sec. 324. RCW 50.38.060 and 1993 c 62 s 6 are each amended to read as follows:

To implement this chapter, the department has authority to:

(1) Establish mechanisms to recover actual costs incurred in producing and providing otherwise nonfunded labor market information.

(a) If the commissioner, in his or her discretion, determines that providing labor market information is in the public interest, the requested information may be provided at reduced costs.

(b) The department shall provide access to labor market information products that constitute public records available for public inspection and

copying under chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act), at fees not exceeding those allowed under RCW 42.17.300 ~~(as recodified by this act)~~ and consistent with the department's fee schedule;

(2) Receive federal set aside funds from several federal programs that are authorized to fund state and local labor market information and are required to use such information in support of their programs;

(3) Enter into agreements with other public agencies for statistical analysis, research, or evaluation studies of local, state, and federally funded employment, training, education, and job creation programs to increase the efficiency or quality of service provided to the public consistent with chapter 50.13 RCW;

(4) Coordinate with other state agencies to study ways to standardize federal and state multi-agency administrative records, such as unemployment insurance information and other information to produce employment, training, education, and economic analysis needed to improve labor market information products and services; and

(5) Produce agricultural labor market information and economic analysis needed to facilitate the efficient and effective matching of the local supply and demand of agricultural labor critical to an effective agricultural labor exchange in Washington state. Information collected for an agricultural labor market information effort will be coordinated with other federal, state, and local statistical agencies to minimize reporting burden through cooperative data collection efforts for statistical analysis, research, or studies.

Sec. 325. RCW 51.36.120 and 1989 c 189 s 2 are each amended to read as follows:

When contracting for health care services and equipment, the department, upon request of a contractor, shall keep confidential financial and valuable trade information, which shall be exempt from public inspection and copying under chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act).

Sec. 326. RCW 52.14.100 and 1984 c 230 s 37 are each amended to read as follows:

All meetings of the board of fire commissioners shall be conducted in accordance with chapter 42.30 RCW and a majority constitutes a quorum for the transaction of business. All records of the board shall be open to inspection in accordance with ~~((the provisions of RCW 42.17.250 through 42.17.340))~~ chapter 42.— RCW (the new chapter created in section 103 of this act). The board has the power and duty to adopt a seal of the district, to manage and conduct the business affairs of the district, to make and execute all necessary contracts, to employ any necessary services, and to adopt reasonable rules to govern the district and to perform its functions, and generally to perform all such acts as may be necessary to carry out the objects of the creation of the district.

Sec. 327. RCW 66.28.180 and 2004 c 269 s 1 and 2004 c 160 s 18 are each reenacted and amended to read as follows:

It is unlawful for a person, firm, or corporation holding a certificate of approval issued under RCW 66.24.270 or 66.24.206, a beer distributor's license, a domestic brewery license, a microbrewery license, a beer importer's license, a beer distributor's license, a domestic winery license, a wine importer's license, or

a wine distributor's license within the state of Washington to modify any prices without prior notification to and approval of the board.

(1) Intent. This section is enacted, pursuant to the authority of this state under the twenty-first amendment to the United States Constitution, to promote the public's interest in fostering the orderly and responsible distribution of malt beverages and wine towards effective control of consumption; to promote the fair and efficient three-tier system of distribution of such beverages; and to confirm existing board rules as the clear expression of state policy to regulate the manner of selling and pricing of wine and malt beverages by licensed suppliers and distributors.

(2) Beer and wine distributor price posting.

(a) Every beer or wine distributor shall file with the board at its office in Olympia a price posting showing the wholesale prices at which any and all brands of beer and wine sold by such beer and/or wine distributor shall be sold to retailers within the state.

(b) Each price posting shall be made on a form prepared and furnished by the board, or a reasonable facsimile thereof, and shall set forth:

(i) All brands, types, packages, and containers of beer offered for sale by such beer and/or wine distributor;

(ii) The wholesale prices thereof to retail licensees, including allowances, if any, for returned empty containers.

(c) No beer and/or wine distributor may sell or offer to sell any package or container of beer or wine to any retail licensee at a price differing from the price for such package or container as shown in the price posting filed by the beer and/or wine distributor and then in effect, according to rules adopted by the board.

(d) Quantity discounts are prohibited. No price may be posted that is below acquisition cost plus ten percent of acquisition cost. However, the board is empowered to review periodically, as it may deem appropriate, the amount of the percentage of acquisition cost as a minimum mark-up over cost and to modify such percentage by rule of the board, except such percentage shall be not less than ten percent.

(e) Distributor prices on a "close-out" item shall be accepted by the board if the item to be discontinued has been listed on the state market for a period of at least six months, and upon the further condition that the distributor who posts such a close-out price shall not restock the item for a period of one year following the first effective date of such close-out price.

(f) The board may reject any price posting that it deems to be in violation of this section or any rule, or portion thereof, or that would tend to disrupt the orderly sale and distribution of beer and wine. Whenever the board rejects any posting, the licensee submitting the posting may be heard by the board and shall have the burden of showing that the posting is not in violation of this section or a rule or does not tend to disrupt the orderly sale and distribution of beer and wine. If the posting is accepted, it shall become effective at the time fixed by the board. If the posting is rejected, the last effective posting shall remain in effect until such time as an amended posting is filed and approved, in accordance with the provisions of this section.

(g) Prior to the effective date of the posted prices, all price postings filed as required by this section constitute investigative information and shall not be

subject to disclosure, pursuant to ((RCW 42.17.310(1)(d))) section 404(1) of this act.

(h) Any beer and/or wine distributor or employee authorized by the distributor-employer may sell beer and/or wine at the distributor's posted prices to any annual or special occasion retail licensee upon presentation to the distributor or employee at the time of purchase of a special permit issued by the board to such licensee.

(i) Every annual or special occasion retail licensee, upon purchasing any beer and/or wine from a distributor, shall immediately cause such beer or wine to be delivered to the licensed premises, and the licensee shall not thereafter permit such beer to be disposed of in any manner except as authorized by the license.

(ii) Beer and wine sold as provided in this section shall be delivered by the distributor or an authorized employee either to the retailer's licensed premises or directly to the retailer at the distributor's licensed premises. A distributor's prices to retail licensees shall be the same at both such places of delivery.

(3) Beer and wine suppliers' price filings, contracts, and memoranda.

(a) Every domestic brewery, microbrewery, and domestic winery offering beer and/or wine for sale within the state shall file with the board at its office in Olympia a copy of every written contract and a memorandum of every oral agreement which such brewery or winery may have with any beer or wine distributor, which contracts or memoranda shall contain a schedule of prices charged to distributors for all items and all terms of sale, including all regular and special discounts; all advertising, sales and trade allowances, and incentive programs; and all commissions, bonuses or gifts, and any and all other discounts or allowances. Whenever changed or modified, such revised contracts or memoranda shall forthwith be filed with the board as provided for by rule. The provisions of this section also apply to certificate of approval holders, beer and/or wine importers, and beer and/or wine distributors who sell to other beer and/or wine distributors.

Each price schedule shall be made on a form prepared and furnished by the board, or a reasonable facsimile thereof, and shall set forth all brands, types, packages, and containers of beer or wine offered for sale by such licensed brewery or winery; all additional information required may be filed as a supplement to the price schedule forms.

(b) Prices filed by a domestic brewery, microbrewery, domestic winery, or certificate of approval holder shall be uniform prices to all distributors on a statewide basis less bona fide allowances for freight differentials. Quantity discounts are prohibited. No price shall be filed that is below acquisition/production cost plus ten percent of that cost, except that acquisition cost plus ten percent of acquisition cost does not apply to sales of beer or wine between a beer or wine importer who sells beer or wine to another beer or wine importer or to a beer or wine distributor, or to a beer or wine distributor who sells beer or wine to another beer or wine distributor. However, the board is empowered to review periodically, as it may deem appropriate, the amount of the percentage of acquisition/production cost as a minimum mark-up over cost and to modify such percentage by rule of the board, except such percentage shall be not less than ten percent.

(c) No domestic brewery, microbrewery, domestic winery, certificate of approval holder, beer or wine importer, or beer or wine distributor may sell or

offer to sell any beer or wine to any persons whatsoever in this state until copies of such written contracts or memoranda of such oral agreements are on file with the board.

(d) No domestic brewery, microbrewery, domestic winery, or certificate of approval holder may sell or offer to sell any package or container of beer or wine to any distributor at a price differing from the price for such package or container as shown in the schedule of prices filed by the domestic brewery, microbrewery, domestic winery, or certificate of approval holder and then in effect, according to rules adopted by the board.

(e) The board may reject any supplier's price filing, contract, or memorandum of oral agreement, or portion thereof that it deems to be in violation of this section or any rule or that would tend to disrupt the orderly sale and distribution of beer or wine. Whenever the board rejects any such price filing, contract, or memorandum, the licensee submitting the price filing, contract, or memorandum may be heard by the board and shall have the burden of showing that the price filing, contract, or memorandum is not in violation of this section or a rule or does not tend to disrupt the orderly sale and distribution of beer or wine. If the price filing, contract, or memorandum is accepted, it shall become effective at a time fixed by the board. If the price filing, contract, or memorandum, or portion thereof, is rejected, the last effective price filing, contract, or memorandum shall remain in effect until such time as an amended price filing, contract, or memorandum is filed and approved, in accordance with the provisions of this section.

(f) Prior to the effective date of the posted prices, all prices, contracts, and memoranda filed as required by this section constitute investigative information and shall not be subject to disclosure, pursuant to (~~RCW 42.17.310(1)(d)~~) section 404(1) of this act.

Sec. 328. RCW 69.41.044 and 1989 1st ex.s. c 9 s 406 are each amended to read as follows:

All records, reports, and information obtained by the board or its authorized representatives from or on behalf of a pharmaceutical manufacturer, representative of a manufacturer, wholesaler, pharmacy, or practitioner who purchases, dispenses, or distributes legend drugs under this chapter are confidential and exempt from public inspection and copying under chapter (~~42.17 RCW~~) 42.— RCW (the new chapter created in section 103 of this act). Nothing in this section restricts the investigations or the proceedings of the board so long as the board and its authorized representatives comply with the provisions of chapter (~~42.17 RCW~~) 42.— RCW (the new chapter created in section 103 of this act).

Sec. 329. RCW 69.41.280 and 1989 c 352 s 6 are each amended to read as follows:

All records, reports, and information obtained by the board or its authorized representatives from or on behalf of a pharmaceutical manufacturer, representative of a manufacturer, wholesaler, pharmacy, or practitioner who purchases, dispenses, or distributes legend drugs under this chapter are confidential and exempt from public inspection and copying under chapter (~~42.17 RCW~~) 42.— RCW (the new chapter created in section 103 of this act). Nothing in this section restricts the investigations or the proceedings of the

board so long as the board and its authorized representatives comply with the provisions of chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act).

Sec. 330. RCW 69.45.090 and 1987 c 411 s 9 are each amended to read as follows:

All records, reports, and information obtained by the board from or on behalf of a manufacturer or manufacturer's representative under this chapter are confidential and exempt from public inspection and copying under chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act). This section does not apply to public disclosure of the identity of persons found by the board to have violated state or federal law, rules, or regulations. This section is not intended to restrict the investigations and proceedings of the board so long as the board maintains the confidentiality required by this section.

Sec. 331. RCW 70.02.090 and 1991 c 335 s 302 are each amended to read as follows:

(1) Subject to any conflicting requirement in the public ~~((disclosure))~~ records act, chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act), a health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:

(a) Knowledge of the health care information would be injurious to the health of the patient;

(b) Knowledge of the health care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;

(c) Knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;

(d) The health care information was compiled and is used solely for litigation, quality assurance, peer review, or administrative purposes; or

(e) Access to the health care information is otherwise prohibited by law.

(2) If a health care provider denies a request for examination and copying under this section, the provider, to the extent possible, shall segregate health care information for which access has been denied under subsection (1) of this section from information for which access cannot be denied and permit the patient to examine or copy the disclosable information.

(3) If a health care provider denies a patient's request for examination and copying, in whole or in part, under subsection (1)(a) or (c) of this section, the provider shall permit examination and copying of the record by another health care provider, selected by the patient, who is licensed, certified, registered, or otherwise authorized under the laws of this state to treat the patient for the same condition as the health care provider denying the request. The health care provider denying the request shall inform the patient of the patient's right to select another health care provider under this subsection. The patient shall be responsible for arranging for compensation of the other health care provider so selected.

Sec. 332. RCW 70.38.095 and 1979 ex.s. c 161 s 9 are each amended to read as follows:

Public accessibility to records shall be accorded by health systems agencies pursuant to Public Law 93-641 and (~~RCW 42.17.250 through 42.17.340~~) chapter 42.— RCW (the new chapter created in section 103 of this act). A health systems agency shall be considered a "public agency" for the sole purpose of complying with the (~~"Open Public Meetings Act of 1971"~~) public records act, chapter (~~42.30 RCW~~) 42.—RCW (the new chapter created in section 103 of this act).

Sec. 333. RCW 70.41.150 and 2000 c 6 s 1 are each amended to read as follows:

Information received by the department through filed reports, inspection, or as otherwise authorized under this chapter, may be disclosed publicly, as permitted under chapter (~~42.17 RCW~~) 42.— RCW (the new chapter created in section 103 of this act), subject to the following provisions:

(1) Licensing inspections, or complaint investigations regardless of findings, shall, as requested, be disclosed no sooner than three business days after the hospital has received the resulting assessment report;

(2) Information regarding administrative action against the license shall, as requested, be disclosed after the hospital has received the documents initiating the administrative action;

(3) Information about complaints that did not warrant an investigation shall not be disclosed except to notify the hospital and the complainant that the complaint did not warrant an investigation. If requested, the individual complainant shall receive information on other like complaints that have been reported against the hospital; and

(4) Information disclosed pursuant to this section shall not disclose individual names.

Sec. 334. RCW 70.44.315 and 1997 c 332 s 18 are each amended to read as follows:

(1) When evaluating a potential acquisition, the commissioners shall determine their compliance with the following requirements:

(a) That the acquisition is authorized under chapter 70.44 RCW and other laws governing public hospital districts;

(b) That the procedures used in the decision-making process allowed district officials to thoroughly fulfill their due diligence responsibilities as municipal officers, including those covered under chapter 42.23 RCW governing conflicts of interest and chapter 42.20 RCW prohibiting malfeasance of public officials;

(c) That the acquisition will not result in the revocation of hospital privileges;

(d) That sufficient safeguards are included to maintain appropriate capacity for health science research and health care provider education;

(e) That the acquisition is allowed under Article VIII, section 7 of the state Constitution, which prohibits gifts of public funds or lending of credit and Article XI, section 14, prohibiting private use of public funds;

(f) That the public hospital district will retain control over district functions as required under chapter 70.44 RCW and other laws governing hospital districts;

(g) That the activities related to the acquisition process complied with chapters (~~42.17~~) 42.— (the new chapter created in section 103 of this act) and

42.32 RCW, governing disclosure of public records, and chapter 42.30 RCW, governing public meetings;

(h) That the acquisition complies with the requirements of RCW 70.44.300 relating to fair market value; and

(i) Other state laws affecting the proposed acquisition.

(2) The commissioners shall also determine whether the public hospital district should retain a right of first refusal to repurchase the assets by the public hospital district if the hospital is subsequently sold to, acquired by, or merged with another entity.

(3)(a) Prior to approving the acquisition of a district hospital, the board of commissioners of the hospital district shall obtain a written opinion from a qualified independent expert or the Washington state department of health as to whether or not the acquisition meets the standards set forth in RCW 70.45.080.

(b) Upon request, the hospital district and the person seeking to acquire its hospital shall provide the department or independent expert with any needed information and documents. The department shall charge the hospital district for any costs the department incurs in preparing an opinion under this section. The hospital district may recover from the acquiring person any costs it incurs in obtaining the opinion from either the department or the independent expert. The opinion shall be delivered to the board of commissioners no later than ninety days after it is requested.

(c) Within ten working days after it receives the opinion, the board of commissioners shall publish notice of the opinion in at least one newspaper of general circulation within the hospital district, stating how a person may obtain a copy, and giving the time and location of the hearing required under (d) of this subsection. It shall make a copy of the report and the opinion available to anyone upon request.

(d) Within thirty days after it received the opinion, the board of commissioners shall hold a public hearing regarding the proposed acquisition. The board of commissioners may vote to approve the acquisition no sooner than thirty days following the public hearing.

(4)(a) For purposes of this section, "acquisition" means an acquisition by a person of any interest in a hospital owned by a public hospital district, whether by purchase, merger, lease, or otherwise, that results in a change of ownership or control of twenty percent or more of the assets of a hospital currently licensed and operating under RCW 70.41.090. Acquisition does not include an acquisition where the other party or parties to the acquisition are nonprofit corporations having a substantially similar charitable health care purpose, organizations exempt from federal income tax under section 501(c)(3) of the internal revenue code, or governmental entities. Acquisition does not include an acquisition where the other party is an organization that is a limited liability corporation, a partnership, or any other legal entity and the members, partners, or otherwise designated controlling parties of the organization are all nonprofit corporations having a charitable health care purpose, organizations exempt from federal income tax under section 501(c)(3) of the internal revenue code, or governmental entities. Acquisition does not include activities between two or more governmental organizations, including organizations acting pursuant to chapter 39.34 RCW, regardless of the type of organizational structure used by the governmental entities.

(b) For purposes of this subsection (4), "person" means an individual, a trust or estate, a partnership, a corporation including associations, a limited liability company, a joint stock company, or an insurance company.

Sec. 335. RCW 70.45.030 and 1997 c 332 s 3 are each amended to read as follows:

(1) A person may not engage in the acquisition of a nonprofit hospital without first having applied for and received the approval of the department under this chapter.

(2) An application must be submitted to the department on forms provided by the department, and at a minimum must include: The name of the hospital being acquired, the name of the acquiring person or other parties to the acquisition, the acquisition price, a copy of the acquisition agreement, a financial and economic analysis and report from an independent expert or consultant of the effect of the acquisition under the criteria in RCW 70.45.070, and all other related documents. The applications and all related documents are considered public records for purposes of chapter ~~((42-17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act).

(3) The department shall charge an applicant fees sufficient to cover the costs of implementing this chapter. The fees must include the cost of the attorney general's opinion under RCW 70.45.060. The department shall transfer this portion of the fee, upon receipt, to the attorney general.

Sec. 336. RCW 70.47.150 and 1990 c 54 s 1 are each amended to read as follows:

Notwithstanding the provisions of chapter ~~((42-17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act), (1) records obtained, reviewed by, or on file with the plan containing information concerning medical treatment of individuals shall be exempt from public inspection and copying; and (2) actuarial formulas, statistics, and assumptions submitted in support of a rate filing by a managed health care system or submitted to the administrator upon his or her request shall be exempt from public inspection and copying in order to preserve trade secrets or prevent unfair competition.

Sec. 337. RCW 70.77.455 and 1997 c 182 s 23 are each amended to read as follows:

(1) All licensees shall maintain and make available to the chief of the Washington state patrol, through the director of fire protection, full and complete records showing all production, imports, exports, purchases, and sales of fireworks items by class.

(2) All records obtained and all reports produced, as required by this chapter, are not subject to disclosure through the public ~~((disclosure))~~ records act under chapter ~~((42-17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act).

Sec. 338. RCW 70.95C.220 and 1990 c 114 s 8 are each amended to read as follows:

(1) The department may review a plan, executive summary, or an annual progress report to determine whether the plan, executive summary, or annual progress report is adequate pursuant to the rules developed under this section and with the provisions of RCW 70.95C.200. In determining the adequacy of any plan, executive summary, or annual progress report, the department shall

base its determination solely on whether the plan, executive summary, or annual progress report is complete and prepared in accordance with the provisions of RCW 70.95C.200.

(2) Plans developed under RCW 70.95C.200 shall be retained at the facility of the hazardous substance user or hazardous waste generator preparing a plan. The plan is not a public record under the public ~~((disclosure laws of the state of Washington contained in))~~ records act, chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act). A user or generator required to prepare a plan shall permit the director or a representative of the director to review the plan to determine its adequacy. No visit made by the director or a representative of the director to a facility for the purposes of this subsection may be regarded as an inspection or investigation, and no notices or citations may be issued, nor any civil penalty assessed, upon such a visit.

(3) If a hazardous substance user or hazardous waste generator fails to complete an adequate plan, executive summary, or annual progress report, the department shall notify the user or generator of the inadequacy, identifying specific deficiencies. For the purposes of this section, a deficiency may include failure to develop a plan, failure to submit an executive summary pursuant to the schedule provided in RCW 70.95C.200(5), and failure to submit an annual progress report pursuant to the rules developed under RCW 70.95C.200(6). The department shall specify a reasonable time frame, of not less than ninety days, within which the user or generator shall complete a modified plan, executive summary, or annual progress report addressing the specified deficiencies.

(4) If the department determines that a modified plan, executive summary, or annual progress report is inadequate, the department may, within its discretion, either require further modification or enter an order pursuant to subsection (5)(a) of this section.

(5)(a) If, after having received a list of specified deficiencies from the department, a hazardous substance user or hazardous waste generator required to prepare a plan fails to complete modification of a plan, executive summary, or annual progress report within the time period specified by the department, the department may enter an order pursuant to chapter 34.05 RCW finding the user or generator not in compliance with the requirements of RCW 70.95C.200. When the order is final, the department shall notify the department of revenue to charge a penalty fee. The penalty fee shall be the greater of one thousand dollars or three times the amount of the user's or generator's previous year's fee, in addition to the current year's fee. If no fee was assessed the previous year, the penalty shall be the greater of one thousand dollars or three times the amount of the current year's fee. The penalty assessed under this subsection shall be collected each year after the year for which the penalty was assessed until an adequate plan or executive summary is completed.

(b) If a hazardous substance user or hazardous waste generator required to prepare a plan fails to complete an adequate plan, executive summary, or annual progress report after the department has levied against the user or generator the penalty provided in (a) of this subsection, the user or generator shall be required to pay a surcharge to the department whenever the user or generator disposes of a hazardous waste at any hazardous waste incinerator or hazardous waste landfill facility located in Washington state, until a plan, executive summary, or annual progress report is completed and determined to be adequate by the department.

The surcharge shall be equal to three times the fee charged for disposal. The department shall furnish the incinerator and landfill facilities in this state with a list of environmental protection agency/state identification numbers of the hazardous waste generators that are not in compliance with the requirements of RCW 70.95C.200.

Sec. 339. RCW 70.102.020 and 1985 c 410 s 1 are each amended to read as follows:

There is hereby created the hazardous substance information and education office. Through this office the department shall:

(1) Facilitate access to existing information on hazardous substances within a community;

(2) Request and obtain information about hazardous substances at specified locations and facilities from agencies that regulate those locations and facilities. The department shall review, approve, and provide confidentiality as provided by statute. Upon request of the department, each agency shall provide the information within forty-five days;

(3) At the request of citizens or public health or public safety organizations, compile existing information about hazardous substance use at specified locations and facilities. This information shall include but not be limited to:

(a) Point and nonpoint air and water emissions;

(b) Extremely hazardous, moderate risk wastes and dangerous wastes as defined in chapter 70.105 RCW produced, used, stored, transported from, or disposed of by any facility;

(c) A list of the hazardous substances present at a given site and data on their acute and chronic health and environmental effects;

(d) Data on governmental pesticide use at a given site;

(e) Data on commercial pesticide use at a given site if such data is only given to individuals who are chemically sensitive; and

(f) Compliance history of any facility.

(4) Provide education to the public on the proper production, use, storage, and disposal of hazardous substances, including but not limited to:

(a) A technical resource center on hazardous substance management for industry and the public;

(b) Programs, in cooperation with local government, to educate generators of moderate risk waste, and provide information regarding the potential hazards to human health and the environment resulting from improper use and disposal of the waste and proper methods of handling, reducing, recycling, and disposing of the waste;

(c) Public information and education relating to the safe handling and disposal of hazardous household substances; and

(d) Guidelines to aid counties in developing and implementing a hazardous household substances program.

Requests for information from the hazardous substance information and education office may be made by letter or by a toll-free telephone line, if one is established by the department. Requests shall be responded to in accordance with chapter (~~(42.17 RCW)~~) 42.— RCW (the new chapter created in section 103 of this act).

This section shall not require any agency to compile information that is not required by existing laws or (~~regulations~~) rules.

Sec. 340. RCW 70.120.100 and 1998 c 342 s 3 are each amended to read as follows:

The department shall investigate complaints received regarding the operation of emission testing stations and shall require corrections or modifications in those operations when deemed necessary.

The department shall also review complaints received regarding the maintenance or repairs secured by owners of motor vehicles for the purpose of complying with the requirements of this chapter. When possible, the department shall assist such owners in determining the merits of the complaints.

The department shall keep a copy of all complaints received, and on request, make copies available to the public. This is not intended to require disclosure of any information that is exempt from public disclosure under chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act).

Sec. 341. RCW 70.148.060 and 1990 c 64 s 7 are each amended to read as follows:

(1) All examination and proprietary reports and information obtained by the director and the director's staff in soliciting bids from insurers and in monitoring the insurer selected by the director shall not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) Subsection (1) of this section notwithstanding, the director may furnish all or part of examination reports prepared by the director or by any person, firm, corporation, association, or other entity preparing the reports on behalf of the director to:

(a) The Washington state insurance commissioner;

(b) A person or organization officially connected with the insurer as officer, director, attorney, auditor, or independent attorney or independent auditor; and

(c) The attorney general in his or her role as legal advisor to the director.

(3) Subsection (1) of this section notwithstanding, the director may furnish all or part of the examination or proprietary reports or information obtained by the director to:

(a) The Washington state insurance commissioner; and

(b) A person, firm, corporation, association, governmental body, or other entity with whom the director has contracted for services necessary to perform his or her official duties.

(4) Examination reports and proprietary information obtained by the director and the director's staff are not subject to public disclosure under chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act).

(5) A person who violates any provision of this section is guilty of a gross misdemeanor.

Sec. 342. RCW 70.149.090 and 1995 c 20 s 9 are each amended to read as follows:

The following shall be confidential and exempt under chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act), subject to the conditions set forth in this section:

(1) All examination and proprietary reports and information obtained by the director and the director's staff in soliciting bids from insurers and in monitoring the insurer selected by the director may not be made public or otherwise

disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) All information obtained by the director or the director's staff related to registration of heating oil tanks to be insured may not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(3) The director may furnish all or part of examination reports prepared by the director or by any person, firm, corporation, association, or other entity preparing the reports on behalf of the director to:

- (a) The Washington state insurance commissioner;
- (b) A person or organization officially connected with the insurer as officer, director, attorney, auditor, or independent attorney or independent auditor; and
- (c) The attorney general in his or her role as legal advisor to the director.

Sec. 343. RCW 70.168.070 and 1990 c 269 s 9 are each amended to read as follows:

Any hospital or health care facility that desires to be authorized to provide a designated trauma care service shall request designation from the department. Designation involves a contractual relationship between the state and a hospital or health care facility whereby each agrees to maintain a level of commitment and resources sufficient to meet responsibilities and standards required by the statewide emergency medical services and trauma care system plan. By January 1992, the department shall determine by rule the manner and form of such requests. Upon receiving a request, the department shall review the request to determine whether the hospital or health care facility is in compliance with standards for the trauma care service or services for which designation is desired. If requests are received from more than one hospital or health care facility within the same emergency medical planning and trauma care planning and service region, the department shall select the most qualified applicant or applicants to be selected through a competitive process. Any applicant not designated may request a hearing to review the decision.

Designations are valid for a period of three years and are renewable upon receipt of a request for renewal prior to expiration from the hospital or health care facility. When an authorization for designation is due for renewal other hospitals and health care facilities in the area may also apply and compete for designation. Regional emergency medical and trauma care councils shall be notified promptly of designated hospitals and health care facilities in their region so they may incorporate them into the regional plan as required by this chapter. The department may revoke or suspend the designation should it determine that the hospital or health care facility is substantially out of compliance with the standards and has refused or been unable to comply after a reasonable period of time has elapsed. The department shall promptly notify the regional emergency medical and trauma care planning and service region of suspensions or revocations. Any facility whose designation has been revoked or suspended may request a hearing to review the action by the department as provided for in chapter 34.05 RCW.

As a part of the process to designate and renew the designation of hospitals authorized to provide level I, II, or III trauma care services or level I, II, and III pediatric trauma care services, the department shall contract for on-site reviews of such hospitals to determine compliance with required standards. The

department may contract for on-site reviews of hospitals and health care facilities authorized to provide level IV or V trauma care services or level I, I-pediatric, II, or III trauma-related rehabilitative services to determine compliance with required standards. Members of on-site review teams and staff included in site visits are exempt from ~~((RCW 42.17.250 through 42.17.450))~~ chapter 42.— RCW (the new chapter created in section 103 of this act). They may not divulge and cannot be subpoenaed to divulge information obtained or reports written pursuant to this section in any civil action, except, after in camera review, pursuant to a court order which provides for the protection of sensitive information of interested parties including the department: (1) In actions arising out of the department's designation of a hospital or health care facility pursuant to this section; (2) in actions arising out of the department's revocation or suspension of designation status of a hospital or health care facility under this section; or (3) in actions arising out of the restriction or revocation of the clinical or staff privileges of a health care provider as defined in RCW ~~((70.70.020))~~ 7.70.020 (1) and (2), subject to any further restrictions on disclosure in RCW 4.24.250 that may apply. Information that identifies individual patients shall not be publicly disclosed without the patient's consent. When a facility requests designation for more than one service, the department may coordinate the joint consideration of such requests.

The department may establish fees to help defray the costs of this section, though such fees shall not be assessed to health care facilities authorized to provide level IV and V trauma care services.

This section shall not restrict the authority of a hospital or a health care provider licensed under Title 18 RCW to provide services which it has been authorized to provide by state law.

Sec. 344. RCW 70.168.090 and 1990 c 269 s 11 are each amended to read as follows:

(1) By July 1991, the department shall establish a statewide data registry to collect and analyze data on the incidence, severity, and causes of trauma, including traumatic brain injury. The department shall collect additional data on traumatic brain injury should additional data requirements be enacted by the legislature. The registry shall be used to improve the availability and delivery of prehospital and hospital trauma care services. Specific data elements of the registry shall be defined by rule by the department. To the extent possible, the department shall coordinate data collection from hospitals for the trauma registry with the ~~((statewide hospital))~~ health care data system authorized in chapter 70.170 RCW. Every hospital, facility, or health care provider authorized to provide level I, II, III, IV, or V trauma care services, level I, II, or III pediatric trauma care services, level I, level I-pediatric, II, or III trauma-related rehabilitative services, and prehospital trauma-related services in the state shall furnish data to the registry. All other hospitals and prehospital providers shall furnish trauma data as required by the department by rule.

The department may respond to requests for data and other information from the registry for special studies and analysis consistent with requirements for confidentiality of patient and quality assurance records. The department may require requestors to pay any or all of the reasonable costs associated with such requests that might be approved.

(2) By January 1994, in each emergency medical services and trauma care planning and service region, a regional emergency medical services and trauma care systems quality assurance program shall be established by those facilities authorized to provide levels I, II, and III trauma care services. The systems quality assurance program shall evaluate trauma care delivery, patient care outcomes, and compliance with the requirements of this chapter. The emergency medical services medical program director and all other health care providers and facilities who provide trauma care services within the region shall be invited to participate in the regional emergency medical services and trauma care quality assurance program.

(3) Data elements related to the identification of individual patient's, provider's and facility's care outcomes shall be confidential, shall be exempt from RCW 42.17.250 through 42.17.450 (as recodified by this act), and shall not be subject to discovery by subpoena or admissible as evidence.

(4) Patient care quality assurance proceedings, records, and reports developed pursuant to this section are confidential, exempt from (~~RCW 42.17.250 through 42.17.450~~) chapter 42.— RCW (the new chapter created in section 103 of this act), and are not subject to discovery by subpoena or admissible as evidence. In any civil action, except, after in camera review, pursuant to a court order which provides for the protection of sensitive information of interested parties including the department: (a) In actions arising out of the department's designation of a hospital or health care facility pursuant to RCW 70.168.070; (b) in actions arising out of the department's revocation or suspension of designation status of a hospital or health care facility under RCW 70.168.070; or (c) in actions arising out of the restriction or revocation of the clinical or staff privileges of a health care provider as defined in RCW 7.70.020 (1) and (2), subject to any further restrictions on disclosure in RCW 4.24.250 that may apply. Information that identifies individual patients shall not be publicly disclosed without the patient's consent.

Sec. 345. RCW 70.190.060 and 1998 c 314 s 12 are each amended to read as follows:

(1) The legislature authorizes community public health and safety networks to reconnect parents and other citizens with children, youth, families, and community institutions which support health and safety. The networks have only those powers and duties expressly authorized under this chapter. The networks should empower parents and other citizens by being a means of expressing their attitudes, spirit, and perspectives regarding safe and healthy family and community life. The legislature intends that parent and other citizen perspectives exercise a controlling influence over policy and program operations of professional organizations concerned with children and family issues within networks in a manner consistent with the Constitution and state law. It is not the intent of the legislature that health, social service, or educational professionals dominate community public health and safety network processes or programs, but rather that these professionals use their skills to lend support to parents and other citizens in expressing their values as parents and other citizens identify community needs and establish community priorities. To this end, the legislature intends full participation of parents and other citizens in community public health and safety networks. The intent is that local community values are reflected in the operations of the network.

(2) A group of persons described in subsection (3) of this section may apply to be a community public health and safety network.

(3) Each community public health and safety network shall be composed of twenty-three people, thirteen of whom shall be citizens who live within the network boundary with no fiduciary interest. In selecting these members, first priority shall be given to members of community mobilization advisory boards, city or county children's services commissions, human services advisory boards, or other such organizations. The thirteen persons shall be selected as follows: Three by chambers of commerce, three by school board members, three by county legislative authorities, three by city legislative authorities, and one high school student, selected by student organizations. The remaining ten members shall live or work within the network boundary and shall include local representation selected by the following groups and entities: Cities; counties; federally recognized Indian tribes; parks and recreation programs; law enforcement agencies; state children's service workers; employment assistance workers; private social service providers, broad-based nonsecular organizations, or health service providers; and public education.

(4) Each of the twenty-three people who are members of each community public health and safety network must sign an annual declaration under penalty of perjury or a notarized statement that clearly, in plain and understandable language, states whether or not he or she has a fiduciary interest. If a member has a fiduciary interest, the nature of that interest must be made clear, in plain understandable language, on the signed statement.

(5) Members of the network shall serve terms of three years.

The terms of the initial members of each network shall be as follows: (a) One-third shall serve for one year; (b) one-third shall serve for two years; and (c) one-third shall serve for three years. Initial members may agree which shall serve fewer than three years or the decision may be made by lot. Any vacancy occurring during the term may be filled by the chair for the balance of the unexpired term.

(6) Not less than sixty days before the expiration of a network member's term, the chair shall submit the name of a nominee to the network for its approval. The network shall comply with subsection (3) of this section.

(7) Networks are subject to the open public meetings act under chapter 42.30 RCW and the public records provisions of (~~RCW 42.17.270 through 42.17.310~~) chapter 42.— RCW (the new chapter created in section 103 of this act).

Sec. 346. RCW 71.05.390 and 2004 c 166 s 6, 2004 c 157 s 5, and 2004 c 33 s 2 are each reenacted and amended to read as follows:

Except as provided in this section, the fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

Information and records may be disclosed only:

(1) In communications between qualified professional persons to meet the requirements of this chapter, in the provision of services or appropriate referrals, or in the course of guardianship proceedings. The consent of the patient, or his or her guardian, shall be obtained before information or records may be

disclosed by a professional person employed by a facility unless provided to a professional person:

- (a) Employed by the facility;
- (b) Who has medical responsibility for the patient's care;
- (c) Who is a county designated mental health professional;
- (d) Who is providing services under chapter 71.24 RCW;
- (e) Who is employed by a state or local correctional facility where the person is confined or supervised; or
- (f) Who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW.

(2) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing outpatient services to the operator of a care facility in which the patient resides.

(3) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such designation.

(4) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(5) For either program evaluation or research, or both: PROVIDED, That the secretary adopts rules for the conduct of the evaluation or research, or both. Such rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I,, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/"

(6)(a) To the courts as necessary to the administration of this chapter or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under this chapter.

(b) To a court or its designee in which a motion under chapter 10.77 RCW has been made for involuntary medication of a defendant for the purpose of competency restoration.

(c) Disclosure under this subsection is mandatory for the purpose of the health insurance portability and accountability act.

(7) To law enforcement officers, public health officers, or personnel of the department of corrections or the indeterminate sentence review board for persons who are the subject of the records and who are committed to the custody

or supervision of the department of corrections or indeterminate sentence review board which information or records are necessary to carry out the responsibilities of their office. Except for dissemination of information released pursuant to RCW 71.05.425 and 4.24.550, regarding persons committed under this chapter under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, the extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, the fact and date of discharge or release, and the last known address shall be disclosed upon request;

(b) The law enforcement and public health officers or personnel of the department of corrections or indeterminate sentence review board shall be obligated to keep such information confidential in accordance with this chapter;

(c) Additional information shall be disclosed only after giving notice to said person and his or her counsel and upon a showing of clear, cogent, and convincing evidence that such information is necessary and that appropriate safeguards for strict confidentiality are and will be maintained. However, in the event the said person has escaped from custody, said notice prior to disclosure is not necessary and that the facility from which the person escaped shall include an evaluation as to whether the person is of danger to persons or property and has a propensity toward violence;

(d) Information and records shall be disclosed to the department of corrections pursuant to and in compliance with the provisions of RCW 71.05.445 for the purposes of completing presentence investigations or risk assessment reports, supervision of an incarcerated offender or offender under supervision in the community, planning for and provision of supervision of an offender, or assessment of an offender's risk to the community; and

(e) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

(8) To the attorney of the detained person.

(9) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2) and 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information shall be disclosed only after giving notice to the committed person and the person's counsel.

(10) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence.

(11) To appropriate corrections and law enforcement agencies all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The decision to disclose or not shall not result in civil liability for the mental health service provider or its employees so long as the decision was reached in good faith and without gross negligence.

(12) To the persons designated in RCW 71.05.425 for the purposes described in that section.

(13) Civil liability and immunity for the release of information about a particular person who is committed to the department under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(14) To a patient's next of kin, guardian, or conservator, if any, in the event of death, as provided in RCW 71.05.400.

(15) To the department of health for the purposes of determining compliance with state or federal licensure, certification, or registration rules or laws. However, the information and records obtained under this subsection are exempt from public inspection and copying pursuant to chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act).

(16) To mark headstones or otherwise memorialize patients interred at state hospital cemeteries. The department of social and health services shall make available the name, date of birth, and date of death of patients buried in state hospital cemeteries fifty years after the death of a patient.

The fact of admission, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to this chapter shall not be admissible as evidence in any legal proceeding outside this chapter without the written consent of the person who was the subject of the proceeding except in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial or in a civil commitment proceeding pursuant to chapter 71.09 RCW. The records and files maintained in any court proceeding pursuant to this chapter shall be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained.

Sec. 347. RCW 72.09.116 and 2004 c 167 s 8 are each amended to read as follows:

All records, documents, data, and other materials obtained under the requirements of RCW 72.09.115 from an existing correctional industries class I work program participant or an applicant for a proposed new or expanded class I correctional industries work program are exempt from public disclosure under chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act).

Sec. 348. RCW 72.09.225 and 1999 c 72 s 2 are each amended to read as follows:

(1) When the secretary has reasonable cause to believe that sexual intercourse or sexual contact between an employee and an inmate has occurred, notwithstanding any rule adopted under chapter 41.06 RCW the secretary shall immediately suspend the employee.

(2) The secretary shall immediately institute proceedings to terminate the employment of any person:

(a) Who is found by the department, based on a preponderance of the evidence, to have had sexual intercourse or sexual contact with the inmate; or

(b) Upon a guilty plea or conviction for any crime specified in chapter 9A.44 RCW when the victim was an inmate.

(3) When the secretary has reasonable cause to believe that sexual intercourse or sexual contact between the employee of a contractor and an inmate has occurred, the secretary shall require the employee of a contractor to be immediately removed from any employment position which would permit the employee to have any access to any inmate.

(4) The secretary shall disqualify for employment with a contractor in any position with access to an inmate, any person:

(a) Who is found by the department, based on a preponderance of the evidence, to have had sexual intercourse or sexual contact with the inmate; or

(b) Upon a guilty plea or conviction for any crime specified in chapter 9A.44 RCW when the victim was an inmate.

(5) The secretary, when considering the renewal of a contract with a contractor who has taken action under subsection (3) or (4) of this section, shall require the contractor to demonstrate that there has been significant progress made in reducing the likelihood that any of its employees will have sexual intercourse or sexual contact with an inmate. The secretary shall examine whether the contractor has taken steps to improve hiring, training, and monitoring practices and whether the employee remains with the contractor. The secretary shall not renew a contract unless he or she determines that significant progress has been made.

(6)(a) For the purposes of RCW 50.20.060, a person terminated under this section shall be considered discharged for misconduct.

(b)(i) The department may, within its discretion or upon request of any member of the public, release information to an individual or to the public regarding any person or contract terminated under this section.

(ii) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470 is immune from civil liability for damages for any discretionary release of relevant and necessary information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the public.

(iii) Except as provided in chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act), or elsewhere, nothing in this section shall impose any liability upon a public official, public employee, or public agency for failing to release information authorized under this section. Nothing in this section implies that information regarding persons designated in subsection (2) of this section is confidential except as may otherwise be provided by law.

(7) The department shall adopt rules to implement this section. The rules shall reflect the legislative intent that this section prohibits individuals who are employed by the department or a contractor of the department from having sexual intercourse or sexual contact with inmates. The rules shall also reflect the legislative intent that when a person is employed by the department or a contractor of the department, and has sexual intercourse or sexual contact with an inmate against the employed person's will, the termination provisions of this section shall not be invoked.

(8) As used in this section:

(a) "Contractor" includes all subcontractors of a contractor;

(b) "Inmate" means an inmate as defined in RCW 72.09.015 or a person under the supervision of the department; and

(c) "Sexual intercourse" and "sexual contact" have the meanings provided in RCW 9A.44.010.

Sec. 349. RCW 73.04.030 and 2002 c 224 s 3 are each amended to read as follows:

Each county auditor of the several counties of the state of Washington shall record upon presentation without expense, in a suitable permanent record the discharge of any veteran of the armed forces of the United States who is residing in the state of Washington.

The department of veterans affairs, in consultation with the association of county auditors, shall develop and distribute to county auditors the form referred to in (~~RCW 42.17.310(1)(aaa)~~) section 424 of this act entitled "request for exemption from public disclosure of discharge papers."

The county auditor may charge a basic recording fee and preservation fee that together shall not exceed a total of seven dollars for the recording of the "request for exemption from public disclosure of discharge papers."

County auditors shall develop a form for requestors of military discharge papers (form DD214) to verify that the requestor is authorized to receive or view the military discharge paper.

Sec. 350. RCW 74.09A.020 and 1993 c 10 s 3 are each amended to read as follows:

(1) The medical assistance administration shall provide routine and periodic computerized information to private insurers regarding client eligibility and coverage information. Private insurers shall use this information to identify joint beneficiaries. Identification of joint beneficiaries shall be transmitted to the medical assistance administration. The medical assistance administration shall use this information to improve accuracy and currency of health insurance coverage and promote improved coordination of benefits.

(2) To the maximum extent possible, necessary data elements and a compatible data base shall be developed by affected health insurers and the medical assistance administration. The medical assistance administration shall establish a representative group of insurers and state agency representatives to develop necessary technical and file specifications to promote a standardized data base. The data base shall include elements essential to the medical assistance administration and its population's insurance coverage information.

(3) If the state and private insurers enter into other agreements regarding the use of common computer standards, the data base identified in this section shall be replaced by the new common computer standards.

(4) The information provided will be of sufficient detail to promote reliable and accurate benefit coordination and identification of individuals who are also eligible for medical assistance administration programs.

(5) The frequency of updates will be mutually agreed to by each insurer and the medical assistance administration based on frequency of change and operational limitations. In no event shall the computerized data be provided less than semiannually.

(6) The insurers and the medical assistance administration shall safeguard and properly use the information to protect records as provided by law, including but not limited to chapters 42.48, 74.09, 74.04, and 70.02 RCW, (~~RCW 42.17.310~~) chapter 42.— RCW (the new chapter created in section 103 of this act), and 42 U.S.C. Sec. 1396a and 42 C.F.R. Sec. 43 et seq. The purpose of this exchange of information is to improve coordination and administration of benefits and ensure that medical insurance benefits are properly utilized.

(7) The medical assistance administration shall target implementation of this chapter to those private insurers with the highest probability of joint beneficiaries.

Sec. 351. RCW 74.13.500 and 1999 c 339 s 1 are each amended to read as follows:

(1) Consistent with the provisions of chapter (~~42.17 RCW~~) 42.—RCW (the new chapter created in section 103 of this act) and applicable federal law, the secretary, or the secretary's designee, shall disclose information regarding the abuse or neglect of a child, the investigation of the abuse, neglect, or near fatality of a child, and any services related to the abuse or neglect of a child if any one of the following factors is present:

(a) The subject of the report has been charged in an accusatory instrument with committing a crime related to a report maintained by the department in its case and management information system;

(b) The investigation of the abuse or neglect of the child by the department or the provision of services by the department has been publicly disclosed in a report required to be disclosed in the course of their official duties, by a law enforcement agency or official, a prosecuting attorney, any other state or local investigative agency or official, or by a judge of the superior court;

(c) There has been a prior knowing, voluntary public disclosure by an individual concerning a report of child abuse or neglect in which such individual is named as the subject of the report; or

(d) The child named in the report has died and the child's death resulted from abuse or neglect or the child was in the care of, or receiving services from the department at the time of death or within twelve months before death.

(2) The secretary is not required to disclose information if the factors in subsection (1) of this section are present if he or she specifically determines the disclosure is contrary to the best interests of the child, the child's siblings, or other children in the household.

(3) Except for cases in subsection (1)(d) of this section, requests for information under this section shall specifically identify the case about which

information is sought and the facts that support a determination that one of the factors specified in subsection (1) of this section is present.

(4) For the purposes of this section, "near fatality" means an act that, as certified by a physician, places the child in serious or critical condition. The secretary is under no obligation to have an act certified by a physician in order to comply with this section.

Sec. 352. RCW 74.13.515 and 1997 c 305 s 5 are each amended to read as follows:

For purposes of RCW 74.13.500(1)(d), the secretary must make the fullest possible disclosure consistent with chapter (~~42.17 RCW~~) 42.—RCW (the new chapter created in section 103 of this act) and applicable federal law in cases of all fatalities of children who were in the care of, or receiving services from, the department at the time of their death or within the twelve months previous to their death.

If the secretary specifically determines that disclosure of the name of the deceased child is contrary to the best interests of the child's siblings or other children in the household, the secretary may remove personally identifying information.

For the purposes of this section, "personally identifying information" means the name, street address, social security number, and day of birth of the child who died and of private persons who are relatives of the child named in child welfare records. "Personally identifying information" shall not include the month or year of birth of the child who has died. Once this personally identifying information is removed, the remainder of the records pertaining to a child who has died must be released regardless of whether the remaining facts in the records are embarrassing to the unidentifiable other private parties or to identifiable public workers who handled the case.

Sec. 353. RCW 74.13.525 and 1997 c 305 s 7 are each amended to read as follows:

The department, when acting in good faith, is immune from any criminal or civil liability, except as provided under RCW 42.17.340 (as recodified by this act), for any action taken under RCW 74.13.500 through 74.13.520.

Sec. 354. RCW 74.34.063 and 1999 c 176 s 8 are each amended to read as follows:

(1) The department shall initiate a response to a report, no later than twenty-four hours after knowledge of the report, of suspected abandonment, abuse, financial exploitation, neglect, or self-neglect of a vulnerable adult.

(2) When the initial report or investigation by the department indicates that the alleged abandonment, abuse, financial exploitation, or neglect may be criminal, the department shall make an immediate report to the appropriate law enforcement agency. The department and law enforcement will coordinate in investigating reports made under this chapter. The department may provide protective services and other remedies as specified in this chapter.

(3) The law enforcement agency or the department shall report the incident in writing to the proper county prosecutor or city attorney for appropriate action whenever the investigation reveals that a crime may have been committed.

(4) The department and law enforcement may share information contained in reports and findings of abandonment, abuse, financial exploitation, and

neglect of vulnerable adults, consistent with RCW 74.04.060, (~~(42.17.310)~~) chapter 42.— RCW (the new chapter created in section 103 of this act), and other applicable confidentiality laws.

(5) The department shall notify the proper licensing authority concerning any report received under this chapter that alleges that a person who is professionally licensed, certified, or registered under Title 18 RCW has abandoned, abused, financially exploited, or neglected a vulnerable adult.

Sec. 355. RCW 74.39A.200 and 2000 c 121 s 11 are each amended to read as follows:

All training curricula and material, except competency testing material, developed by or for the department and used in part or in whole for the purpose of improving provider and caregiver knowledge and skill are in the public domain unless otherwise protected by copyright law and are subject to disclosure under chapter (~~(42.17 RCW)~~) 42.— RCW (the new chapter created in section 103 of this act). Any training curricula and material developed by a private entity through a contract with the department are also considered part of the public domain and shall be shared subject to copyright restrictions. Any proprietary curricula and material developed by a private entity for the purposes of training staff in facilities licensed under chapter 18.20 or 70.128 RCW or individual providers and home care agency providers under this chapter and approved for training by the department are not part of the public domain.

Sec. 356. RCW 74.46.820 and 1998 c 322 s 43 are each amended to read as follows:

(1) Cost reports and their final audit reports filed by the contractor shall be subject to public disclosure pursuant to the requirements of chapter (~~(42.17 RCW)~~) 42.— RCW (the new chapter created in section 103 of this act).

(2) Subsection (1) of this section does not prevent a contractor from having access to its own records or from authorizing an agent or designee to have access to the contractor's records.

(3) Regardless of whether any document or report submitted to the secretary pursuant to this chapter is subject to public disclosure, copies of such documents or reports shall be provided by the secretary, upon written request, to the legislature and to state agencies or state or local law enforcement officials who have an official interest in the contents thereof.

Sec. 357. RCW 76.09.060 and 2003 c 314 s 5 are each amended to read as follows:

The following shall apply to those forest practices administered and enforced by the department and for which the board shall promulgate regulations as provided in this chapter:

(1) The department shall prescribe the form and contents of the notification and application. The forest practices rules shall specify by whom and under what conditions the notification and application shall be signed or otherwise certified as acceptable. The application or notification shall be delivered in person to the department, sent by first class mail to the department or electronically filed in a form defined by the department. The form for electronic filing shall be readily convertible to a paper copy, which shall be available to the public pursuant to chapter (~~(42.17 RCW)~~) 42.— RCW (the new chapter created

in section 103 of this act). The information required may include, but is not limited to:

(a) Name and address of the forest landowner, timber owner, and operator;
(b) Description of the proposed forest practice or practices to be conducted;
(c) Legal description and tax parcel identification numbers of the land on which the forest practices are to be conducted;

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

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

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

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

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

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

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

(k) All necessary application or notification fees.

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

(3) The application for a forest practice or the notification of a Class II forest practice is subject to the three-year reforestation requirement.

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

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

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

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

(b) Except as provided elsewhere in this section, if the application or notification does not state that any land covered by the application or notification will be or is intended to be so converted:

(i) For six years after the date of the application the county, city, town, and regional governmental entities shall deny any or all applications for permits or approvals, including building permits and subdivision approvals, relating to nonforestry uses of land subject to the application;

(A) The department shall submit to the local governmental entity a copy of the statement of a forest landowner's intention not to convert which shall represent a recognition by the landowner that the six-year moratorium shall be imposed and shall preclude the landowner's ability to obtain development permits while the moratorium is in place. This statement shall be filed by the local governmental entity with the county recording officer, who shall record the documents as provided in chapter 65.04 RCW, except that lands designated as forest lands of long-term commercial significance under chapter 36.70A RCW shall not be recorded due to the low likelihood of conversion. Not recording the statement of a forest landowner's conversion intention shall not be construed to mean the moratorium is not in effect.

(B) The department shall collect the recording fee and reimburse the local governmental entity for the cost of recording the application.

(C) When harvesting takes place without an application, the local governmental entity shall impose the six-year moratorium provided in (b)(i) of this subsection from the date the unpermitted harvesting was discovered by the department or the local governmental entity.

(D) The local governmental entity shall develop a process for lifting the six-year moratorium, which shall include public notification, and procedures for appeals and public hearings.

(E) The local governmental entity may develop an administrative process for lifting or waiving the six-year moratorium for the purposes of constructing a single-family residence or outbuildings, or both, on a legal lot and building site. Lifting or waiving of the six-year moratorium is subject to compliance with all local ordinances.

(F) The six-year moratorium shall not be imposed on a forest practices application that contains a conversion option harvest plan approved by the local governmental entity unless the forest practice was not in compliance with the approved forest practice permit. Where not in compliance with the conversion option harvest plan, the six-year moratorium shall be imposed from the date the application was approved by the department or the local governmental entity;

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

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

(c) The application or notification shall be signed by the forest landowner and accompanied by a statement signed by the forest landowner indicating his or her intent with respect to conversion and acknowledging that he or she is familiar with the effects of this subsection.

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

application, notify the department two days before the commencement of actual operations.

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

(6) Except as provided in RCW 76.09.350(4), the notification to or the approval given by the department to an application to conduct a forest practice shall be effective for a term of two years from the date of approval or notification and shall not be renewed unless a new application is filed and approved or a new notification has been filed. At the option of the applicant, an application or notification may be submitted to cover a single forest practice or a number of forest practices within reasonable geographic or political boundaries as specified by the department. An application or notification that covers more than one forest practice may have an effective term of more than two years. The board shall adopt rules that establish standards and procedures for approving an application or notification that has an effective term of more than two years. Such rules shall include extended time periods for application or notification approval or disapproval. On an approved application with a term of more than two years, the applicant shall inform the department before commencing operations.

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

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

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

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

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

(d) When the appropriate regulatory staff of the department are notified under (c) of this subsection, they must consult with the landowner, interested agencies, and affected tribes, and assist the notifying agencies in the

development of integrated pest management plans that comply with forest practices rules as required under (b) of this subsection.

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

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

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

Sec. 358. RCW 80.04.095 and 1987 c 107 s 1 are each amended to read as follows:

Records, subject to chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act), filed with the commission or the attorney general from any person which contain valuable commercial information, including trade secrets or confidential marketing, cost, or financial information, or customer-specific usage and network configuration and design information, shall not be subject to inspection or copying under chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act): (1) Until notice to the person or persons directly affected has been given; and (2) if, within ten days of the notice, the person has obtained a superior court order protecting the records as confidential. The court shall determine that the records are confidential and not subject to inspection and copying if disclosure would result in private loss, including an unfair competitive disadvantage. When providing information to the commission or the attorney general, a person shall designate which records or portions of records contain valuable commercial information. Nothing in this section shall prevent the use of protective orders by the commission governing disclosure of proprietary or confidential information in contested proceedings.

Sec. 359. RCW 81.104.115 and 2001 c 127 s 1 are each amended to read as follows:

(1) The department may collect and review the system safety and security program plan prepared by each owner or operator of a rail fixed guideway system. In carrying out this function, the department may adopt rules specifying the elements and standard to be contained in a system safety and security program plan, and the content of any investigation report, corrective action plan, and accompanying implementation schedule resulting from a reportable accident, unacceptable hazardous condition, or security breach. These rules may include due dates for the department's timely receipt of and response to required documents.

(2) The security section of the system safety and security plan as described in subsection (1)(d) of RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180 are exempt from public disclosure under chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act) by the department when collected from the owners and operators of fixed

railway systems. However, the activities and plans as described in subsection (1)(a), (b), and (c) of RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180 are not exempt from public disclosure.

(3) The department shall audit each system safety and security program plan at least once every three years. The department may contract with other persons or entities for the performance of duties required by this subsection. The department shall provide at least thirty days' advance notice to the owner or operator of a rail fixed guideway system before commencing the audit. The owner or operator of each rail fixed guideway system shall reimburse the reasonable expenses of the department in carrying out its responsibilities of this subsection within ninety days after receipt of an invoice. The department shall notify the owner or operator of the estimated expenses at least six months in advance of when the department audits the system.

(4) In the event of a reportable accident, unacceptable hazardous condition, or security breach, the department shall review the investigation report, corrective action plan, and accompanying implementation schedule, submitted by the owner or operator of the rail fixed guideway system to ensure that it meets the goal of preventing and mitigating a recurrence of the reportable accident, unacceptable hazardous condition, or security breach.

(a) The department may, at its option, perform a separate, independent investigation of a reportable accident, unacceptable hazardous condition, or security breach. The department may contract with other persons or entities for the performance of duties required by this subsection.

(b) If the department does not concur with the investigation report, corrective action plan, and accompanying implementation schedule, submitted by the owner or operator, the department shall notify that owner or operator in writing within forty-five days of its receipt of the complete investigation report, corrective action plan, and accompanying implementation schedule.

(5) The secretary may adopt rules to implement this section and RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180, including rules establishing procedures and timelines for owners and operators of rail fixed guideway systems to comply with RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180 and the rules adopted under this section. If noncompliance by an owner or operator of a rail fixed guideway system results in the loss of federal funds to the state of Washington or a political subdivision of the state, the owner or operator is liable to the affected entity or entities for the amount of the lost funds.

(6) The department may impose sanctions upon owners and operators of rail fixed guideway systems, but only for failure to meet reasonable deadlines for submission of required reports and audits. The department is expressly prohibited from imposing sanctions for any other purposes, including, but not limited to, differences in format or content of required reports and audits.

(7) The department and its employees have no liability arising from the adoption of rules; the review of or concurrence in a system safety and security program plan; the separate, independent investigation of a reportable accident, unacceptable hazardous condition, or security breach; and the review of or concurrence in a corrective action plan for a reportable accident, unacceptable hazardous condition, or security breach.

Sec. 360. RCW 81.112.180 and 1999 c 202 s 6 are each amended to read as follows:

(1) Each regional transit authority that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety and security program plan for that guideway to the state department of transportation by September 1, 1999, or at least three months before beginning operations or instituting revisions to its plan. This plan must describe the authority's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plan must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the regional transit authority shall revise its plan to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plan for review.

(2) Each regional transit authority shall implement and comply with its system safety and security program plan. The regional transit authority shall perform internal safety and security audits to evaluate its compliance with the plan, and submit its audit schedule to the department of transportation no later than December 15th each year. The regional transit authority shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. This annual report must include the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plan.

(3) Each regional transit authority shall notify the department of transportation within twenty-four hours of an occurrence of a reportable accident, unacceptable hazardous condition, or security breach. The department may adopt rules further defining a reportable accident, unacceptable hazardous condition, or security breach. The regional transit authority shall investigate all reportable accidents, unacceptable hazardous conditions, or security breaches and provide a written investigation report to the department within forty-five calendar days after the reportable accident, unacceptable hazardous condition, or security breach.

(4) The security section of the safety and security plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act). However, the activities and plans as described in subsections (1)(a), (b), and (c), (2), and (3) of this section are not subject to this exemption.

Sec. 361. RCW 82.32.330 and 2000 c 173 s 1 and 2000 c 106 s 1 are each reenacted and amended to read as follows:

(1) For purposes of this section:

(a) "Disclose" means to make known to any person in any manner whatever a return or tax information;

(b) "Return" means a tax or information return or claim for refund required by, or provided for or permitted under, the laws of this state which is filed with the department of revenue by, on behalf of, or with respect to a person, and any

amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed;

(c) "Tax information" means (i) a taxpayer's identity, (ii) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability deficiencies, overassessments, or tax payments, whether taken from the taxpayer's books and records or any other source, (iii) whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, (iv) a part of a written determination that is not designated as a precedent and disclosed pursuant to RCW 82.32.410, or a background file document relating to a written determination, and (v) other data received by, recorded by, prepared by, furnished to, or collected by the department of revenue with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of a person under the laws of this state for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense: PROVIDED, That data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Except as provided by RCW 82.32.410, nothing in this chapter shall require any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material, or documents so as to permit its disclosure;

(d) "State agency" means every Washington state office, department, division, bureau, board, commission, or other state agency;

(e) "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer; and

(f) "Department" means the department of revenue or its officer, agent, employee, or representative.

(2) Returns and tax information shall be confidential and privileged, and except as authorized by this section, neither the department of revenue nor any other person may disclose any return or tax information.

(3) The foregoing, however, shall not prohibit the department of revenue from:

(a) Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:

(i) In respect of any tax imposed under the laws of this state if the taxpayer or its officer or other person liable under Title 82 RCW is a party in the proceeding; or

(ii) In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding;

(b) Disclosing, subject to such requirements and conditions as the director shall prescribe by rules adopted pursuant to chapter 34.05 RCW, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person: PROVIDED, That tax information not received from the taxpayer shall not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal,

state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;

(c) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been either issued or filed and remains outstanding for a period of at least ten working days. The department shall not be required to disclose any information under this subsection if a taxpayer: (i) Has been issued a tax assessment; (ii) has been issued a warrant that has not been filed; and (iii) has entered a deferred payment arrangement with the department of revenue and is making payments upon such deficiency that will fully satisfy the indebtedness within twelve months;

(d) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been filed with a court of record and remains outstanding;

(e) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

(f) Disclosing such return or tax information, for official purposes only, to the governor or attorney general, or to any state agency, or to any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

(g) Permitting the department of revenue's records to be audited and examined by the proper state officer, his or her agents and employees;

(h) Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought;

(i) Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of this state;

(j) Disclosing any such return or tax information to the Department of Justice, the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury, the Department of Defense, the United States Customs Service, the Coast Guard of the United States, and the United States Department of Transportation, or any authorized representative thereof, for official purposes;

(k) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

(l) Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. This subsection shall not be construed as giving authority to the department to give, sell, or provide access to any list of taxpayers for any commercial purpose;

(m) Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act) or is a document maintained by a court of record not otherwise prohibited from disclosure;

(n) Disclosing such return or tax information to the United States department of agriculture for the limited purpose of investigating food stamp fraud by retailers;

(o) Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the department for a filed tax warrant, judgment, or lien against the real property; or

(p) Disclosing to a person against whom the department has asserted liability as a successor under RCW 82.32.140 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded.

(4)(a) The department may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection (4). The disclosure must be in connection with the department's official duties relating to an audit, collection activity, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

(b) Before disclosure of any tax return or tax information under this subsection (4), the department shall, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence shall clearly identify the data, materials, or documents to be disclosed. The department may not disclose any tax return or tax information under this subsection (4) until the time period allowed in (c) of this subsection has expired or until the court has ruled on any challenge brought under (c) of this subsection.

(c) The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under (b) of this subsection to petition the superior court of the

county in which the petitioner resides for injunctive relief. The court shall limit or deny the request of the department if the court determines that:

(i) The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

(iii) The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

(d) The department shall reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

(e) Requesting information under (b) of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.

(5) Any person acquiring knowledge of any return or tax information in the course of his or her employment with the department of revenue and any person acquiring knowledge of any return or tax information as provided under subsection (3)(f), (g), (h), (i), (j), or (n) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the state, such person shall forfeit such office or employment and shall be incapable of holding any public office or employment in this state for a period of two years thereafter.

Sec. 362. RCW 82.32.410 and 2001 c 320 s 10 are each amended to read as follows:

(1) The director may designate certain written determinations as precedents.

(a) By rule adopted pursuant to chapter 34.05 RCW, the director shall adopt criteria which he or she shall use to decide whether a determination is precedential. These criteria shall include, but not be limited to, whether the determination clarifies an unsettled interpretation of Title 82 RCW or where the determination modifies or clarifies an earlier interpretation.

(b) Written determinations designated as precedents by the director shall be made available for public inspection and shall be published by the department.

(c) The department shall disclose any written determination upon which it relies to support any assessment of tax, interest, or penalty against such taxpayer, after making the deletions provided by subsection (2) of this section.

(2) Before making a written determination available for public inspection under subsection (1) of this section, the department shall delete:

(a) The names, addresses, and other identifying details of the person to whom the written determination pertains and of another person identified in the written determination; and

(b) Information the disclosure of which is specifically prohibited by any statute applicable to the department of revenue, and the department may also delete other information exempted from disclosure by chapter ~~((42.17 RCW))~~

42.— RCW (the new chapter created in section 103 of this act) or any other statute applicable to the department of revenue.

Sec. 363. RCW 84.08.210 and 1997 c 239 s 1 are each amended to read as follows:

(1) For purposes of this section, "tax information" means confidential income data and proprietary business information obtained by the department in the course of carrying out the duties now or hereafter imposed upon it in this title that has been communicated in confidence in connection with the assessment of property and that has not been publicly disseminated by the taxpayer, the disclosure of which would be either highly offensive to a reasonable person and not a legitimate concern to the public or would result in an unfair competitive disadvantage to the taxpayer.

(2) Tax information is confidential and privileged, and except as authorized by this section, neither the department nor any other person may disclose tax information.

(3) Subsection (2) of this section, however, does not prohibit the department from:

(a) Disclosing tax information to any county assessor or county treasurer;

(b) Disclosing tax information in a civil or criminal judicial proceeding or an administrative proceeding in respect to taxes or penalties imposed under this title or Title 82 RCW or in respect to assessment or valuation for tax purposes of the property to which the information or facts relate;

(c) Disclosing tax information with the written permission of the taxpayer;

(d) Disclosing tax information to the proper officer of the tax department of any state responsible for the imposition or collection of property taxes, or for the valuation of property for tax purposes, if the other state grants substantially similar privileges to the proper officers of this state;

(e) Disclosing tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under chapter ~~((42-17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act) or is a document maintained by a court of record not otherwise prohibited from disclosure;

(f) Disclosing tax information to a peace officer as defined in RCW 9A.04.110 or county prosecutor, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecutor who receives the tax information may disclose the tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the tax information originally was sought; or

(g) Disclosing information otherwise available under chapter ~~((42-17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act).

(4) A violation of this section constitutes a gross misdemeanor.

Sec. 364. RCW 84.40.020 and 2001 c 187 s 16 are each amended to read as follows:

All real property in this state subject to taxation shall be listed and assessed every year, with reference to its value on the first day of January of the year in which it is assessed. Such listing and all supporting documents and records shall be open to public inspection during the regular office hours of the assessor's

office: PROVIDED, That confidential income data is hereby exempted from public inspection as noted in RCW 42.17.260 and 42.17.310 (as recodified by this act). All personal property in this state subject to taxation shall be listed and assessed every year, with reference to its value and ownership on the first day of January of the year in which it is assessed: PROVIDED, That if the stock of goods, wares, merchandise or material, whether in a raw or finished state or in process of manufacture, owned or held by any taxpayer on January 1 of any year does not fairly represent the average stock carried by such taxpayer, such stock shall be listed and assessed upon the basis of the monthly average of stock owned or held by such taxpayer during the preceding calendar year or during such portion thereof as the taxpayer was engaged in business.

Sec. 365. RCW 90.14.068 and 1997 c 440 s 1 are each amended to read as follows:

(1) A new period for filing statements of claim for water rights is established. The filing period shall begin September 1, 1997, and shall end at midnight June 30, 1998. Each person or entity claiming under state law a right to withdraw or divert and beneficially use surface water under a right that was established before the effective date of water code established by chapter 117, Laws of 1917, and any person claiming under state law a right to withdraw and beneficially use ground water under a right that was established before the effective date of the ground water code established by chapter 263, Laws of 1945, shall register the claim with the department during the filing period unless the claim has been filed in the state water rights claims registry before July 27, 1997. A person who claims such a right and fails to register the claim as required is conclusively deemed to have waived and relinquished any right, title, or interest in the right. A statement filed during this filing period shall be filed as provided in RCW 90.14.051 and 90.14.061 and shall be subject to the provisions of this chapter regarding statements of claim. This reopening of the period for filing statements of claim shall not affect or impair in any respect whatsoever any water right existing prior to July 27, 1997. A water right embodied in a statement of claim filed under this section is subordinate to any water right embodied in a permit or certificate issued under chapter 90.03 or 90.44 RCW prior to the date the statement of claim is filed with the department and is subordinate to any water right embodied in a statement of claim filed in the water rights claims registry before July 27, 1997.

(2) The department of ecology shall, at least once each week during the month of August 1997 and at least once each month during the filing period, publish a notice regarding this new filing period in newspapers of general circulation in the various regions of the state. The notice shall contain the substance of the following notice:

WATER RIGHTS NOTICE

Each person or entity claiming a right to withdraw or divert and beneficially use surface water under a right that was established before June 7, 1917, or claiming a right to withdraw and beneficially use ground water under a right that was established before June 7, 1945, under the laws of the state of Washington must register the claim with the department of ecology, Olympia, Washington. The claim must be

registered on or after September 1, 1997, and not later than five o'clock on June 30, 1998.

**FAILURE TO REGISTER THE CLAIM
WILL RESULT IN A WAIVER AND
RELINQUISHMENT OF THE WATER
RIGHT OR CLAIMED WATER RIGHT**

Registering a claim is NOT required for:

1. A water right that is based on the authority of a permit or certificate issued by the department of ecology or one of its predecessors;
2. A water right that is based on the exemption from permitting requirements provided by RCW 90.44.050 for certain very limited uses of ground water; or
3. A water right that is based on a statement of claim that has previously been filed in the state's water rights claims registry during other registration periods.

For further information, for a copy of the law establishing this filing period, and for an explanation of the law and its requirements, contact the department of ecology, Olympia, Washington.

The department shall also prepare, make available to the public, and distribute to the communications media information describing the types of rights for which statements of claim need not be filed, the effect of filing, the effect of RCW 90.14.071, and other information relevant to filings and statements of claim.

(3) The department of ecology shall ensure that employees of the department are readily available to respond to inquiries regarding filing statements of claim and that all of the information the department has at its disposal that is relevant to an inquiry regarding a particular potential claim, including information regarding other rights and claims in the vicinity of the potentially claimed right, is available to the person making the inquiry. The department shall dedicate additional staff in each of the department's regional offices and in the department's central office to ensure that responses and information are provided in a timely manner during each of the business days during the month of August 1997 and during the new filing period.

(4) To assist the department in avoiding unnecessary duplication, the department shall provide to a requestor, within ten working days of receiving the request, the records of any water right claimed, listed, recorded, or otherwise existing in the records of the department or its predecessor agencies, including any report of a referee in a water rights adjudication. This information shall be provided as required by this subsection if the request is provided in writing from the owner of the water right or from the holder of a possessory interest in any real property for water right records associated with the property or if the requestor is an attorney for such an owner. The information regarding water rights in the area served by a regional office of the department shall also be

provided within ten working days to any requestor who requests to review the information in person in the department's regional office. The information held by the headquarters office of the department shall also be provided within ten working days to any requestor who requests to review the information in person in the department's headquarters office. The requirements of this subsection that records and information be provided to requestors within ten working days may not be construed as limiting in any manner the obligations of the department to provide public access to public records as required by chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act).

(5) This section does not apply to claims for the use of ground water withdrawn in an area that is, during the period established by subsection (2) of this section, the subject of a general adjudication proceeding for water rights in superior court under RCW 90.03.110 through 90.03.245 and the proceeding applies to ground water rights. This section does not apply to claims for the use of surface water withdrawn in an area that is, during the period established by subsection (2) of this section, the subject of a general adjudication proceeding for water rights in superior court under RCW 90.03.110 through 90.03.245 and the proceeding applies to surface water rights.

(6) This section does not apply to claims for the use of water in a ground water area or subarea for which a management program adopted by the department by rule and in effect on July 27, 1997, establishes acreage expansion limitations for the use of ground water.

Sec. 366. RCW 90.80.135 and 2001 c 237 s 18 are each amended to read as follows:

(1) A board is subject to the requirements of chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act). Each board must establish and maintain records of its proceedings and determinations. While in the possession of the board, all such records must be made available for inspection and copies must be provided to the public on request under the provisions of chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act).

(2) Upon the conclusion of its business involving a water right transfer application, a board must promptly send the original copies of all records relating to that application to the department for recordkeeping. A board may keep a copy of the original documents. After the records are transferred to the department, the responsibility for making the records available under chapter ~~((42.17 RCW))~~ 42.— RCW (the new chapter created in section 103 of this act) is transferred to the department.

PART III PUBLIC DISCLOSURE EXEMPTIONS

NEW SECTION. **Sec. 401.** The purpose of sections 402 through 429 of this act is to reorganize the public inspection and copying exemptions in RCW 42.17.310 through 42.17.31921 by creating smaller, discrete code sections organized by subject matter. The legislature does not intend that this act effectuate any substantive change to any public inspection and copying exemption in the Revised Code of Washington.

Sec. 402. RCW 42.17.310 and 2003 c 277 s 3 and 2003 c 124 s 1 are each reenacted and amended to read as follows:

(1) ~~((The following are exempt from public inspection and copying:~~

~~(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.~~

~~(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.~~

~~(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.~~

~~(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.~~

~~(e) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.~~

~~(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.~~

~~(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.~~

~~(h) 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.~~

~~(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.~~

~~(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.~~

~~(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.~~

~~(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.~~

~~(m) 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 (i) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (ii) highway construction or improvement as required by RCW 47.28.070.~~

~~(n) Railroad company contracts filed prior to July 28, 1991, with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.~~

~~(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to export projects pursuant to RCW 43.23.035.~~

~~(p) Financial disclosures filed by private vocational schools under chapters 28B.85 and 28C.10 RCW.~~

~~(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.~~

~~(r) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 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.~~

~~(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.~~

~~(t) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.~~

~~(u) The residential addresses or residential telephone numbers of employees or volunteers of a public agency which are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency.~~

~~(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order.~~

~~(w)(i) The federal social security number of individuals governed under chapter 18.130 RCW maintained in the files of the department of health, except this exemption does not apply to requests made directly to the department from federal, state, and local agencies of government, and national and state licensing, credentialing, investigatory, disciplinary, and examination organizations; (ii) the~~

~~current residential address and current residential telephone number of a health care provider governed under chapter 18.130 RCW maintained in the files of the department, if the provider requests that this information be withheld from public inspection and copying, and provides to the department an accurate alternate or business address and business telephone number. On or after January 1, 1995, the current residential address and residential telephone number of a health care provider governed under RCW 18.130.040 maintained in the files of the department shall automatically be withheld from public inspection and copying unless the provider specifically requests the information be released, and except as provided for under RCW 42.17.260(9).~~

~~(x) Information obtained by the board of pharmacy as provided in RCW 69.45.090.~~

~~(y) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420.~~

~~(z) 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.~~

~~(aa) 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.~~

~~(bb) Financial and valuable trade information under RCW 51.36.120.~~

~~(cc) Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or 70.123.075 or a rape crisis center as defined in RCW 70.125.030.~~

~~(dd) Information that identifies a person who, while an agency employee: (i) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (ii) requests his or her identity or any identifying information not be disclosed.~~

~~(ee) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment.~~

~~(ff) Business related information protected from public inspection and copying under RCW 15.86.110.~~

~~(gg) 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.~~

~~(hh) Information and documents created specifically for, and collected and maintained by a quality improvement committee pursuant to RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW 4.24.250, regardless of which agency is in possession of the information and documents.~~

~~(ii) Personal information in files maintained in a data base created under RCW 43.07.360.~~

~~(jj) 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.~~

~~(kk) Names of individuals residing in emergency or transitional housing that are furnished to the department of revenue or a county assessor in order to substantiate a claim for property tax exemption under RCW 84.36.043.~~

~~(ll) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service. However, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides.~~

~~(mm) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons.~~

~~(nn) The personally identifying information of persons who acquire and use transit passes and other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose this information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media, or to the news media when reporting on public transportation or public safety. This information may also be disclosed at the agency's discretion to governmental agencies or groups concerned with public transportation or public safety.~~

~~(oo) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310. If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this section as exempt from disclosure. If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality.~~

~~(pp) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110.~~

~~(qq) Financial and commercial information supplied by or on behalf of a person, firm, corporation, or entity under chapter 28B.95 RCW relating to the purchase or sale of tuition units and contracts for the purchase of multiple tuition units.~~

~~(rr) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs~~

and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b).

~~(ss) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law.~~

~~(tt) 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 liquor license, gambling license, or lottery retail license.~~

~~(uu) Records maintained by the employment security department and subject to chapter 50.13 RCW if provided to another individual or organization for operational, research, or evaluation purposes.~~

~~(vv) Individually identifiable information received by the work force training and education coordinating board for research or evaluation purposes.~~

~~(ww) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:~~

~~(i) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and~~

~~(ii) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism.~~

~~(xx) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher providing the catch data. However, this information may be released to government agencies concerned with the management of fish and wildlife resources.~~

~~(yy) Sensitive wildlife data obtained by the department of fish and wildlife. However, sensitive wildlife data may be released to government agencies concerned with the management of fish and wildlife resources. Sensitive wildlife data includes:~~

~~(i) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;~~

~~(ii) Radio frequencies used in, or locational data generated by, telemetry studies; or~~

~~(iii) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:~~

~~(A) The species has a known commercial or black market value;~~

~~(B) There is a history of malicious take of that species; or~~

~~(C) There is a known demand to visit, take, or disturb, and the species behavior or ecology renders it especially vulnerable or the species has an extremely limited distribution and concentration.~~

~~(zz) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW, except name, address of contact used by the department, and type of license, endorsement, or tag. However, the department of fish and wildlife may disclose personally identifying information to:~~

~~(i) Government agencies concerned with the management of fish and wildlife resources;~~

~~(ii) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and~~

~~(iii) Law enforcement agencies for the purpose of firearm possession enforcement under RCW 9.41.040.~~

~~(aaa)(i) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have not been commingled with other recorded documents. These records will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding that veteran's general power of attorney, or to anyone else designated in writing by that veteran to receive the records.~~

~~(ii) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have been commingled with other records, if the veteran has recorded a "request for exemption from public disclosure of discharge papers" with the county auditor. If such a request has been recorded, these records may be released only to the veteran filing the papers, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.~~

~~(iii) Discharge papers of a veteran filed at the office of the county auditor after June 30, 2002, are not public records, but will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.~~

~~(iv) For the purposes of this subsection (1)(aaa), next of kin of deceased veterans have the same rights to full access to the record. Next of kin are the veteran's widow or widower who has not remarried, son, daughter, father, mother, brother, and sister.~~

~~(bbb) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility or any individual's safety.~~

~~(ccc) Information compiled by school districts or schools in the development of their comprehensive safe school plans pursuant to RCW~~

28A.320.125, to the extent that they identify specific vulnerabilities of school districts and each individual school.

~~(ddd) Information regarding the infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities.~~

~~(eee) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW.~~

~~(fff) Proprietary data, trade secrets, or other information that relates to: (i) A vendor's unique methods of conducting business; (ii) data unique to the product or services of the vendor; or (iii) 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.~~

~~(2)) Except for information described in ((subsection (1)(c)(i) of this section)) section 403(3)(a) of this act and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this ((section)) chapter are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.~~

~~((3)) (2) Inspection or copying of any specific records exempt under the provisions of this ((section)) chapter may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.~~

~~((4)) (3) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.~~

NEW SECTION. Sec. 403. The following personal information is exempt from public inspection and copying under this chapter:

(1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;

(2) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;

(3) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (a) be prohibited to such persons by RCW 84.08.210, 82.32.330,

84.40.020, or 84.40.340 or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer; and

(4) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law.

NEW SECTION. Sec. 404. The following investigative, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter:

(1) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy;

(2) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim, or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath;

(3) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b);

(4) License applications under RCW 9.41.070; copies of license applications or information on the applications may be released to law enforcement or corrections agencies; and

(5) Information revealing the identity of child victims of sexual assault who are under age eighteen. Identifying information means the child victim's name, address, location, photograph, and in cases in which the child victim is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator.

NEW SECTION. Sec. 405. The following employment and licensing information is exempt from public inspection and copying under this chapter:

(1) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination;

(2) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant;

(3) The residential addresses or residential telephone numbers of employees or volunteers of a public agency that are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency;

(4) Information that identifies a person who, while an agency employee: (a) Seeks advice, under an informal process established by the employing agency, in

order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (b) requests his or her identity or any identifying information not be disclosed;

(5) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment; and

(6) Except as provided in RCW 47.64.220, salary and employee benefit information collected under RCW 47.64.220(1) and described in RCW 47.64.220(2).

NEW SECTION. Sec. 406. Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, are exempt from disclosure under this chapter. In no event may disclosure be denied for more than three years after the appraisal.

NEW SECTION. Sec. 407. 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 chapter 43.163 RCW and chapter 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 43.163, 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) 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 liquor license, gambling license, or lottery retail license;

(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; and

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

(i) Financial and proprietary information collected from any person and provided to the department of community, trade, and economic development pursuant to RCW 43.330.050(8) and 43.330.080(4); and

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

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

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

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

NEW SECTION. Sec. 408. Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended are exempt under this chapter, except that a specific record is not exempt when publicly cited by an agency in connection with any agency action.

NEW SECTION. Sec. 409. Records that are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts are exempt from disclosure under this chapter.

NEW SECTION. Sec. 410. Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or predeation of such sites are exempt from disclosure under this chapter.

NEW SECTION. Sec. 411. Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, that discloses or could be used to disclose the identity of a library user is exempt from disclosure under this chapter.

NEW SECTION. Sec. 412. The following educational information is exempt from disclosure under this chapter:

(1) Financial disclosures filed by private vocational schools under chapters 28B.85 and 28C.10 RCW;

(2) Financial and commercial information supplied by or on behalf of a person, firm, corporation, or entity under chapter 28B.95 RCW relating to the purchase or sale of tuition units and contracts for the purchase of multiple tuition units;

(3) Individually identifiable information received by the work force training and education coordinating board for research or evaluation purposes; and

(4) Except for public records as defined in RCW 40.14.040, any records or documents obtained by a state college, university, library, or archive through or concerning any gift, grant, conveyance, bequest, or devise, the terms of which restrict or regulate public access to those records or documents.

NEW SECTION. Sec. 413. The following information relating to public utilities and transportation is exempt from disclosure under this chapter:

(1) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095;

(2) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order;

(3) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service; however, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides;

(4) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons;

(5) The personally identifying information of persons who acquire and use transit passes and other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose this information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media, or to the news media when reporting on public transportation or public safety. This information may also be disclosed at the agency's discretion to governmental agencies or groups concerned with public transportation or public safety;

(6) Records of any person that belong to a public utility district or a municipally owned electrical utility, unless the law enforcement authority provides the public utility district or municipally owned electrical utility with a written statement in which the authority states that it suspects that the particular person to whom the records pertain has committed a crime and the authority has a reasonable belief that the records could determine or help determine whether the suspicion might be true. Information obtained in violation of this subsection is inadmissible in any criminal proceeding; and

(7) Any information obtained by governmental agencies that is collected by the use of a motor carrier intelligent transportation system or any comparable information equipment attached to a truck, tractor, or trailer; however, the information may be given to other governmental agencies or the owners of the truck, tractor, or trailer from which the information is obtained. As used in this subsection, "motor carrier" has the same definition as provided in RCW 81.80.010.

NEW SECTION. Sec. 414. Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department are exempt from disclosure under this chapter.

NEW SECTION. Sec. 415. (1) The federal social security number of individuals governed under chapter 18.130 RCW maintained in the files of the department of health is exempt from disclosure under this chapter. The exemption in this section does not apply to requests made directly to the department from federal, state, and local agencies of government, and national and state licensing, credentialing, investigatory, disciplinary, and examination organizations.

(2) The current residential address and current residential telephone number of a health care provider governed under chapter 18.130 RCW maintained in the files of the department are exempt from disclosure under this chapter, if the provider requests that this information be withheld from public inspection and copying, and provides to the department of health an accurate alternate or business address and business telephone number. The current residential address and residential telephone number of a health care provider governed under RCW 18.130.040 maintained in the files of the department of health shall automatically be withheld from public inspection and copying unless the provider specifically requests the information be released, and except as provided for under RCW 42.17.260(9) (as recodified by this act).

NEW SECTION. Sec. 416. (1) The following health care information is exempt from disclosure under this chapter:

(a) Information obtained by the board of pharmacy as provided in RCW 69.45.090;

(b) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420;

(c) Information and documents created specifically for, and collected and maintained by a quality improvement committee under RCW 43.70.510 or

70.41.200, or by a peer review committee under RCW 4.24.250, regardless of which agency is in possession of the information and documents;

(d)(i) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310;

(ii) If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this subsection (1)(d) as exempt from disclosure;

(iii) If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality;

(e) Records of the entity obtained in an action under RCW 18.71.300 through 18.71.340;

(f) Except for published statistical compilations and reports relating to the infant mortality review studies that do not identify individual cases and sources of information, any records or documents obtained, prepared, or maintained by the local health department for the purposes of an infant mortality review conducted by the department of health under RCW 70.05.170; and

(g) Complaints filed under chapter 18.130 RCW after July 27, 1997, to the extent provided in RCW 18.130.095(1).

(2) Chapter 70.02 RCW applies to public inspection and copying of health care information of patients.

NEW SECTION. Sec. 417. Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or 70.123.075 or a rape crisis center as defined in RCW 70.125.030 are exempt from disclosure under this chapter.

NEW SECTION. Sec. 418. The following information relating to agriculture and livestock is exempt from disclosure under this chapter:

(1) Business-related information under RCW 15.86.110;

(2) Information provided under RCW 15.54.362;

(3) Production or sales records required to determine assessment levels and actual assessment payments to commodity boards and commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.100, and 16.67 RCW or required by the department of agriculture to administer these chapters or the department's programs;

(4) Consignment information contained on phytosanitary certificates issued by the department of agriculture under chapters 15.13, 15.49, and 15.17 RCW or federal phytosanitary certificates issued under 7 C.F.R. 353 through cooperative agreements with the animal and plant health inspection service, United States department of agriculture, or on applications for phytosanitary certification required by the department of agriculture;

(5) Financial and commercial information and records supplied by persons (a) to the department of agriculture for the purpose of conducting a referendum

for the potential establishment of a commodity board or commission; or (b) to the department of agriculture or commodity boards or commissions formed under chapter 15.24, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.100, or 16.67 RCW with respect to domestic or export marketing activities or individual producer's production information;

(6) Except under RCW 15.19.080, information obtained regarding the purchases, sales, or production of an individual American ginseng grower or dealer;

(7) Information that can be identified to a particular business and that is collected under section 3(1), chapter 235, Laws of 2002; and

(8) Financial statements provided under RCW 16.65.030(1)(d).

NEW SECTION. Sec. 419. Names of individuals residing in emergency or transitional housing that are furnished to the department of revenue or a county assessor in order to substantiate a claim for property tax exemption under RCW 84.36.043 are exempt from disclosure under this chapter.

NEW SECTION. Sec. 420. The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

(1) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110;

(2) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW;

(3) The names and individual identification data of all viators regulated by the insurance commissioner under chapter 48.102 RCW;

(4) Information provided under RCW 48.30A.045 through 48.30A.060;

(5) Information provided under RCW 48.05.510 through 48.05.535, 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600 through 48.46.625;

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

(7) Examination reports and information obtained by the department of financial institutions from banks under RCW 30.04.075, from savings banks under RCW 32.04.220, from savings and loan associations under RCW 33.04.110, from credit unions under RCW 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and from securities brokers and investment advisers under RCW 21.20.100, all of which is confidential and privileged information;

(8) Information provided to the insurance commissioner under RCW 48.110.040(3);

(9) Documents, materials, or information obtained by the insurance commissioner under RCW 48.02.065, all of which are confidential and privileged; and

(10) Confidential proprietary and trade secret information provided to the commissioner under RCW 48.31C.020 through 48.31C.050 and 48.31C.070.

NEW SECTION. Sec. 421. Records maintained by the employment security department and subject to chapter 50.13 RCW if provided to another individual or organization for operational, research, or evaluation purposes are exempt from disclosure under this chapter.

NEW SECTION. Sec. 422. The following information relating to security is exempt from disclosure under this chapter:

(1) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(a) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and

(b) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism;

(2) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility or any individual's safety;

(3) Information compiled by school districts or schools in the development of their comprehensive safe school plans under RCW 28A.320.125, to the extent that they identify specific vulnerabilities of school districts and each individual school;

(4) Information regarding the infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities; and

(5) The security section of transportation system safety and security program plans required under RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180.

NEW SECTION. Sec. 423. The following information relating to fish and wildlife is exempt from disclosure under this chapter:

(1) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher providing the catch data, however, this information may be released to government agencies concerned with the management of fish and wildlife resources;

(2) Sensitive wildlife data obtained by the department of fish and wildlife, however, sensitive wildlife data may be released to government agencies

concerned with the management of fish and wildlife resources. As used in this subsection, sensitive wildlife data includes:

(a) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;

(b) Radio frequencies used in, or locational data generated by, telemetry studies; or

(c) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(i) The species has a known commercial or black market value;

(ii) There is a history of malicious take of that species; or

(iii) There is a known demand to visit, take, or disturb, and the species behavior or ecology renders it especially vulnerable or the species has an extremely limited distribution and concentration; and

(3) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW, except name, address of contact used by the department, and type of license, endorsement, or tag; however, the department of fish and wildlife may disclose personally identifying information to:

(a) Government agencies concerned with the management of fish and wildlife resources;

(b) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and

(c) Law enforcement agencies for the purpose of firearm possession enforcement under RCW 9.41.040.

NEW SECTION. Sec. 424. (1) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have not been commingled with other recorded documents are exempt from disclosure under this chapter. These records will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding that veteran's general power of attorney, or to anyone else designated in writing by that veteran to receive the records.

(2) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have been commingled with other records are exempt from disclosure under this chapter, if the veteran has recorded a "request for exemption from public disclosure of discharge papers" with the county auditor. If such a request has been recorded, these records may be released only to the veteran filing the papers, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(3) Discharge papers of a veteran filed at the office of the county auditor after June 30, 2002, are not public records, but will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(4) For the purposes of this section, next of kin of deceased veterans have the same rights to full access to the record. Next of kin are the veteran's widow or widower who has not remarried, son, daughter, father, mother, brother, and sister.

NEW SECTION. Sec. 425. Information in an application for licensing or a small loan endorsement under chapter 31.45 RCW regarding the personal residential address, telephone number of the applicant, or financial statement is exempt from disclosure under this chapter.

NEW SECTION. Sec. 426. All records obtained and all reports produced as required by state fireworks law, chapter 70.77 RCW, are exempt from disclosure under this chapter.

NEW SECTION. Sec. 427. All records, documents, data, and other materials obtained under the requirements of RCW 72.09.115 from an existing correctional industries class I work program participant or an applicant for a proposed new or expanded class I correctional industries work program are exempt from public disclosure under this chapter.

NEW SECTION. Sec. 428. Information relating to the following programs and reports, which have no ongoing activity, is exempt from disclosure under this chapter:

(1) Railroad company contracts filed prior to July 28, 1991, with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter;

(2) Personal information in files maintained in a data base created under RCW 43.07.360; and

(3) Data collected by the department of social and health services for the reports required by section 8, chapter 231, Laws of 2003, except as compiled in the aggregate and reported to the senate and house of representatives.

NEW SECTION. Sec. 429. The following acts or parts of acts are each repealed:

(1) RCW 42.17.312 (Medical records—Health care information) and 1991 c 335 s 902;

(2) RCW 42.17.313 (Application for license or small loan endorsement under chapter 31.45 RCW—Certain information exempt) and 1995 c 18 s 8 & 1991 c 355 s 22;

(3) RCW 42.17.314 (Electrical utility records, request by law enforcement agency) and 1987 c 403 s 6;

(4) RCW 42.17.315 (Certain records obtained by colleges, universities, libraries, or archives exempt) and 1975 1st ex.s. c 294 s 22;

(5) RCW 42.17.316 (Certain records of impaired physician program exempt) and 2001 c 64 s 3, 1994 sp.s. c 9 s 726, & 1987 c 416 s 7;

(6) RCW 42.17.317 (Information on commercial fertilizer distribution exempt) and 1987 c 45 s 15;

(7) RCW 42.17.318 (Information on concealed pistol licenses exempt) and 1988 c 219 s 2;

(8) RCW 42.17.319 (Certain records of department of community, trade, and economic development exempt) and 2001 c 87 s 1, 1999 c 150 s 1, 1993 c 280 s 36, & 1989 c 312 s 7;

- (9) RCW 42.17.31901 (Identity of child victims of sexual assault exempt) and 1992 c 188 s 6;
- (10) RCW 42.17.31902 (Infant mortality review) and 1992 c 179 s 2;
- (11) RCW 42.17.31903 (Identification of viators regulated by the insurance commissioner exempt) and 1995 c 161 s 15;
- (12) RCW 42.17.31904 (Insurance antifraud plans exempt) and 1995 c 285 s 15;
- (13) RCW 42.17.31905 (Insurance information on certain material transactions exempt) and 1995 c 86 s 25;
- (14) RCW 42.17.31906 (Fireworks records exempt) and 1995 c 61 s 30;
- (15) RCW 42.17.31907 (Agricultural business and commodity board and commission records exempt) and 2002 c 313 s 66, 2001 c 314 s 18, & 1996 c 80 s 3;
- (16) RCW 42.17.31908 (Business information gathered under certain regulatory activities exempt) and 1996 c 102 s 1;
- (17) RCW 42.17.31909 (American ginseng growers or dealers—Certain information exempt) and 1998 c 154 s 33 & 1996 c 188 s 6;
- (18) RCW 42.17.31910 (Uniform Disciplinary Act complaints exempt) and 1997 c 270 s 2;
- (19) RCW 42.17.31911 (Examination reports and information from financial institutions exempt) and 1997 c 258 s 1;
- (20) RCW 42.17.31912 (Motor carrier information systems) and 1999 c 146 s 1;
- (21) RCW 42.17.31913 (Marine employees salary surveys) and 1999 c 256 s 2;
- (22) RCW 42.17.31914 (Rail fixed guideway system—Safety and security program plan) and 1999 c 202 s 8;
- (23) RCW 42.17.31915 (Service contract providers—Financial reports exempt) and 1999 c 112 s 18;
- (24) RCW 42.17.31916 (Insurance information) and 2001 c 57 s 2;
- (25) RCW 42.17.31917 (Insurance information—Proprietary or trade secret) and 2001 c 179 s 14;
- (26) RCW 42.17.31918 (Agriculture records exempt—Apple merchants) and 2002 c 235 s 4;
- (27) RCW 42.17.31919 (Public livestock market information exempt) and 2003 c 326 s 91;
- (28) RCW 42.17.31920 (Department of social and health services reports for section 8, chapter 231, Laws of 2003) and 2004 c 142 s 16; and
- (29) RCW 42.17.31921 (Correctional industries class I work program information) and 2004 c 167 s 9.

PART IV MISCELLANEOUS PROVISIONS

NEW SECTION. Sec. 501. Part headings used in this act are not any part of the law.

NEW SECTION. Sec. 502. This act takes effect July 1, 2006.

NEW SECTION. Sec. 503. Sections 1, 101, 102, and 403 through 428 of this act are each added to the new chapter created in section 103 of this act.

Passed by the House March 4, 2005.

Passed by the Senate April 15, 2005.

Approved by the Governor May 4, 2005.

Filed in Office of Secretary of State May 4, 2005.

CHAPTER 275

[Second Substitute House Bill 1168]

PRESCRIPTION DRUGS—CANADIAN PHARMACIES

AN ACT Relating to reimportation of prescription drugs; amending RCW 18.64.350 and 18.64.360; adding a new section to chapter 18.64 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that as consumers' prescription drug costs continue to rise, people across the state of Washington are exercising the option to purchase prescription drugs from Canada for their personal use. The state has a strong interest in the safety of drugs purchased through this mechanism. To address this interest, the legislature intends to authorize the state board of pharmacy to regulate nonresident Canadian pharmacies.

Sec. 2. RCW 18.64.350 and 1991 c 87 s 1 are each amended to read as follows:

(1) The legislature finds and declares that the practice of pharmacy is a dynamic, patient-oriented health service that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use and drug-related therapy.

(2) The legislature recognizes that with the proliferation of alternate methods of health delivery, there has arisen among third-party payors and insurance companies the desire to control the cost and utilization of pharmacy services through a variety of mechanisms, including the use of mail-order pharmacies located outside the state of Washington.

(3) As a result, the legislature finds and declares that to continue to protect the Washington consumer-patient, all out-of-state pharmacies, including those located in Canada, that provide services to Washington residents shall be licensed by the department of health, disclose specific information about their services, and provide pharmacy services at a high level of protection and competence.

Sec. 3. RCW 18.64.360 and 1996 c 109 s 1 are each amended to read as follows:

(1) For the purposes of this chapter any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an individual, controlled substances, legend drugs, or devices into this state is a nonresident pharmacy, and shall be licensed by the department of health, and shall disclose to the department the following:

(a) The location, names, and titles of all owners including corporate officers and all pharmacists employed by the pharmacy who are dispensing controlled substances, legend drugs, or devices to residents of this state. A report containing this information shall be made on an annual basis and within ninety days after a change of location, corporate officer, or pharmacist;

(b) Proof of compliance with all lawful directions and requests for information from the regulatory or licensing agency of the state or Canadian province in which it is licensed as well as with all requests for information made by the department of health under this section. The nonresident pharmacy shall maintain, at all times, a valid unexpired license, permit, or registration to operate the pharmacy in compliance with the laws of the state or Canadian province in which it is located. As a prerequisite to be licensed by the department of health, the nonresident pharmacy shall submit a copy of the most recent inspection report issued by the regulatory licensing agency of the state or Canadian province in which it is located;

(c) Proof that it maintains its records of controlled substances, legend drugs, or devices dispensed to patients in this state so that the records are readily retrievable from the records of other drugs dispensed.

(2) Any pharmacy subject to this section shall, during its regular hours of operation, provide a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number shall be disclosed on the label affixed to each container of drugs dispensed to patients in this state.

(3) A pharmacy subject to this section shall comply with board rules regarding the maintenance and use of patient medication record systems.

(4) A pharmacy subject to this section shall comply with board of pharmacy rules regarding the provision of drug information to the patient. Drug information may be contained in written form setting forth directions for use and any additional information necessary to assure the proper utilization of the medication prescribed. A label bearing the expiration date of the prescription must be affixed to each box, bottle, jar, tube, or other container of a prescription that is dispensed in this state by a pharmacy subject to this section.

(5) A pharmacy subject to this section shall not dispense medication in a quantity greater than authorized by the prescriber.

(6) The license fee specified by the secretary, in accordance with the provisions of RCW 43.70.250, shall not exceed the fee charged to a pharmacy located in this state.

(7) The license requirements of this section apply to nonresident pharmacies that ship, mail, or deliver controlled substances, legend drugs, and devices into this state only under a prescription. The board of pharmacy may grant an exemption from licensing under this section upon application by an out-of-state pharmacy that restricts its dispensing activity in Washington to isolated transactions.

(8) Each nonresident pharmacy that ships, mails, or delivers legend drugs or devices into this state shall designate a resident agent in Washington for service of process. The designation of such an agent does not indicate that the nonresident pharmacy is a resident of Washington for tax purposes.

(9) The board shall attempt to develop a reciprocal licensing agreement for licensure of nonresident pharmacies with Health Canada or an applicable Canadian province. If the board is unable to develop such an agreement, the board shall develop a process to license participating Canadian nonresident pharmacies through on-site inspection and certification.

NEW SECTION, Sec. 4. A new section is added to chapter 18.64 RCW to read as follows:

(1) By September 1, 2005, the board of pharmacy shall, in consultation with the department and the health care authority, submit a waiver request to the federal food and drug administration that authorizes the importation of prescription drugs from Canada.

(2) Upon approval of the federal waiver allowing for the importation of prescription drugs from Canada, the board, in consultation with the department and the health care authority, shall license Canadian pharmacies that provide services to Washington residents under RCW 18.64.350 and RCW 18.64.360.

Passed by the House April 18, 2005.

Passed by the Senate April 12, 2005.

Approved by the Governor May 4, 2005.

Filed in Office of Secretary of State May 4, 2005.

CHAPTER 276

[Second Substitute House Bill 1220]

LONG-TERM CARE FINANCING AND CHRONIC CARE MANAGEMENT—JOINT TASK FORCE

AN ACT Relating to establishing a task force on long-term care financing and chronic care management; and creating new sections.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) The governor shall establish a joint legislative and executive task force on long-term care financing and chronic care management. The joint task force consists of eight members, as follows: The secretary of the department of social and health services; the secretary of the department of health; the administrator of the health care authority; a representative from the governor's office; two members of the senate appointed by the president of the senate, one of whom shall be a member of the majority caucus and one of whom shall be a member of the minority caucus; and two members of the house of representatives appointed by the speaker of the house of representatives, one of whom shall be a member of the majority caucus and one of whom shall be a member of the minority caucus.

(2) The joint task force shall elect a member of the joint task force to serve as chair of the joint task force.

(3) Consistent with funds appropriated specifically for this purpose, the joint task force shall contract for professional services. State agencies, the senate, and the house of representatives may provide staff support upon request of the joint task force.

(4) The joint task force shall create advisory committees to assist the joint task force in its work. The task force shall actively consult with and solicit recommendations from the advisory committee or committees regarding issues under consideration by the task force.

(5) Joint task force members may be reimbursed for travel expenses as authorized under RCW 43.03.050 and 43.03.060, and chapter 44.04 RCW as appropriate. Advisory committee members, if appointed, may not receive compensation or reimbursement for travel or expenses.

(6) The joint task force shall review public and private mechanisms for financing long-term care and make recommendations related to:

(a) The composition of a long-term care system that is adequate to meet the needs of persons of all ages with functional limitations, including appropriate services to be offered in the continuum of care ranging from services to support persons residing at home through residential care. This shall be accomplished by first determining capacity in each level of care in the long-term care continuum and assessing the impact, by geographic region, of increasing or decreasing capacity in each level of care;

(b) Efficient payment models that will effectively sustain public funding of long-term care and maximize the use of financial resources to directly meet the needs of persons of all ages with functional limitations;

(c) State laws and regulations that should be revised and/or eliminated in order to reduce or contain long-term care costs to individuals and the state;

(d) The feasibility of private options for realistically enabling individuals to pay for long-term care and the most effective tools for implementing these options. The assessment of options should include but not be limited to: (i) Adequacy of personal savings and pensions; (ii) availability of family care, including incentives and supports for families to provide care or pay for care; (iii) creative community-based strategies or partnerships for funding quality long-term care; (iv) enhanced health insurance options; (v) long-term care insurance options, including incentives to purchase long-term care insurance through individual or group-based products; (vi) life insurance annuities; and (vii) reverse mortgage and other products that draw on home equity; and

(e) Options that will support long-term care needs of rural communities.

(7) The joint task force shall recommend chronic care management and disability prevention interventions that will reduce health care and long-term care costs to individuals and the state, improve the health of individuals over their life span, and encourage patient self-management of chronic care needs.

(8) The joint task force shall incorporate a process designed to facilitate an open dialog with the public on findings and recommendations.

(9) The joint task force shall: (a) Report its initial findings to the governor and appropriate committees of the legislature by January 1, 2006; (b) report its recommendations to the governor and appropriate committees of the legislature by January 1, 2007; and (c) submit a final report to the governor and appropriate committees of the legislature by June 30, 2007.

NEW SECTION. Sec. 2. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2005, in the omnibus appropriations act, this act is null and void.

Passed by the House April 18, 2005.

Passed by the Senate April 7, 2005.

Approved by the Governor May 4, 2005.

Filed in Office of Secretary of State May 4, 2005.

CHAPTER 277

[Substitute House Bill 1347]

DISHONORED CHECKS

AN ACT Relating to dishonored checks; amending RCW 28A.300.455; adding new sections to chapter 62A.3 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature has directed the financial literacy public-private partnership to complete certain tasks to support efforts to increase the level of financial literacy in the common schools. In order to promote a greater understanding by students of the consequences of a dishonored check, the legislature intends to extend by one year the date by which the financial literacy public-private partnership must identify strategies to increase the financial literacy of public school students in Washington.

Sec. 2. RCW 28A.300.455 and 2004 c 247 s 3 are each amended to read as follows:

(1) By September 30, 2004, the financial literacy public-private partnership shall adopt a definition of financial literacy to be used in educational efforts.

(2) By June 30, ((2005)) 2006, the financial literacy public-private partnership shall identify strategies to increase the financial literacy of public school students in our state. To the extent funds are available, strategies to be considered by the partnership shall include, but not be limited to:

(a) Identifying and making available to school districts:

(i) Important financial literacy skills and knowledge;

(ii) Ways in which teachers at different grade levels may integrate financial literacy in mathematics, social studies, and other course content areas;

(iii) Instructional materials and programs, including schoolwide programs, that include the important financial literacy skills and knowledge;

(iv) Assessments and other outcome measures that schools and communities may use to determine whether students are financially literate; and

(v) Other strategies for expanding and increasing the quality of financial literacy instruction in public schools, including professional development for teachers;

(b) Developing a structure and set of operating principles for the financial literacy public-private partnership to assist interested school districts in improving the financial literacy of their students by providing such things as financial literacy instructional materials and professional development; and

(c) Providing a report to the governor, the house and senate financial institutions and education committees of the legislature, the superintendent of public instruction, the state board of education, and education stakeholder groups, on the results of work of the financial literacy public-private partnership. A final report shall be submitted to the same parties by June 30, 2007.

NEW SECTION. Sec. 3. (1) If a check as defined in RCW 62A.3-104 is dishonored by nonacceptance or nonpayment and the check is assigned or written to a collection agency as defined in RCW 19.16.100, the collection agency may collect a reasonable handling fee for each instrument. If the collection agency or its agent provides a notice of dishonor in the form provided in section 4 of this act to the drawer and the check amount plus the reasonable handling fee are not paid within thirty-three days after providing the notice of dishonor, then, unless the instrument otherwise provides, the drawer of the instrument is liable for payment of interest at the rate of twelve percent per annum from the date of dishonor, and a cost of collection of forty dollars or the face amount of the check, whichever is less, payable to the collection agency. In addition, in the event of court action on the check and after notice and the

expiration of the thirty-three days, the court shall award reasonable attorneys' fees, and three times the face amount of the check or three hundred dollars, whichever is less, as part of the damages payable to the collection agency. This section does not apply to an instrument that is dishonored by reason of a justifiable stop payment order.

(2) Subsequent to the commencement of an action on the check under subsection (1) of this section but prior to the hearing, the defendant may tender to the plaintiff as satisfaction of the claim, an amount of money equal to the face amount of the check, a reasonable handling fee, accrued interest, collection costs equal to the face amount of the check not to exceed forty dollars, and the incurred court costs, service costs, and statutory attorneys' fees.

(3) Nothing in this section precludes the right to commence action in a court under chapter 12.40 RCW for small claims.

NEW SECTION. Sec. 4. (1) If a check is assigned or written to a collection agency as defined in RCW 19.16.100 and the collection agency or its agent provides a notice of dishonor, the notice of dishonor may be sent by mail to the drawer at the drawer's last known address. The collection agency may, as an alternative to providing a notice in the form described in RCW 62A.3-520, provide a notice in substantially the following form:

NOTICE OF DISHONOR OF CHECK

A check drawn by you and made payable by you to in the amount of has not been accepted for payment by, which is the drawee bank designated on your check. This check is dated, and it is numbered, No.

You are CAUTIONED that unless you pay the amount of this check and a handling fee of within thirty-three days after the date this letter is postmarked or personally delivered, you may very well have to pay the following additional amounts:

- (a) Costs of collecting the amount of the check in the lesser of the check amount or forty dollars, plus, in the event of legal action, court costs and attorneys' fees, which will be set by the court;
- (b) Interest on the amount of the check which shall accrue at the rate of twelve percent per annum from the date of dishonor; and
- (c) Three hundred dollars or three times the face amount of the check, whichever is less, by award of the court.

You are also CAUTIONED that law enforcement agencies may be provided with a copy of this notice of dishonor and the check drawn by you for the possibility of proceeding with criminal charges if you do not pay the amount of this check within thirty-three days after the date this letter is postmarked.

You are advised to make your payment of \$. to at the following address:

(2) The cautionary statement regarding law enforcement in subsection (1) of this section need not be included in a notice of dishonor sent by a collection agency. However, if included and whether or not the collection agency regularly refers dishonored checks to law enforcement, the cautionary statement in subsection (1) of this section shall not be construed as a threat to take any action not intended to be taken or that cannot legally be taken; nor shall it be construed to be harassing, oppressive, or abusive conduct; nor shall it be construed to be a

false, deceptive, or misleading representation; nor shall it be construed to be unfair or unconscionable; nor shall it otherwise be construed to violate any law.

(3) In addition to sending a notice of dishonor to the drawer of the check under this section, the person sending notice shall execute an affidavit certifying service of the notice by mail. The affidavit of service by mail must be substantially in the following form:

AFFIDAVIT OF SERVICE BY MAIL

I,, hereby certify that on the day of, 20. . ., a copy of the foregoing Notice was served on by mailing via the United States Postal Service, postage prepaid, at, Washington.

Dated:
(Signature)

(4) The person enforcing a check under this section shall file the affidavit and check, or a true copy thereof, with the clerk of the court in which an action on the check is commenced as permitted by court rule or practice.

NEW SECTION. Sec. 5. No interest, collection costs, and attorneys' fees, except handling fees, are recoverable on any dishonored check under the provisions of section 3 of this act where a collection agency or its agent, employee, or assign has demanded:

(1) Interest or collection costs in excess of that provided by section 3 of this act; or

(2) Interest or collection costs prior to the expiration of thirty-three days after the serving or mailing of the notice of dishonor, as provided by section 3 or 4 of this act; or

(3) Attorneys' fees other than statutory attorneys' fees without having the fees set by the court, or any attorneys' fees prior to thirty-three days after the serving or mailing of the notice of dishonor, as provided by section 3 or 4 of this act.

NEW SECTION. Sec. 6. Sections 3 through 5 of this act are each added to chapter 62A.3 RCW under the subchapter heading "DISHONOR."

Passed by the House April 20, 2005.

Passed by the Senate April 15, 2005.

Approved by the Governor May 4, 2005.

Filed in Office of Secretary of State May 4, 2005.

CHAPTER 278

[Engrossed Second Substitute House Bill 1418]

INSURANCE—OVERPAYMENT RECOVERY

AN ACT Relating to regulating insurance overpayment recovery practices; adding new sections to chapter 48.43 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 48.43 RCW to read as follows:

(1) Except in the case of fraud, or as provided in subsections (2) and (3) of this section, a carrier may not: (a) Request a refund from a health care provider

of a payment previously made to satisfy a claim unless it does so in writing to the provider within twenty-four months after the date that the payment was made; or (b) request that a contested refund be paid any sooner than six months after receipt of the request. Any such request must specify why the carrier believes the provider owes the refund. If a provider fails to contest the request in writing to the carrier within thirty days of its receipt, the request is deemed accepted and the refund must be paid.

(2) A carrier may not, if doing so for reasons related to coordination of benefits with another carrier or entity responsible for payment of a claim: (a) Request a refund from a health care provider of a payment previously made to satisfy a claim unless it does so in writing to the provider within thirty months after the date that the payment was made; or (b) request that a contested refund be paid any sooner than six months after receipt of the request. Any such request must specify why the carrier believes the provider owes the refund, and include the name and mailing address of the entity that has primary responsibility for payment of the claim. If a provider fails to contest the request in writing to the carrier within thirty days of its receipt, the request is deemed accepted and the refund must be paid.

(3) A carrier may at any time request a refund from a health care provider of a payment previously made to satisfy a claim if: (a) A third party, including a government entity, is found responsible for satisfaction of the claim as a consequence of liability imposed by law, such as tort liability; and (b) the carrier is unable to recover directly from the third party because the third party has either already paid or will pay the provider for the health services covered by the claim.

(4) If a contract between a carrier and a health care provider conflicts with this section, this section shall prevail. However, nothing in this section prohibits a health care provider from choosing at any time to refund to a carrier any payment previously made to satisfy a claim.

(5) For purposes of this section, "refund" means the return, either directly or through an offset to a future claim, of some or all of a payment already received by a health care provider.

(6) This section neither permits nor precludes a carrier from recovering from a subscriber, enrollee, or beneficiary any amounts paid to a health care provider for benefits to which the subscriber, enrollee, or beneficiary was not entitled under the terms and conditions of the health plan, insurance policy, or other benefit agreement.

(7) This section does not apply to claims for health care services provided through dental-only health carriers, health care services provided under Title XVIII (medicare) of the social security act, or medicare supplemental plans regulated under chapter 48.66 RCW.

NEW SECTION, Sec. 2. A new section is added to chapter 48.43 RCW to read as follows:

(1) Except in the case of fraud, or as provided in subsection (2) of this section, a health care provider may not: (a) Request additional payment from a carrier to satisfy a claim unless he or she does so in writing to the carrier within twenty-four months after the date that the claim was denied or payment intended to satisfy the claim was made; or (b) request that the additional payment be made

any sooner than six months after receipt of the request. Any such request must specify why the provider believes the carrier owes the additional payment.

(2) A health care provider may not, if doing so for reasons related to coordination of benefits with another carrier or entity responsible for payment of a claim: (a) Request additional payment from a carrier to satisfy a claim unless he or she does so in writing to the carrier within thirty months after the date the claim was denied or payment intended to satisfy the claim was made; or (b) request that the additional payment be made any sooner than six months after receipt of the request. Any such request must specify why the provider believes the carrier owes the additional payment, and include the name and mailing address of any entity that has disclaimed responsibility for payment of the claim.

(3) If a contract between a carrier and a health care provider conflicts with this section, this section shall prevail. However, nothing in this section prohibits a carrier from choosing at any time to make additional payments to a provider to satisfy a claim.

(4) This section does not apply to claims for health care services provided through dental-only health carriers, health care services provided under Title XVIII (medicare) of the social security act, or medicare supplemental plans regulated under chapter 48.66 RCW.

NEW SECTION. Sec. 3. This act applies to contracts issued or renewed on or after January 1, 2006.

Passed by the House April 19, 2005.

Passed by the Senate April 11, 2005.

Approved by the Governor May 4, 2005.

Filed in Office of Secretary of State May 4, 2005.

CHAPTER 279

[Engrossed Second Substitute House Bill 1441]

INSURANCE—CHILDRENS' HEALTH COVERAGE

AN ACT Relating to health insurance coverage for children; amending RCW 74.09.415; adding a new section to chapter 74.09 RCW; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 74.09 RCW to read as follows:

(1) The legislature finds that:

(a) The health of the children of Washington state is critical to their success in school and throughout their lives. Children with health insurance coverage have better health outcomes than those who lack coverage. Children without health insurance coverage are more likely to be in poor health and more likely to delay receiving, or go without, needed health care services;

(b) Access to preventive and well-child health services for children is a cost-effective investment of both public and private dollars that improves the health of children and of our communities at large; and

(c) Health care coverage for children in Washington state is the product of critical efforts in both the private and public sectors to help children succeed. Private health insurance coverage is complemented by public programs that

meet needs of low-income children whose parents are not offered health insurance coverage through their employer or who cannot otherwise afford the costs of coverage. In 2004, thirty-five percent of children in Washington state had some form of public health coverage. Yet, even with the efforts of both the private and public sectors, too many children in Washington state lack health insurance coverage. In 2004, almost one hundred thousand children were uninsured. Two-thirds of these children are low income.

(2) It is therefore the intent of the legislature that all children in the state of Washington have health care coverage by 2010. This should be accomplished by building upon and strengthening the successes of private health insurance coverage and publicly supported children's health insurance programs in Washington state. Access to coverage should be streamlined and efficient, with reductions in unnecessary administrative costs and mechanisms to expeditiously link children with a medical home.

Sec. 2. RCW 74.09.415 and 2002 c 366 s 2 are each amended to read as follows:

(1) There is hereby established a program to be known as the children's health program. The legislature finds that the children's health program is a more appropriate mechanism for providing health services to poor children who are not otherwise eligible for medical assistance than grants to community clinics to offset uncompensated care or coverage through the Washington basic health plan.

To the extent of available funds:

(a) Health care services may be provided to persons who are under eighteen years of age with household incomes at or below the federal poverty level and not otherwise eligible for medical assistance or the limited casualty program for the medically needy.

(b) The determination of eligibility of recipients for health care services shall be the responsibility of the department. ~~((The application process shall be easy to understand and, to the extent possible, applications shall be made available at local schools and other appropriate locations.))~~ The department shall make eligibility determinations within the time frames for establishing eligibility for children on medical assistance, as defined by RCW 74.09.510.

(c) The amount, scope, and duration of health care services provided to eligible children under the children's health program shall be the same as that provided to children under medical assistance, as defined in RCW 74.09.520.

~~(2) ((The legislature is interested in assessing the effectiveness of the prenatal care program. However, the legislature recognizes the cost and complexity associated with such assessment.~~

~~The legislature accepts the effectiveness of prenatal and maternity care at improving birth outcomes when these services are received by eligible persons. Therefore, the legislature intends to focus scarce assessment resources to determine the extent to which support services such as child care, psychosocial and nutritional assessment and counseling, case management, transportation, and other support services authorized by chapter 296, Laws of 1990, result in receipt of prenatal and maternity care by eligible persons.~~

~~The University of Washington shall conduct a study, based on a statistically significant statewide sampling of data, to evaluate the effectiveness of the~~

maternity care access program set forth in RCW 74.09.760 through 74.09.820 based on the principles set forth in RCW 74.09.770.

The University of Washington shall develop a plan and budget for the study in consultation with the joint legislative audit and review committee. The joint legislative audit and review committee shall also monitor the progress of the study.

The department of social and health services shall make data and other information available as needed to the University of Washington as required to conduct this study.

The study shall determine:

(a) The characteristics of women receiving services, including health risk factors;

(b) The extent to which access to maternity care and support services have improved in this state as a result of this program;

(c) The utilization of services and birth outcomes for women and infants served by this program by type of practitioner;

(d) The extent to which birth outcomes for women receiving services under this program have improved in comparison to birth outcomes of nonmedicaid mothers;

(e) The impact of increased medicaid reimbursement to physicians on provider participation;

(f) The difference between costs for services provided under this program and medicaid reimbursement for the services;

(g) The gaps in services, if any, that may still exist for women and their infants as defined by RCW 74.09.790 (1) and (4) served by this program, excluding pregnant substance abusers, and women covered by private health insurance; and

(h) The number and mix of services provided to eligible women as defined by subsection (2)(g) of this section and the effect on birth outcomes as compared to nonmedicaid birth outcomes.) Enrollment in the children's health program shall not result in expenditures that exceed the amount that has been appropriated for the program in the operating budget. If it appears that continued enrollment will result in expenditures exceeding the appropriated level for a particular fiscal year, the department may freeze new enrollment in the program for that year.

****NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005.***

*Sec. 3 was vetoed. See message at end of chapter.

Passed by the House April 21, 2005.

Passed by the Senate April 23, 2005.

Approved by the Governor May 4, 2005, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 4, 2005.

Note: Governor's explanation of partial veto is as follows:

"I am returning, without my approval as to Section 3, Engrossed Second Substitute House Bill No. 1441 entitled:

"AN ACT Relating to health insurance coverage for children."

This bill reinstates the Children's Health Program for children up to 100 percent of the federal poverty level who are not otherwise eligible for Medicaid. Section 3 of the bill, the emergency clause that contains the effective date of July 1, 2005, is not needed for funding purposes and could set unreasonable expectations regarding the timing of implementation. The Department of Social and Health Services' (the "Department") operating budget appropriation for 2005-07 becomes effective on July 1, 2005. The Department estimates it will take six months to make the systems changes necessary to start enrolling children in this program by January 2006. I do not want to create false expectation that the Department will start enrolling children on July 1, 2005.

For these reasons I have vetoed Section 3 of Engrossed Second Substitute House Bill No. 1441.

With the exception of Section 3, Engrossed Second Substitute House Bill No. 1441 is approved."

CHAPTER 280

[House Bill 1557]

ELECTRICAL BOARD

AN ACT Relating to expanding membership of the electrical board by appointment of one outside line worker; amending RCW 19.28.311; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 19.28.311 and 2000 c 238 s 3 are each amended to read as follows:

There is hereby created an electrical board, consisting of (~~fourteen~~) fifteen members to be appointed by the governor with the advice of the director of labor and industries as herein provided. It shall be the purpose and function of the board to advise the director on all matters pertaining to the enforcement of this chapter including, but not limited to standards of electrical and telecommunications installation, minimum inspection procedures, and the adoption of rules pertaining to the electrical inspection division: PROVIDED, HOWEVER, That no rules shall be amended or repealed until the electrical board has first had an opportunity to consider any proposed amendments or repeals and had an opportunity to make recommendations to the director relative thereto. The members of the electrical board shall be selected and appointed as follows: One member shall be an employee or officer of a corporation or public agency generating or distributing electric power; one member must be an employee or officer of a facilities-based telecommunications service provider regulated by the Washington state utilities and transportation commission; three members shall be licensed electrical contractors: PROVIDED, That one of these members may be a representative of a trade association in the electrical industry; one member shall be a licensed telecommunications contractor; one member shall be an employee, or officer, or representative of a corporation or firm engaged in the business of manufacturing or distributing electrical and telecommunications materials, equipment, or devices; one member shall be a person with knowledge of the electrical industry, not related to the electrical industry, to represent the public; three members shall be certified electricians; one member shall be a telecommunications worker; one member shall be a licensed professional electrical engineer qualified to do business in the state of Washington and designated as a registered communications distribution designer; one member shall be an outside line worker; and one nonvoting member must be a building official from an incorporated city or town with an electrical inspection program established under RCW 19.28.141. The regular

term of each member shall be four years: PROVIDED, HOWEVER, The original board shall be appointed on June 9, 1988, for the following terms: The first term of the member representing a corporation or public agency generating or distributing electric power shall serve four years; two members representing licensed electrical contractors shall serve three years; the member representing a manufacturer or distributor of electrical equipment or devices shall serve three years; the member representing the public and one member representing licensed electrical contractors shall serve two years; the three members selected as certified electricians shall serve for terms of one, two, and three years, respectively; the member selected as the licensed professional electrical engineer shall serve for one year. In appointing the original board, the governor shall give due consideration to the value of continuity in membership from predecessor boards. Thereafter, the governor shall appoint or reappoint board members for terms of four years and to fill vacancies created by the completion of the terms of the original members. When new positions are created, the governor may appoint the initial members to the new positions to staggered terms of one to three years. The governor shall also fill vacancies caused by death, resignation, or otherwise for the unexpired term of such members by appointing their successors from the same business classification. The same procedure shall be followed in making such subsequent appointments as is provided for the original appointments. The board, at this first meeting shall elect one of its members to serve as chairman. Any person acting as the chief electrical inspector shall serve as secretary of the board during his or her tenure as chief state inspector. Meetings of the board shall be held at least quarterly in accordance with a schedule established by the board. Each member of the board shall receive compensation in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 which shall be paid out of the electrical license fund, upon vouchers approved by the director of labor and industries.

NEW SECTION. Sec. 2. The governor shall appoint the member representing outside line workers within ninety days after the effective date of this act.

Passed by the House March 8, 2005.

Passed by the Senate April 15, 2005.

Approved by the Governor May 4, 2005.

Filed in Office of Secretary of State May 4, 2005.

CHAPTER 281

[Substitute House Bill 1652]

FIRE PROTECTION DISTRICTS—HEALTH CLINIC SERVICES

AN ACT Relating to authorizing fire protection districts to establish or participate in health clinic services; amending RCW 52.02.020; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 52.02.020 and 2003 c 309 s 1 are each amended to read as follows:

(1) Fire protection districts for the provision of fire prevention services, fire suppression services, emergency medical services, and for the protection of life

and property in areas outside of cities and towns, except where the cities and towns have been annexed into a fire protection district or where the district is continuing service pursuant to RCW 35.02.202, are authorized to be established as provided in this title.

(2) In addition to other services authorized under this section, fire protection districts that share a common border with Canada and are surrounded on three sides by water or are bounded on the north by Bremerton, on the west by Mason county, on the south by Pierce county, and on the east by the Puget Sound, may also establish or participate in the provision of health clinic services.

****NEW SECTION. Sec. 2. The department of health shall conduct a study to evaluate the merits of allowing fire protection districts to establish or participate in the provision of health clinic services.***

(1) The study shall consider any relevant matters, including but not limited to: The scope of the services which might be provided, the interest among Washington's fire protection districts in providing these services, the need for having them do so, the impact on overall health expenditures of allowing health services to be provided this way, potential government liability, and patient health and safety issues.

(2) The secretary of health shall appoint an advisory group of affected parties, including local physicians and other health care providers, to assist in the study.

(3) The department shall report the results of the study and any recommendations to the legislature by September 1, 2006. At a minimum, the recommendations shall include: (a) The criteria and process which should be used to evaluate requests by fire protection districts to establish or participate in the provision of health clinic services; and (b) any other statutory or administrative changes needed to address the concerns identified.

*Sec. 2 was vetoed. See message at end of chapter.

Passed by the House April 20, 2005.

Passed by the Senate April 13, 2005.

Approved by the Governor May 4, 2005, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 4, 2005.

Note: Governor's explanation of partial veto is as follows:

"I am returning, without my approval as to Section 2, Substitute House Bill No. 1652 entitled:

"AN ACT Relating to authorizing fire protection districts to establish or participate in health clinic services."

This bill authorizes one additional fire protection district to operate a health clinic in Kitsap County. Section 2 of the bill directs the Department of Health to conduct a study to evaluate the merits of allowing fire protection districts to establish or participate in the provision of health care services. The study must consider the scope of services that might be provided, the interest among Washington's fire districts in providing these services, the need for having them do so, and the impact on health expenditures and potential government liability. Section 2 also includes the appointment of an advisory group to assist in the study and a final report by September 1, 2006. The Legislature did not, however, appropriate funds for the study.

For these reasons, I have vetoed Section 2 of Substitute House Bill No. 1652.

With the exception of Section 2, Substitute House Bill No. 1652 is approved."

CHAPTER 282

[House Bill 1668]

ADMINISTRATIVE OFFICE OF THE COURTS

AN ACT Relating to the administrative office of the courts; amending RCW 2.14.110, 2.43.020, 2.43.030, 2.43.070, 2.56.010, 2.56.020, 2.56.030, 2.56.120, 2.56.150, 2.56.180, 2.68.020, 2.70.050, 3.46.030, 3.50.020, 3.66.010, 3.66.070, 9.73.230, 9.94A.855, 10.64.120, 10.98.080, 10.98.100, 10.98.160, 13.34.102, 13.40.430, 13.64.080, 13.70.130, 26.12.177, 26.12.802, 26.12.804, 26.18.210, 26.18.220, 26.19.011, 26.19.035, 26.19.050, 26.26.065, 26.50.030, 26.50.035, 35.20.030, 36.01.050, 36.18.018, 43.08.250, 43.70.540, 43.101.280, 46.20.286, 74.14C.100, and 82.14.310; amending 1983 c 199 s 2 (uncodified); and reenacting and amending RCW 9.94A.660 and 9.94A.850.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 2.14.110 and 1996 c 42 s 1 are each amended to read as follows:

If a member dies, the amount of the accumulated contributions standing to the member's credit at the time of the member's death shall be paid to the member's estate, or such person or persons, trust, or organization as the member has nominated by written designation duly executed and filed with the administrative office of the (~~(administrator for the)~~) courts. If there is no such designated person or persons still living at the time of the member's death, the member's accumulated contributions shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation or, if there is no such surviving spouse, then to the member's legal representatives.

Sec. 2. RCW 2.43.020 and 1989 c 358 s 2 are each amended to read as follows:

As used in this chapter:

(1) "Non-English-speaking person" means any person involved in a legal proceeding who cannot readily speak or understand the English language, but does not include hearing-impaired persons who are covered under chapter 2.42 RCW.

(2) "Qualified interpreter" means a person who is able readily to interpret or translate spoken and written English for non-English-speaking persons and to interpret or translate oral or written statements of non-English-speaking persons into spoken English.

(3) "Legal proceeding" means a proceeding in any court in this state, grand jury hearing, or hearing before an inquiry judge, or before (~~(trib))~~ an administrative board, commission, agency, or licensing body of the state or any political subdivision thereof.

(4) "Certified interpreter" means an interpreter who is certified by the administrative office of the (~~(administrator for the)~~) courts.

(5) "Appointing authority" means the presiding officer or similar official of any court, department, board, commission, agency, licensing authority, or legislative body of the state or of any political subdivision thereof.

Sec. 3. RCW 2.43.030 and 1990 c 183 s 1 are each amended to read as follows:

(1) Whenever an interpreter is appointed to assist a non-English-speaking person in a legal proceeding, the appointing authority shall, in the absence of a written waiver by the person, appoint a certified or a qualified interpreter to assist the person throughout the proceedings.

(a) Except as otherwise provided for in (b) of this subsection, the interpreter appointed shall be a qualified interpreter.

(b) Beginning on July 1, 1990, when a non-English-speaking person is a party to a legal proceeding, or is subpoenaed or summoned by an appointing authority or is otherwise compelled by an appointing authority to appear at a legal proceeding, the appointing authority shall use the services of only those language interpreters who have been certified by the administrative office of the ((~~administrator for the~~)) courts, unless good cause is found and noted on the record by the appointing authority. For purposes of chapter 358, Laws of 1989, "good cause" includes but is not limited to a determination that:

(i) Given the totality of the circumstances, including the nature of the proceeding and the potential penalty or consequences involved, the services of a certified interpreter are not reasonably available to the appointing authority; or

(ii) The current list of certified interpreters maintained by the administrative office of the ((~~administrator for the~~)) courts does not include an interpreter certified in the language spoken by the non-English-speaking person.

(c) Except as otherwise provided in this section, when a non-English-speaking person is involved in a legal proceeding, the appointing authority shall appoint a qualified interpreter.

(2) If good cause is found for using an interpreter who is not certified or if a qualified interpreter is appointed, the appointing authority shall make a preliminary determination, on the basis of testimony or stated needs of the non-English-speaking person, that the proposed interpreter is able to interpret accurately all communications to and from such person in that particular proceeding. The appointing authority shall satisfy itself on the record that the proposed interpreter:

(a) Is capable of communicating effectively with the court or agency and the person for whom the interpreter would interpret; and

(b) Has read, understands, and will abide by the code of ethics for language interpreters established by court rules.

Sec. 4. RCW 2.43.070 and 1989 c 358 s 7 are each amended to read as follows:

(1) Subject to the availability of funds, the administrative office of the ((~~administrator for the~~)) courts shall establish and administer a comprehensive testing and certification program for language interpreters.

(2) The administrative office of the ((~~administrator for the~~)) courts shall work cooperatively with community colleges and other private or public educational institutions, and with other public or private organizations to establish a certification preparation curriculum and suitable training programs to ensure the availability of certified interpreters. Training programs shall be made readily available in both eastern and western Washington locations.

(3) The administrative office of the ((~~administrator for the~~)) courts shall establish and adopt standards of proficiency, written and oral, in English and the language to be interpreted.

(4) The administrative office of the ((~~administrator for the~~)) courts shall conduct periodic examinations to ensure the availability of certified interpreters. Periodic examinations shall be made readily available in both eastern and western Washington locations.

(5) The administrative office of the (~~(administrator for the)~~) courts shall compile, maintain, and disseminate a current list of interpreters certified by the office (~~(of the administrator for the courts)~~).

(6) The administrative office of the (~~(administrator for the)~~) courts may charge reasonable fees for testing, training, and certification.

Sec. 5. RCW 2.56.010 and 1984 c 20 s 1 are each amended to read as follows:

There shall be a state office to be known as the administrative office of (~~(administrator for)~~) the courts. The executive officer of the administrative office of the courts is the administrator for the courts, who shall be appointed by and hold office at the pleasure of the supreme court of this state (~~(from a list of five persons submitted by the governor of the state of Washington, and shall hold office at the pleasure of the appointing power. He shall not be over the age of sixty years at the time of his appointment. He shall receive a)~~). The administrator's salary (~~(to)~~) shall be fixed by the supreme court.

Sec. 6. RCW 2.56.020 and 1957 c 259 s 2 are each amended to read as follows:

(1) The administrator for the courts, with the approval of the chief justice of the supreme court of this state, shall appoint and fix the compensation of such assistants as are necessary to enable (~~(him to perform)~~) performance of the power and duties vested in (~~(him. During his term of office or employment,)~~) the administrative office of the courts.

(2) Neither the administrator nor any assistant shall engage (~~(directly or indirectly)~~) in the private practice of law (~~(in this state)~~) except as otherwise provided for in this section.

(3) Except as provided in subsection (4) of this section, nothing in this section prohibits the administrator or any assistant from:

(a) Performing legal services for himself or herself or his or her immediate family; or

(b) Performing legal services of a charitable nature.

(4) The legal services identified in subsection (3) of this section may not be performed if they would interfere with the duties of the administrator or any assistant and no services that are performed shall be deemed within the scope of employment.

Sec. 7. RCW 2.56.030 and 2002 c 49 s 2 are each amended to read as follows:

The administrator for the courts shall, under the supervision and direction of the chief justice:

(1) Examine the administrative methods and systems employed in the offices of the judges, clerks, stenographers, and employees of the courts and make recommendations, through the chief justice, for the improvement of the same;

(2) Examine the state of the dockets of the courts and determine the need for assistance by any court;

(3) Make recommendations to the chief justice relating to the assignment of judges where courts are in need of assistance and carry out the direction of the chief justice as to the assignments of judges to counties and districts where the courts are in need of assistance;

(4) Collect and compile statistical and other data and make reports of the business transacted by the courts and transmit the same to the chief justice to the end that proper action may be taken in respect thereto;

(5) Prepare and submit budget estimates of state appropriations necessary for the maintenance and operation of the judicial system and make recommendations in respect thereto;

(6) Collect statistical and other data and make reports relating to the expenditure of public moneys, state and local, for the maintenance and operation of the judicial system and the offices connected therewith;

(7) Obtain reports from clerks of courts in accordance with law or rules adopted by the supreme court of this state on cases and other judicial business in which action has been delayed beyond periods of time specified by law or rules of court and make report thereof to supreme court of this state;

(8) Act as secretary of the judicial conference referred to in RCW 2.56.060;

(9) Submit annually, as of February 1st, to the chief justice, a report of the activities of the administrator's office for the preceding calendar year including activities related to courthouse security;

(10) Administer programs and standards for the training and education of judicial personnel;

(11) Examine the need for new superior court and district court judge positions under (~~(a weighted caseload)~~) an objective workload analysis (~~(that takes into account the time required to hear all the cases in a particular court and the amount of time existing judges have available to hear cases in that court)~~). The results of the (~~(weighted caseload)~~) objective workload analysis shall be reviewed by the board for judicial administration which shall make recommendations to the legislature. It is the intent of the legislature that (~~(weighted caseload)~~) an objective workload analysis become the basis for creating additional district and superior court positions, and recommendations should address that objective;

(12) Provide staff to the judicial retirement account plan under chapter 2.14 RCW;

(13) Attend to such other matters as may be assigned by the supreme court of this state;

(14) Within available funds, develop a curriculum for a general understanding of child development, placement, and treatment resources, as well as specific legal skills and knowledge of relevant statutes including chapters 13.32A, 13.34, and 13.40 RCW, cases, court rules, interviewing skills, and special needs of the abused or neglected child. This curriculum shall be completed and made available to all juvenile court judges, court personnel, and service providers and be updated yearly to reflect changes in statutes, court rules, or case law;

(15) Develop, in consultation with the entities set forth in RCW 2.56.150(3), a comprehensive statewide curriculum for persons who act as guardians ad litem under Title 13 or 26 RCW. The curriculum shall be made available July 1, 1997, and include specialty sections on child development, child sexual abuse, child physical abuse, child neglect, clinical and forensic investigative and interviewing techniques, family reconciliation and mediation services, and relevant statutory and legal requirements. The curriculum shall be made

available to all superior court judges, court personnel, and all persons who act as guardians ad litem;

(16) Develop a curriculum for a general understanding of crimes of malicious harassment, as well as specific legal skills and knowledge of RCW 9A.36.080, relevant cases, court rules, and the special needs of malicious harassment victims. This curriculum shall be made available to all superior court and court of appeals judges and to all justices of the supreme court;

(17) Develop, in consultation with the criminal justice training commission and the commissions established under chapters 43.113, 43.115, and 43.117 RCW, a curriculum for a general understanding of ethnic and cultural diversity and its implications for working with youth of color and their families. The curriculum shall be available to all superior court judges and court commissioners assigned to juvenile court, and other court personnel. Ethnic and cultural diversity training shall be provided annually so as to incorporate cultural sensitivity and awareness into the daily operation of juvenile courts statewide;

(18) Authorize the use of closed circuit television and other electronic equipment in judicial proceedings. The administrator shall promulgate necessary standards and procedures and shall provide technical assistance to courts as required;

(19) Develop a Washington family law handbook in accordance with RCW 2.56.180;

(20) Administer state funds for improving the operation of the courts and provide support for court coordinating councils, under the direction of the board for judicial administration.

Sec. 8. RCW 2.56.120 and 1986 c 158 s 1 are each amended to read as follows:

(1) The administrative office of the (~~(administrator for the)~~) courts, in cooperation with appropriate legislative committees and legislative staff, shall establish a procedure for the provision of judicial impact notes on the effect legislative bills will have on the workload and administration of the courts of this state. The (~~(administrator for)~~) administrative office of the courts and the office of financial management shall coordinate the development of judicial impact notes with the preparation of fiscal notes under chapters 43.88A and 43.132 RCW.

(2) The (~~(administrator for)~~) administrative office of the courts shall provide a judicial impact note on any legislative proposal at the request of any legislator. The note shall be provided to the requesting legislator and copies filed with the appropriate legislative committees in accordance with subsection (3) of this section when the proposed legislation is introduced in either house.

(3) When a judicial impact note is prepared and approved by the (~~(administrator for)~~) administrative office of the courts, copies of the note shall be filed with:

(a) The chairperson of the committee to which the bill was referred upon introduction in the house of origin;

(b) The senate committee on ways and means;

(c) The house of representatives committee on ways and means;

(d) The senate judiciary committee;

(e) The house of representatives judiciary committee; and

(f) The office of financial management.

(4) This section shall not prevent either house of the legislature from acting on any bill before it as otherwise provided by the state Constitution, by law, and by the rules and joint rules of the senate and house of representatives, nor shall the lack of any judicial impact note as provided in this section or any error in the accuracy thereof affect the validity of any measure otherwise duly passed by the legislature.

Sec. 9. RCW 2.56.150 and 1996 c 249 s 3 are each amended to read as follows:

(1) The administrator for the courts shall review the advisability and feasibility of the statewide mandatory use of court-appointed special advocates as described in RCW 26.12.175 to act as guardians ad litem in appropriate cases under Titles 13 and 26 RCW. The review must explore the feasibility of obtaining various sources of private and public funding to implement statewide mandatory use of court-appointed special advocates, such as grants and donations, instead of or in combination with raising court fees or assessments.

(2) The administrator shall also conduct a study on the feasibility and desirability of requiring all persons who act as guardians ad litem under Titles 11, 13, and 26 RCW to be certified as qualified guardians ad litem prior to their eligibility for appointment.

(3) In conducting the review and study the administrator shall consult with: (a) The presidents or directors of all public benefit nonprofit corporations that are eligible to receive state funds under RCW 43.330.135; (b) the attorney general, or a designee; (c) the secretary of the department of social and health services, or a designee; (d) the superior court judges association; (e) the Washington state bar association; (f) public defenders who represent children under Title 13 or 26 RCW; (g) private attorneys who represent parents under Title 13 or 26 RCW; (h) professionals who evaluate families for the purposes of determining the custody or placement decisions of children; (i) the office of financial management; (j) persons who act as volunteer or compensated guardians ad litem; and (k) parents who have dealt with guardians ad litem in court cases. For the purposes of studying the feasibility of a certification requirement for guardians ad litem acting under Title 11 RCW the administrator shall consult with the advisory group formed under RCW 11.88.090.

(4) The (~~office of the~~) administrator (~~for the courts~~) shall also conduct a review of problems and concerns about the role of guardians ad litem in actions under Titles 11, 13, and 26 RCW and recommend alternatives to strengthen judicial oversight of guardians ad litem and ensure fairness and impartiality of the process. The (~~office of the~~) administrator (~~for the courts~~) must accept and obtain comments from parties designated in subsection (3) of this section.

Sec. 10. RCW 2.56.180 and 2003 c 225 s 1 are each amended to read as follows:

(1) The (~~administrator for~~) administrative office of the courts (~~with~~) shall create a handbook explaining the sections of Washington law pertaining to the rights and responsibilities of marital partners to each other and to any children during a marriage and a dissolution of marriage. The handbook may also be provided in videotape or other electronic form.

(2) The handbook created under subsection (1) of this section (~~(will)~~) shall be provided by the county auditor when an individual applies for a marriage license under RCW 26.04.140.

(3) The information contained in the handbook created under subsection (1) of this section (~~(will)~~) shall be reviewed and updated annually. The handbook must contain the following information:

(a) Information on prenuptial agreements as contracts and as a means of structuring financial arrangements and other aspects of the marital relationship;

(b) Information on shared parental responsibility for children, including establishing a residential schedule for the child in the event of the dissolution of the marriage;

(c) Information on notice requirements and standards for parental relocation;

(d) Information on child support for minor children;

(e) Information on property rights, including equitable distribution of assets and premarital and postmarital property rights;

(f) Information on spousal maintenance;

(g) Information on domestic violence, child abuse, and neglect, including penalties;

(h) Information on the court process for dissolution;

(i) Information on the effects of dissolution on children;

(j) Information on community resources that are available to separating or divorcing persons and their children.

Sec. 11. RCW 2.68.020 and 1994 c 8 s 1 are each amended to read as follows:

There is created an account in the custody of the state treasurer to be known as the judicial information system account. The administrative office of the (~~(administrator for the)~~) courts shall maintain and administer the account, in which shall be deposited all moneys received from in-state noncourt users and any out-of-state users of the judicial information system and moneys as specified in RCW 2.68.040 for the purposes of providing judicial information system access to noncourt users and providing an adequate level of automated services to the judiciary. The legislature shall appropriate the funds in the account for the purposes of the judicial information system. The account shall be used for the acquisition of equipment, software, supplies, services, and other costs incidental to the acquisition, development, operation, and administration of information services, telecommunications, systems, software, supplies, and equipment, including the payment of principal and interest on items paid in installments.

Sec. 12. RCW 2.70.050 and 1996 c 221 s 6 are each amended to read as follows:

(1) All powers, duties, and functions of the supreme court and the administrative office of the (~~(administrator for the)~~) courts pertaining to appellate indigent defense are transferred to the office of public defense.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the supreme court or the administrative office of the (~~(administrator for the)~~) courts pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the office of public defense. All cabinets, furniture, office equipment, motor vehicles, and other

tangible property employed by the supreme court or the administrative office of the (~~administrator for the~~) courts in carrying out the powers, functions, and duties transferred shall be made available to the office of public defense. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the office of public defense.

(b) Any appropriations made to the supreme court or the administrative office of the (~~administrator for the~~) courts for carrying out the powers, functions, and duties transferred shall, on June 6, 1996, be transferred and credited to the office of public defense.

(c) Whenever 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 supreme court or the administrative office of the (~~administrator for the~~) courts engaged in performing the powers, functions, and duties transferred are transferred to the jurisdiction of the office of public defense. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the office of public defense 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 supreme court or the administrative office of the (~~administrator for the~~) courts pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the office of public defense. All existing contracts and obligations shall remain in full force and shall be performed by the office of public defense.

(5) The transfer of the powers, duties, functions, and personnel of the supreme court or the administrative office of the (~~administrator for the~~) courts shall not affect the validity of any act performed before June 6, 1996.

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

(7) Nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the personnel board as provided by law.

Sec. 13. RCW 3.46.030 and 2000 c 111 s 5 are each amended to read as follows:

A municipal department shall have exclusive jurisdiction of matters arising from ordinances of the city, and no jurisdiction of other matters except as conferred by statute. A municipal department participating in the program established by the administrative office of the (~~administrator for the~~) courts pursuant to RCW 2.56.160 shall have jurisdiction to take recognizance, approve

bail, and arraign defendants held within its jurisdiction on warrants issued by any court of limited jurisdiction participating in the program.

Sec. 14. RCW 3.50.020 and 2000 c 111 s 6 are each amended to read as follows:

The municipal court shall have exclusive original jurisdiction over traffic infractions arising under city ordinances and exclusive original criminal jurisdiction of all violations of city ordinances duly adopted by the city in which the municipal court is located and shall have original jurisdiction of all other actions brought to enforce or recover license penalties or forfeitures declared or given by such ordinances or by state statutes. The municipal court shall also have the jurisdiction as conferred by statute. The municipal court is empowered to forfeit cash bail or bail bonds and issue execution thereon; and in general to hear and determine all causes, civil or criminal, including traffic infractions, arising under such ordinances and to pronounce judgment in accordance therewith. A municipal court participating in the program established by the administrative office of the (~~administrator for the~~) courts pursuant to RCW 2.56.160 shall have jurisdiction to take recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by any court of limited jurisdiction participating in the program.

Sec. 15. RCW 3.66.010 and 2000 c 111 s 2 are each amended to read as follows:

(1) The justices of the peace elected in accordance with chapters 3.30 through 3.74 RCW are authorized to hold court as judges of the district court for the trial of all actions enumerated in chapters 3.30 through 3.74 RCW or assigned to the district court by law; to hear, try, and determine the same according to the law, and for that purpose where no special provision is otherwise made by law, such court shall be vested with all the necessary powers which are possessed by courts of record in this state; and all laws of a general nature shall apply to such district court as far as the same may be applicable and not inconsistent with the provisions of chapters 3.30 through 3.74 RCW. The district court shall, upon the demand of either party, impanel a jury to try any civil or criminal case in accordance with the provisions of chapter 12.12 RCW. No jury trial may be held in a proceeding involving a traffic infraction.

(2) A district court participating in the program established by the administrative office of the (~~administrator for the~~) courts pursuant to RCW 2.56.160 shall have jurisdiction to take recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by any other court of limited jurisdiction participating in the program.

Sec. 16. RCW 3.66.070 and 2002 c 59 s 1 are each amended to read as follows:

(1) All criminal actions shall be brought in the district where the alleged violation occurred: PROVIDED, That (a) the prosecuting attorney may file felony cases in the district in which the county seat is located, (b) with the consent of the defendant criminal actions other than those arising out of violations of city ordinances may be brought in or transferred to the district in which the county seat is located, (c) if the alleged violation relates to driving, or being in actual physical control of, a motor vehicle while under the influence of intoxicating liquor or any drug and the alleged violation occurred within a

judicial district which has been designated an enhanced enforcement district under RCW 2.56.110, the charges may be filed in that district or in a district within the same county which is adjacent to the district in which the alleged violation occurred, and (d) a district court participating in the program established by the administrative office of the (~~administrator for the~~) courts pursuant to RCW 2.56.160 shall have jurisdiction to take recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by any other court of limited jurisdiction participating in the program.

(2) In the event of an emergency created by act of nature, civil unrest, technological failure, or other hazardous condition, temporary venue for court of limited jurisdiction matters may be had in a court district not impacted by the emergency. Such emergency venue is appropriate only for the duration of the emergency.

(3) A criminal action commenced under a local ordinance or state statute is deemed to be properly heard by the court of original jurisdiction even though the hearing may take place by video or other electronic means as approved by the supreme court and the defendant is appearing by an electronic method from a location outside the court's geographic jurisdiction or boundaries.

Sec. 17. RCW 9.73.230 and 1989 c 271 s 204 are each amended to read as follows:

(1) As part of a bona fide criminal investigation, the chief law enforcement officer of a law enforcement agency or his or her designee above the rank of first line supervisor may authorize the interception, transmission, or recording of a conversation or communication by officers under the following circumstances:

(a) At least one party to the conversation or communication has consented to the interception, transmission, or recording;

(b) Probable cause exists to believe that the conversation or communication involves the unlawful manufacture, delivery, sale, or possession with intent to manufacture, deliver, or sell, controlled substances as defined in chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW; and

(c) A written report has been completed as required by subsection (2) of this section.

(2) The agency's chief officer or designee authorizing an interception, transmission, or recording under subsection (1) of this section, shall prepare and sign a written report at the time of authorization indicating:

(a) The circumstances that meet the requirements of subsection (1) of this section;

(b) The names of the authorizing and consenting parties, except that in those cases where the consenting party is a confidential informant, the name of the confidential informant need not be divulged;

(c) The names of the officers authorized to intercept, transmit, and record the conversation or communication;

(d) The identity of the particular person or persons, if known, who may have committed or may commit the offense;

(e) The details of the particular offense or offenses that may have been or may be committed and the expected date, location, and approximate time of the conversation or communication; and

(f) Whether there was an attempt to obtain authorization pursuant to RCW 9.73.090(2) and, if there was such an attempt, the outcome of the attempt.

(3) An authorization under this section is valid in all jurisdictions within Washington state and for the interception of communications from additional persons if the persons are brought into the conversation or transaction by the nonconsenting party or if the nonconsenting party or such additional persons cause or invite the consenting party to enter another jurisdiction.

(4) The recording of any conversation or communication under this section shall be done in such a manner that protects the recording from editing or other alterations.

(5) An authorization made under this section is valid for no more than twenty-four hours from the time it is signed by the authorizing officer, and each authorization shall independently meet all of the requirements of this section. The authorizing officer shall sign the written report required under subsection (2) of this section, certifying the exact date and time of his or her signature. An authorization under this section may be extended not more than twice for an additional consecutive twenty-four hour period based upon the same probable cause regarding the same suspected transaction. Each such extension shall be signed by the authorizing officer.

(6) Within fifteen days after the signing of an authorization that results in any interception, transmission, or recording of a conversation or communication pursuant to this section, the law enforcement agency which made the interception, transmission, or recording shall submit a report including the original authorization under subsection (2) of this section to a judge of a court having jurisdiction which report shall identify (a) the persons, including the consenting party, who participated in the conversation, and (b) the date, location, and approximate time of the conversation.

In those cases where the consenting party is a confidential informant, the name of the confidential informant need not be divulged.

A monthly report shall be filed by the law enforcement agency with the administrator for the courts indicating the number of authorizations granted, the date and time of each authorization, interceptions made, arrests resulting from an interception, and subsequent invalidations.

(7)(a) Within two judicial days of receipt of a report under subsection (6) of this section, the court shall make an ex parte review of the authorization, but not of the evidence, and shall make a determination whether the requirements of subsection (1) of this section were met. If the court determines that any of the requirements of subsection (1) of this section were not met, the court shall order that any recording and any copies or transcriptions of the conversation or communication be destroyed. Destruction of recordings, copies, or transcriptions shall be stayed pending any appeal of a finding that the requirements of subsection (1) of this section were not met.

(b) Absent a continuation under (c) of this subsection, six months following a determination under (a) of this subsection that probable cause did not exist, the court shall cause a notice to be mailed to the last known address of any nonconsenting party to the conversation or communication that was the subject of the authorization. The notice shall indicate the date, time, and place of any interception, transmission, or recording made pursuant to the authorization. The notice shall also identify the agency that sought the authorization and shall

indicate that a review under (a) of this subsection resulted in a determination that the authorization was made in violation of this section.

(c) An authorizing agency may obtain six-month extensions to the notice requirement of (b) of this subsection in cases of active, ongoing criminal investigations that might be jeopardized by sending the notice.

(8) In any subsequent judicial proceeding, evidence obtained through the interception or recording of a conversation or communication pursuant to this section shall be admissible only if:

(a) The court finds that the requirements of subsection (1) of this section were met and the evidence is used in prosecuting an offense listed in subsection (1)(b) of this section; or

(b) The evidence is admitted with the permission of the person whose communication or conversation was intercepted, transmitted, or recorded; or

(c) The evidence is admitted in a prosecution for a "serious violent offense" as defined in RCW 9.94A.030 in which a party who consented to the interception, transmission, or recording was a victim of the offense; or

(d) The evidence is admitted in a civil suit for personal injury or wrongful death arising out of the same incident, in which a party who consented to the interception, transmission, or recording was a victim of a serious violent offense as defined in RCW 9.94A.030.

Nothing in this subsection bars the admission of testimony of a party or eyewitness to the intercepted, transmitted, or recorded conversation or communication when that testimony is unaided by information obtained solely by violation of RCW 9.73.030.

(9) Any determination of invalidity of an authorization under this section shall be reported by the court to the administrative office of the (~~administrator for the~~) courts.

(10) Any person who intentionally intercepts, transmits, or records or who intentionally authorizes the interception, transmission, or recording of a conversation or communication in violation of this section, is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(11) An authorizing agency is liable for twenty-five thousand dollars in exemplary damages, in addition to any other damages authorized by this chapter or by other law, to a person whose conversation or communication was intercepted, transmitted, or recorded pursuant to an authorization under this section if:

(a) In a review under subsection (7) of this section, or in a suppression of evidence proceeding, it has been determined that the authorization was made without the probable cause required by subsection (1)(b) of this section; and

(b) The authorization was also made without a reasonable suspicion that the conversation or communication would involve the unlawful acts identified in subsection (1)(b) of this section.

***Sec. 18. RCW 9.94A.660 and 2002 c 290 s 20 and 2002 c 175 s 10 are each reenacted and amended to read as follows:**

(1) An offender is eligible for the special drug offender sentencing alternative if:

(a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.533 (3) or (4);

(b) The offender has no current or prior convictions for a sex offense or violent offense in this state, another state, or the United States;

(c) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance; and

(d) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence.

(2) If the standard sentence range is greater than one year and the sentencing court determines that the offender is eligible for this alternative and that the offender and the community will benefit from the use of the alternative, the judge may waive imposition of a sentence within the standard sentence range and impose a sentence that must include a period of total confinement in a state facility for one-half of the midpoint of the standard sentence range. During incarceration in the state facility, offenders sentenced under this subsection shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections.

The court shall also impose:

(a) The remainder of the midpoint of the standard range as a term of community custody which must include appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services;

(b) Crime-related prohibitions including a condition not to use illegal controlled substances;

(c) A requirement to submit to urinalysis or other testing to monitor that status; and

(d) A term of community custody pursuant to RCW 9.94A.715 to be imposed upon failure to complete or administrative termination from the special drug offender sentencing alternative program.

The court may prohibit the offender from using alcohol or controlled substances and may require that the monitoring for controlled substances be conducted by the department or by a treatment alternatives to street crime program or a comparable court or agency-referred program. The offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring. In addition, the court shall impose three or more of the following conditions:

(i) Devote time to a specific employment or training;

(ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer before any change in the offender's address or employment;

(iii) Report as directed to a community corrections officer;

(iv) Pay all court-ordered legal financial obligations;

(v) Perform community restitution work;

(vi) Stay out of areas designated by the sentencing court;

(vii) Such other conditions as the court may require such as affirmative conditions.

(3) If the offender violates any of the sentence conditions in subsection (2) of this section or is found by the United States attorney general to be subject to a deportation order, a violation hearing shall be held by the department unless waived by the offender.

(a) If the department finds that conditions have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence.

(b) If the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence.

(4) The department shall determine the rules for calculating the value of a day fine based on the offender's income and reasonable obligations which the offender has for the support of the offender and any dependents. These rules shall be developed in consultation with the ~~((administrator for))~~ administrative office of the courts, the office of financial management, and the commission.

(5) An offender who fails to complete the special drug offender sentencing alternative program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court and shall be subject to all rules relating to earned release time. An offender who violates any conditions of supervision as defined by the department shall be sanctioned. Sanctions may include, but are not limited to, reclassifying the offender to serve the unexpired term of his or her sentence as ordered by the sentencing court. If an offender is reclassified to serve the unexpired term of his or her sentence, the offender shall be subject to all rules relating to earned release time.

*Sec. 18 was vetoed. See message at end of chapter.

Sec. 19. RCW 9.94A.850 and 2002 c 290 s 22, 2002 c 237 s 16, and 2002 c 175 s 16 are each reenacted and amended to read as follows:

(1) A sentencing guidelines commission is established as an agency of state government.

(2) The legislature finds that the commission, having accomplished its original statutory directive to implement this chapter, and having expertise in sentencing practice and policies, shall:

(a) Evaluate state sentencing policy, to include whether the sentencing ranges and standards are consistent with and further:

(i) The purposes of this chapter as defined in RCW 9.94A.010; and

(ii) The intent of the legislature to emphasize confinement for the violent offender and alternatives to confinement for the nonviolent offender.

The commission shall provide the governor and the legislature with its evaluation and recommendations under this subsection not later than December 1, 1996, and every two years thereafter;

(b) Recommend to the legislature revisions or modifications to the standard sentence ranges, state sentencing policy, prosecuting standards, and other standards. If implementation of the revisions or modifications would result in exceeding the capacity of correctional facilities, then the commission shall

accompany its recommendation with an additional list of standard sentence ranges which are consistent with correction capacity;

(c) Study the existing criminal code and from time to time make recommendations to the legislature for modification;

(d)(i) Serve as a clearinghouse and information center for the collection, preparation, analysis, and dissemination of information on state and local adult and juvenile sentencing practices; (ii) develop and maintain a computerized adult and juvenile sentencing information system by individual superior court judge consisting of offender, offense, history, and sentence information entered from judgment and sentence forms for all adult felons; and (iii) conduct ongoing research regarding adult and juvenile sentencing guidelines, use of total confinement and alternatives to total confinement, plea bargaining, and other matters relating to the improvement of the adult criminal justice system and the juvenile justice system;

(e) Assume the powers and duties of the juvenile disposition standards commission after June 30, 1996;

(f) Evaluate the effectiveness of existing disposition standards and related statutes in implementing policies set forth in RCW 13.40.010 generally, specifically review the guidelines relating to the confinement of minor and first-time offenders as well as the use of diversion, and review the application of current and proposed juvenile sentencing standards and guidelines for potential adverse impacts on the sentencing outcomes of racial and ethnic minority youth;

(g) Solicit the comments and suggestions of the juvenile justice community concerning disposition standards, and make recommendations to the legislature regarding revisions or modifications of the standards. The evaluations shall be submitted to the legislature on December 1 of each odd-numbered year. The department of social and health services shall provide the commission with available data concerning the implementation of the disposition standards and related statutes and their effect on the performance of the department's responsibilities relating to juvenile offenders, and with recommendations for modification of the disposition standards. The administrative office of the (~~administrator for the~~) courts shall provide the commission with available data on diversion, including the use of youth court programs, and dispositions of juvenile offenders under chapter 13.40 RCW; and

(h) Not later than December 1, 1997, and at least every two years thereafter, based on available information, report to the governor and the legislature on:

(i) Racial disproportionality in juvenile and adult sentencing, and, if available, the impact that diversions, such as youth courts, have on racial disproportionality in juvenile prosecution, adjudication, and sentencing;

(ii) The capacity of state and local juvenile and adult facilities and resources; and

(iii) Recidivism information on adult and juvenile offenders.

(3) Each of the commission's recommended standard sentence ranges shall include one or more of the following: Total confinement, partial confinement, community supervision, community restitution, and a fine.

(4) The standard sentence ranges of total and partial confinement under this chapter, except as provided in RCW 9.94A.517, are subject to the following limitations:

(a) If the maximum term in the range is one year or less, the minimum term in the range shall be no less than one-third of the maximum term in the range, except that if the maximum term in the range is ninety days or less, the minimum term may be less than one-third of the maximum;

(b) If the maximum term in the range is greater than one year, the minimum term in the range shall be no less than seventy-five percent of the maximum term in the range, except that for murder in the second degree in seriousness level XIV under RCW 9.94A.510, the minimum term in the range shall be no less than fifty percent of the maximum term in the range; and

(c) The maximum term of confinement in a range may not exceed the statutory maximum for the crime as provided in RCW 9A.20.021.

(5)(a) Not later than December 31, 1999, the commission shall propose to the legislature the initial community custody ranges to be included in sentences under RCW 9.94A.715 for crimes committed on or after July 1, 2000. Not later than December 31 of each year, the commission may propose modifications to the ranges. The ranges shall be based on the principles in RCW 9.94A.010, and shall take into account the funds available to the department for community custody. The minimum term in each range shall not be less than one-half of the maximum term.

(b) The legislature may, by enactment of a legislative bill, adopt or modify the community custody ranges proposed by the commission. If the legislature fails to adopt or modify the initial ranges in its next regular session after they are proposed, the proposed ranges shall take effect without legislative approval for crimes committed on or after July 1, 2000.

(c) When the commission proposes modifications to ranges pursuant to this subsection, the legislature may, by enactment of a bill, adopt or modify the ranges proposed by the commission for crimes committed on or after July 1 of the year after they were proposed. Unless the legislature adopts or modifies the commission's proposal in its next regular session, the proposed ranges shall not take effect.

(6) The commission shall exercise its duties under this section in conformity with chapter 34.05 RCW.

Sec. 20. RCW 9.94A.855 and 1999 c 143 s 10 are each amended to read as follows:

The commission shall appoint a research staff of sufficient size and with sufficient resources to accomplish its duties. The commission may request from the office of financial management, the indeterminate sentence review board, (~~administrator for~~) the administrative office of the courts, the department of corrections, and the department of social and health services such data, information, and data processing assistance as it may need to accomplish its duties, and such services shall be provided without cost to the commission. The commission shall adopt its own bylaws.

The salary for a full-time executive officer, if any, shall be fixed by the governor pursuant to RCW 43.03.040.

Sec. 21. 1983 c 199 s 2 (uncodified) is amended to read as follows:

The administrative office of the (~~administrator for the~~) courts shall notify all courts of the requirements contained in RCW 10.40.200. The judicial council shall recommend to the supreme court appropriate court rules to ensure

compliance with the requirements of RCW 10.40.200. Until court rules are promulgated, the administrative office of the (~~(administrator for the)~~) courts shall develop and distribute forms necessary for the courts to comply with RCW 10.40.200.

Sec. 22. RCW 10.64.120 and 1996 c 298 s 6 are each amended to read as follows:

(1) Every judge of a court of limited jurisdiction shall have the authority to levy upon a person a monthly assessment not to exceed one hundred dollars for services provided whenever the person is referred by the court to the misdemeanor probation department for evaluation or supervision services. The assessment may also be made by a judge in superior court when such misdemeanor or gross misdemeanor cases are heard in the superior court.

(2) For the purposes of this section the administrative office of the (~~(administrator for the)~~) courts shall define a probation department and adopt rules for the qualifications of probation officers based on occupational and educational requirements developed by an oversight committee. This oversight committee shall include a representative from the district and municipal court judges association, the misdemeanor corrections association, the administrative office of the (~~(administrator for the)~~) courts, and associations of cities and counties. The oversight committee shall consider qualifications that provide the training and education necessary to (a) conduct presentencing and postsentencing background investigations, including sentencing recommendations to the court regarding jail terms, alternatives to incarceration, and conditions of release; and (b) provide ongoing supervision and assessment of offenders' needs and the risk they pose to the community.

(3) It shall be the responsibility of the probation services office to implement local procedures approved by the court of limited jurisdiction to ensure collection and payment of such fees into the general fund of the city or county treasury.

(4) Revenues raised under this section shall be used to fund programs for probation services and shall be in addition to those funds provided in RCW 3.62.050.

Sec. 23. RCW 10.98.080 and 1985 c 201 s 3 are each amended to read as follows:

The section shall promptly furnish a state identification number to the originating agency and to the prosecuting attorney who received a copy of the arrest and fingerprint form. In the case of juvenile felony-like adjudications, the section shall furnish, upon request, the state identification number to the juvenile information section of the (~~(administrator for)~~) administrative office of the courts.

Sec. 24. RCW 10.98.100 and 1985 c 201 s 5 are each amended to read as follows:

The section shall administer a compliance audit at least once annually for each prosecuting attorney, district and municipal court, and originating agency to ensure that all disposition reports have been received and added to the criminal offender record information described in RCW 43.43.705. The section shall prepare listings of all arrests charged and listed in the criminal offender record information for which no disposition report has been received and which has

been outstanding for more than nine months since the date of arrest. Each prosecuting attorney, district and municipal court, and originating agency shall be furnished a list of outstanding disposition reports. Cases pending prosecution shall be considered outstanding dispositions in the compliance audit. Within forty-five days, the prosecuting attorney, district and municipal court, and originating agency shall provide the section with a current disposition report for each outstanding disposition. The section shall assist prosecuting attorneys with the compliance audit by cross-checking outstanding cases with the ~~((administrator for))~~ administrative office of the courts and the department of corrections. The section may provide technical assistance to prosecuting attorneys, district or municipal courts, or originating agencies for their compliance audits. The results of compliance audits shall be published annually and distributed to legislative committees dealing with criminal justice issues, the office of financial management, and criminal justice agencies and associations.

Sec. 25. RCW 10.98.160 and 2003 c 104 s 2 are each amended to read as follows:

In the development and modification of the procedures, definitions, and reporting capabilities of the section, the department, the office of financial management, and the responsible agencies and persons shall consider the needs of other criminal justice agencies such as the ~~((administrator for))~~ administrative office of the courts, local law enforcement agencies, local jails, the sentencing guidelines commission, the indeterminate sentence review board, the clemency board, prosecuting attorneys, and affected state agencies such as the office of financial management and legislative committees dealing with criminal justice issues. The Washington integrated justice information board shall review and provide recommendations to state justice agencies and the courts for development and modification of the statewide justice information network.

Sec. 26. RCW 13.34.102 and 2000 c 124 s 3 are each amended to read as follows:

(1) All guardians ad litem must comply with the training requirements established under RCW 2.56.030(15), prior to their appointment in cases under Title 13 RCW, except that volunteer guardians ad litem or court-appointed special advocates may comply with alternative training requirements approved by the administrative office of the ~~((administrator for the))~~ courts that meet or exceed the statewide requirements.

(2)(a) Each guardian ad litem program for compensated guardians ad litem shall establish a rotational registry system for the appointment of guardians ad litem. If a judicial district does not have a program the court shall establish the rotational registry system. Guardians ad litem shall be selected from the registry except in exceptional circumstances as determined and documented by the court. The parties may make a joint recommendation for the appointment of a guardian ad litem from the registry.

(b) In judicial districts with a population over one hundred thousand, a list of three names shall be selected from the registry and given to the parties along with the background information as specified in RCW 13.34.100(3), including their hourly rate for services. Each party may, within three judicial days, strike one name from the list. If more than one name remains on the list, the court shall make the appointment from the names on the list. In the event all three names

are stricken the person whose name appears next on the registry shall be appointed.

(c) If a party reasonably believes that the appointed guardian ad litem lacks the necessary expertise for the proceeding, charges an hourly rate higher than what is reasonable for the particular proceeding, or has a conflict of interest, the party may, within three judicial days from the appointment, move for substitution of the appointed guardian ad litem by filing a motion with the court.

(d) The superior court shall remove any person from the guardian ad litem registry who misrepresents his or her qualifications pursuant to a grievance procedure established by the court.

(3) The rotational registry system shall not apply to court-appointed special advocate programs.

Sec. 27. RCW 13.40.430 and 2003 c 207 s 13 are each amended to read as follows:

The (~~(administrator for)~~) administrative office of the courts shall collect such data as may be necessary to monitor any disparity in processing or disposing of cases involving juvenile offenders due to economic, gender, geographic, or racial factors that may result from implementation of section 1, chapter 373, Laws of 1993. The (~~(administrator for)~~) administrative office of the courts may, in consultation with juvenile courts, determine a format for the collection of such data and a schedule for the reporting of such data and shall keep a minimum of five years of data at any given time.

Sec. 28. RCW 13.64.080 and 1993 c 294 s 8 are each amended to read as follows:

The administrative office of the (~~(administrator for the)~~) courts shall prepare and distribute to the county court clerks appropriate forms for minors seeking to initiate a petition of emancipation.

Sec. 29. RCW 13.70.130 and 1989 1st ex.s. c 17 s 15 are each amended to read as follows:

The (~~(administrator for)~~) administrative office of the courts may apply for and receive funds from federal, local, and private sources for carrying out the purposes of this chapter.

Sec. 30. RCW 26.12.177 and 2000 c 124 s 7 are each amended to read as follows:

(1) All guardians ad litem and investigators appointed under this title must comply with the training requirements established under RCW 2.56.030(15), prior to their appointment in cases under Title 26 RCW, except that volunteer guardians ad litem or court-appointed special advocates may comply with alternative training requirements approved by the administrative office of the (~~(administrator for the)~~) courts that meet or exceed the statewide requirements.

(2)(a) Each guardian ad litem program for compensated guardians ad litem shall establish a rotational registry system for the appointment of guardians ad litem and investigators under this title. If a judicial district does not have a program the court shall establish the rotational registry system. Guardians ad litem and investigators under this title shall be selected from the registry except in exceptional circumstances as determined and documented by the court. The parties may make a joint recommendation for the appointment of a guardian ad litem from the registry.

(b) In judicial districts with a population over one hundred thousand, a list of three names shall be selected from the registry and given to the parties along with the background information as specified in RCW 26.12.175(3), including their hourly rate for services. Each party may, within three judicial days, strike one name from the list. If more than one name remains on the list, the court shall make the appointment from the names on the list. In the event all three names are stricken the person whose name appears next on the registry shall be appointed.

(c) If a party reasonably believes that the appointed guardian ad litem lacks the necessary expertise for the proceeding, charges an hourly rate higher than what is reasonable for the particular proceeding, or has a conflict of interest, the party may, within three judicial days from the appointment, move for substitution of the appointed guardian ad litem by filing a motion with the court.

(d) Under this section, within either registry referred to in (a) of this subsection, a subregistry may be created that consists of guardians ad litem under contract with the department of social and health services' division of child support. Guardians ad litem on such a subregistry shall be selected and appointed in state-initiated paternity cases only.

(e) The superior court shall remove any person from the guardian ad litem registry who misrepresents his or her qualifications pursuant to a grievance procedure established by the court.

(3) The rotational registry system shall not apply to court-appointed special advocate programs.

Sec. 31. RCW 26.12.802 and 1999 c 397 s 2 are each amended to read as follows:

The ~~((administrator for))~~ administrative office of the courts shall conduct a unified family court pilot program.

(1) Pilot program sites shall be selected through a request for proposal process, and shall be established in no more than three superior court judicial districts.

(2) To be eligible for consideration as a pilot project site, judicial districts must have a statutorily authorized judicial complement of at least five judges.

(3) The ~~((administrator for))~~ administrative office of the courts shall develop criteria for the unified family court pilot program. The pilot program shall include:

(a) All case types under Title 13 RCW, chapters 26.09, 26.10, 26.12, 26.18, 26.19, 26.20, 26.26, 26.50, 26.27, and 28A.225 RCW;

(b) Unified family court judicial officers, who volunteer for the program, and meet training requirements established by local court rule;

(c) Case management practices that provide a flexible response to the diverse court-related needs of families involved in multiple areas of the justice system. Case management practices should result in a reduction in process redundancies and an efficient use of time and resources, and create a system enabling multiple case type resolution by one judicial officer or judicial team;

(d) A court facilitator to provide assistance to parties with matters before the unified family court; and

(e) An emphasis on providing nonadversarial methods of dispute resolution such as a settlement conference, evaluative mediation by attorney mediators, and facilitative mediation by nonattorney mediators.

(4) The administrative office of the (~~(administrator for the)~~) courts shall publish and disseminate a state-approved listing of definitions of nonadversarial methods of dispute resolution so that court officials, practitioners, and users can choose the most appropriate process for the matter at hand.

(5) The administrative office of the (~~(administrator for the)~~) courts shall provide to the judicial districts selected for the pilot program the computer resources needed by each judicial district to implement the unified family court pilot program.

(6) The administrative office of the (~~(administrator for the)~~) courts shall conduct a study of the pilot program measuring improvements in the judicial system's response to family involvement in the judicial system. The administrator for the courts shall report preliminary findings and final results of the study to the governor, the chief justice of the supreme court, and the legislature on a biennial basis. The initial report is due by July 1, 2000, and the final report is due by December 1, 2004.

Sec. 32. RCW 26.12.804 and 1999 c 397 s 3 are each amended to read as follows:

The judges of the superior court judicial districts with unified family court pilot programs shall adopt local court rules directing the program. The local court rules shall comply with the criteria established by the (~~(administrator for)~~) administrative office of the courts and shall include:

(1) A requirement that all judicial officers hearing cases in unified family court:

(a) Complete an initial training program including the topic areas of childhood development, domestic violence, cultural awareness, child abuse and neglect, chemical dependency, and mental illness; and

(b) Subsequent to the training in (a) of this subsection, annually attend a minimum of eight hours of continuing education of pertinence to the unified family court;

(2) Case management that is based on the practice of one judge or judicial team handling all matters relating to a family;

(3) An emphasis on coordinating or consolidating, to the extent possible, all cases before the unified family court relating to a family; and

(4) Programs that provide for record confidentiality to protect the confidentiality of court records in accordance with the law. However law enforcement agencies shall have access to the records to the extent permissible under the law.

Sec. 33. RCW 26.18.210 and 1990 1st ex.s. c 2 s 22 are each amended to read as follows:

(1) The (~~(administrator for)~~) administrative office of the courts shall develop a child support order summary report form to provide for the reporting of summary information in every case in which a child support order is entered or modified either judicially or administratively. The (~~(administrator for)~~) administrative office of the courts shall attempt to the greatest extent possible to make the form simple and understandable by the parties. The form shall indicate the following:

(a) The county in which the order was entered and the cause number;

(b) Whether it was a judicial or administrative order;

- (c) Whether the order is an original order or from a modification;
 - (d) The number of children of the parties and the children's ages;
 - (e) The combined monthly net income of parties;
 - (f) The monthly net income of the father as determined by the court;
 - (g) The monthly net income of the mother as determined by the court;
 - (h) The basic child support obligation for each child as determined from the economic table;
 - (i) Whether or not the court deviated from the child support for each child;
 - (j) The reason or reasons stated by the court for the deviation;
 - (k) The amount of child support after the deviation;
 - (l) Any amount awarded for day care;
 - (m) Any other extraordinary amounts in the order;
 - (n) Any amount ordered for postsecondary education;
 - (o) The total amount of support ordered;
 - (p) In the case of a modification, the amount of support in the previous order;
 - (q) If the change in support was in excess of thirty percent, whether the change was phased in;
 - (r) The amount of the transfer payment ordered;
 - (s) Which parent was ordered to make the transfer payment; and
 - (t) The date of the entry of the order.
- (2) The ~~((administrator for))~~ administrative office of the courts shall make the form available to the parties.

Sec. 34. RCW 26.18.220 and 1992 c 229 s 5 are each amended to read as follows:

(1) The ~~((administrator for))~~ administrative office of the courts shall develop not later than July 1, 1991, standard court forms and format rules for mandatory use by litigants in all actions commenced under chapters 26.09, 26.10, and 26.26 RCW effective January 1, 1992. The administrator for the courts shall develop mandatory forms for financial affidavits for integration into the worksheets. The forms shall be developed and approved not later than September 1, 1992. The parties shall use the mandatory form for financial affidavits for actions commenced on or after September 1, 1992. The ~~((administrator for))~~ administrative office of the courts has continuing responsibility to develop and revise mandatory forms and format rules as appropriate.

(2) A party may delete unnecessary portions of the forms according to the rules established by the ~~((administrator for))~~ administrative office of the courts. A party may supplement the mandatory forms with additional material.

(3) A party's failure to use the mandatory forms or follow the format rules shall not be a reason to dismiss a case, refuse a filing, or strike a pleading. However, the court may require the party to submit a corrected pleading and may impose terms payable to the opposing party or payable to the court, or both.

(4) The ~~((administrator for))~~ administrative office of the courts shall distribute a master copy of the forms to all county court clerks. The ~~((administrator for))~~ administrative office of the courts and county clerks shall distribute the mandatory forms to the public upon request and may charge for the cost of production and distribution of the forms. Private vendors may distribute the mandatory forms. Distribution may be in printed or electronic form.

Sec. 35. RCW 26.19.011 and 1991 sp.s. c 28 s 4 are each amended to read as follows:

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

(1) "Basic child support obligation" means the monthly child support obligation determined from the economic table based on the parties' combined monthly net income and the number of children for whom support is owed.

(2) "Child support schedule" means the standards, economic table, worksheets, and instructions, as defined in this chapter.

(3) "Court" means a superior court judge, court commissioner, and presiding and reviewing officers who administratively determine or enforce child support orders.

(4) "Deviation" means a child support amount that differs from the standard calculation.

(5) "Economic table" means the child support table for the basic support obligation provided in RCW 26.19.020.

(6) "Instructions" means the instructions developed by the administrative office of the ((~~administrator for the~~)) courts pursuant to RCW 26.19.050 for use in completing the worksheets.

(7) "Standards" means the standards for determination of child support as provided in this chapter.

(8) "Standard calculation" means the presumptive amount of child support owed as determined from the child support schedule before the court considers any reasons for deviation.

(9) "Support transfer payment" means the amount of money the court orders one parent to pay to another parent or custodian for child support after determination of the standard calculation and deviations. If certain expenses or credits are expected to fluctuate and the order states a formula or percentage to determine the additional amount or credit on an ongoing basis, the term "support transfer payment" does not mean the additional amount or credit.

(10) "Worksheets" means the forms developed by the administrative office of the ((~~administrator for the~~)) courts pursuant to RCW 26.19.050 for use in determining the amount of child support.

Sec. 36. RCW 26.19.035 and 1992 c 229 s 6 are each amended to read as follows:

(1) **Application of the child support schedule.** The child support schedule shall be applied:

(a) In each county of the state;

(b) In judicial and administrative proceedings under this title or Title 13 or 74 RCW;

(c) In all proceedings in which child support is determined or modified;

(d) In setting temporary and permanent support;

(e) In automatic modification provisions or decrees entered pursuant to RCW 26.09.100; and

(f) In addition to proceedings in which child support is determined for minors, to adult children who are dependent on their parents and for whom support is ordered pursuant to RCW 26.09.100.

The provisions of this chapter for determining child support and reasons for deviation from the standard calculation shall be applied in the same manner by the court, presiding officers, and reviewing officers.

(2) **Written findings of fact supported by the evidence.** An order for child support shall be supported by written findings of fact upon which the support determination is based and shall include reasons for any deviation from the standard calculation and reasons for denial of a party's request for deviation from the standard calculation. The court shall enter written findings of fact in all cases whether or not the court: (a) Sets the support at the presumptive amount, for combined monthly net incomes below five thousand dollars; (b) sets the support at an advisory amount, for combined monthly net incomes between five thousand and seven thousand dollars; or (c) deviates from the presumptive or advisory amounts.

(3) **Completion of worksheets.** Worksheets in the form developed by the administrative office of the (~~administrator for the~~) courts shall be completed under penalty of perjury and filed in every proceeding in which child support is determined. The court shall not accept incomplete worksheets or worksheets that vary from the worksheets developed by the administrative office of the (~~administrator for the~~) courts.

(4) **Court review of the worksheets and order.** The court shall review the worksheets and the order setting support for the adequacy of the reasons set forth for any deviation or denial of any request for deviation and for the adequacy of the amount of support ordered. Each order shall state the amount of child support calculated using the standard calculation and the amount of child support actually ordered. Worksheets shall be attached to the decree or order or if filed separately shall be initialed or signed by the judge and filed with the order.

Sec. 37. RCW 26.19.050 and 1990 1st ex.s. c 2 s 5 are each amended to read as follows:

(1) The (~~administrator for~~) administrative office of the courts shall develop and adopt worksheets and instructions to assist the parties and courts in establishing the appropriate child support level and apportionment of support. The (~~administrator for~~) administrative office of the courts shall attempt to the greatest extent possible to make the worksheets and instructions understandable by persons who are not represented by legal counsel.

(2) The (~~administrator for~~) administrative office of the courts shall develop and adopt standards for the printing of worksheets and shall establish a process for certifying printed worksheets. The administrator may maintain a register of sources for approved worksheets.

(3) The (~~administrator for~~) administrative office of the courts should explore methods to assist pro se parties and judges in the courtroom to calculate support payments through automated software, equipment, or personal assistance.

Sec. 38. RCW 26.26.065 and 1992 c 229 s 7 are each amended to read as follows:

(1) Effective January 1, 1992, a party shall not file any pleading with the clerk of the court in an action commenced under this chapter unless on forms approved by the (~~administrator for~~) administrative office of the courts.

(2) The parties shall comply with requirements for submission to the court of forms as provided in RCW 26.18.220.

Sec. 39. RCW 26.50.030 and 1996 c 248 s 12 are each amended to read as follows:

There shall exist an action known as a petition for an order for protection in cases of domestic violence.

(1) A petition for relief shall allege the existence of domestic violence, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought. Petitioner and respondent shall disclose the existence of any other litigation concerning the custody or residential placement of a child of the parties as set forth in RCW (~~26.27.090~~) 26.27.281 and the existence of any other restraining, protection, or no-contact orders between the parties.

(2) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties except in cases where the court realigns petitioner and respondent in accordance with RCW 26.50.060(4).

(3) Within ninety days of receipt of the master copy from the (~~administrator for~~) administrative office of the courts, all court clerk's offices shall make available the standardized forms, instructions, and informational brochures required by RCW 26.50.035 and shall fill in and keep current specific program names and telephone numbers for community resources. Any assistance or information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.

(4) No filing fee may be charged for proceedings under this section. Forms and instructional brochures shall be provided free of charge.

(5) A person is not required to post a bond to obtain relief in any proceeding under this section.

Sec. 40. RCW 26.50.035 and 2000 c 119 s 14 are each amended to read as follows:

(1) The (~~administrator for~~) administrative office of the courts shall develop and prepare instructions and informational brochures required under RCW 26.50.030(4), standard petition and order for protection forms, and a court staff handbook on domestic violence and the protection order process. The standard petition and order for protection forms must be used after September 1, 1994, for all petitions filed and orders issued under this chapter. The instructions, brochures, forms, and handbook shall be prepared in consultation with interested persons, including a representative of the state domestic violence coalition, judges, and law enforcement personnel.

(a) The instructions shall be designed to assist petitioners in completing the petition, and shall include a sample of standard petition and order for protection forms.

(b) The informational brochure shall describe the use of and the process for obtaining, modifying, and terminating a domestic violence protection order as provided under this chapter, an antiharassment no-contact order as provided under chapter 9A.46 RCW, a domestic violence no-contact order as provided under chapter 10.99 RCW, a restraining order as provided under chapters 26.09,

26.10, 26.26, and 26.44 RCW, an antiharassment protection order as provided by chapter 10.14 RCW, and a foreign protection order as defined in chapter 26.52 RCW.

(c) The order for protection form shall include, in a conspicuous location, notice of criminal penalties resulting from violation of the order, and the following statement: "You can be arrested even if the person or persons who obtained the order invite or allow you to violate the order's prohibitions. The respondent has the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order upon written application."

(d) The court staff handbook shall allow for the addition of a community resource list by the court clerk.

(2) All court clerks shall obtain a community resource list from a domestic violence program, defined in RCW 70.123.020, serving the county in which the court is located. The community resource list shall include the names and telephone numbers of domestic violence programs serving the community in which the court is located, including law enforcement agencies, domestic violence agencies, sexual assault agencies, legal assistance programs, interpreters, multicultural programs, and batterers' treatment programs. The court shall make the community resource list available as part of or in addition to the informational brochures described in subsection (1) of this section.

(3) The (~~administrator for~~) administrative office of the courts shall distribute a master copy of the petition and order forms, instructions, and informational brochures to all court clerks and shall distribute a master copy of the petition and order forms to all superior, district, and municipal courts.

(4) For purposes of this section, "court clerks" means court administrators in courts of limited jurisdiction and elected court clerks.

(5) The (~~administrator for~~) administrative office of the courts shall determine the significant non-English-speaking or limited English-speaking populations in the state. The administrator shall then arrange for translation of the instructions and informational brochures required by this section, which shall contain a sample of the standard petition and order for protection forms, into the languages spoken by those significant non-English-speaking populations and shall distribute a master copy of the translated instructions and informational brochures to all court clerks by January 1, 1997.

(6) The (~~administrator for~~) administrative office of the courts shall update the instructions, brochures, standard petition and order for protection forms, and court staff handbook when changes in the law make an update necessary.

Sec. 41. RCW 35.20.030 and 2000 c 111 s 7 are each amended to read as follows:

The municipal court shall have jurisdiction to try violations of all city ordinances and all other actions brought to enforce or recover license penalties or forfeitures declared or given by any such ordinances. It is empowered to forfeit cash bail or bail bonds and issue execution thereon, to hear and determine all causes, civil or criminal, arising under such ordinances, and to pronounce judgment in accordance therewith: PROVIDED, That for a violation of the criminal provisions of an ordinance no greater punishment shall be imposed than a fine of five thousand dollars or imprisonment in the city jail not to exceed one year, or both such fine and imprisonment, but the punishment for any criminal

ordinance shall be the same as the punishment provided in state law for the same crime. All civil and criminal proceedings in municipal court, and judgments rendered therein, shall be subject to review in the superior court by writ of review or on appeal: PROVIDED, That an appeal from the court's determination or order in a traffic infraction proceeding may be taken only in accordance with RCW 46.63.090(5). Costs in civil and criminal cases may be taxed as provided in district courts. A municipal court participating in the program established by the administrative office of the (~~administrator for the~~) courts pursuant to RCW 2.56.160 shall have jurisdiction to take recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by any court of limited jurisdiction participating in the program.

Sec. 42. RCW 36.01.050 and 2000 c 244 s 1 are each amended to read as follows:

(1) All actions against any county may be commenced in the superior court of such county, or in the superior court of either of the two nearest judicial districts. All actions by any county shall be commenced in the superior court of the county in which the defendant resides, or in either of the two judicial districts nearest to the county bringing the action.

(2) The determination of the nearest judicial districts is measured by the travel time between county seats using major surface routes, as determined by the administrative office of the (~~administrator for the~~) courts.

Sec. 43. RCW 36.18.018 and 1995 c 292 s 15 are each amended to read as follows:

(1) State revenue collected by county clerks under subsection (2) of this section must be transmitted to the appropriate state court. The administrative office of the (~~state administrator for the~~) courts shall retain fees collected under subsection (3) of this section.

(2) For appellate review under RAP 5.1(b), two hundred fifty dollars must be charged.

(3) For all copies and reports produced by the (~~administrator for~~) administrative office of the courts as permitted under RCW 2.68.020 and supreme court policy, a variable fee must be charged.

Sec. 44. RCW 43.08.250 and 2003 1st sp.s. c 25 s 918 are each amended to read as follows:

The money received by the state treasurer from fees, fines, forfeitures, penalties, reimbursements or assessments by any court organized under Title 3 or 35 RCW, or chapter 2.08 RCW, shall be deposited in the public safety and education account which is hereby created in the state treasury. The legislature shall appropriate the funds in the account to promote traffic safety education, highway safety, criminal justice training, crime victims' compensation, judicial education, the judicial information system, civil representation of indigent persons, winter recreation parking, drug court operations, and state game programs. During the fiscal biennium ending June 30, 2005, the legislature may appropriate moneys from the public safety and education account for purposes of appellate indigent defense and other operations of the office of public defense, the criminal litigation unit of the attorney general's office, the treatment alternatives to street crimes program, crime victims advocacy programs, justice information network telecommunication planning, treatment for supplemental

security income clients, sexual assault treatment, operations of the administrative office of (~~(administrator for)~~) the courts, security in the common schools, alternative school start-up grants, programs for disruptive students, criminal justice data collection, Washington state patrol criminal justice activities, drug court operations, unified family courts, local court backlog assistance, financial assistance to local jurisdictions for extraordinary costs incurred in the adjudication of criminal cases, domestic violence treatment and related services, the department of corrections' costs in implementing chapter 196, Laws of 1999, reimbursement of local governments for costs associated with implementing criminal and civil justice legislation, the replacement of the department of corrections' offender-based tracking system, secure and semi-secure crisis residential centers, HOPE beds, the family policy council and community public health and safety networks, the street youth program, public notification about registered sex offenders, and narcotics or methamphetamine-related enforcement, education, training, and drug and alcohol treatment services.

Sec. 45. RCW 43.70.540 and 1995 c 399 s 76 are each amended to read as follows:

The legislature recognizes that the state patrol, the administrative office of the (~~(administrator for the)~~) courts, the sheriffs' and police chiefs' association, the department of social and health services, the department of community, trade, and economic development, the sentencing guidelines commission, the department of corrections, and the superintendent of public instruction each have comprehensive data and analysis capabilities that have contributed greatly to our current understanding of crime and violence, and their causes.

The legislature finds, however, that a single health-oriented agency must be designated to provide consistent guidelines to all these groups regarding the way in which their data systems collect this important data. It is not the intent of the legislature by RCW 43.70.545 to transfer data collection requirements from existing agencies or to require the addition of major new data systems. It is rather the intent to make only the minimum required changes in existing data systems to increase compatibility and comparability, reduce duplication, and to increase the usefulness of data collected by these agencies in developing more accurate descriptions of violence.

Sec. 46. RCW 43.101.280 and 1993 c 415 s 4 are each amended to read as follows:

The criminal justice training commission shall develop, in consultation with the (~~(administrator for)~~) administrative office of the courts and the commissions established under chapters 43.113, 43.115, and 43.117 RCW, a curriculum for a general understanding of ethnic and cultural diversity and its implications for working with youth of color and their families. The curriculum shall be developed by October 1, 1993. The commission shall ensure that ethnic and diversity training becomes an integral part of the training of law enforcement personnel so as to incorporate cultural sensitivity and awareness into the daily activities of law enforcement personnel.

Sec. 47. RCW 46.20.286 and 1996 c 199 s 6 are each amended to read as follows:

The department of licensing shall adopt procedures in cooperation with the administrative office of the (~~(administrator for the)~~) courts and the department of corrections to implement RCW 46.20.285.

Sec. 48. RCW 74.14C.100 and 1995 c 311 s 12 are each amended to read as follows:

(1) The department shall, within available funds, provide for ongoing training and consultation to department personnel to carry out their responsibilities effectively. Such training may:

(a) Include the family unit as the primary focus of service; identifying family member strengths; empowering families; child, adult, and family development; stress management; and may include parent training and family therapy techniques;

(b) Address intake and referral, assessment of risk, case assessment, matching clients to services, and service planning issues in the context of the home-delivered service model, including strategies for engaging family members, defusing violent situations, and communication and conflict resolution skills;

(c) Cover methods of helping families acquire the skills they need, including home management skills, life skills, parenting, child development, and the use of community resources;

(d) Address crisis intervention and other strategies for the management of depression, and suicidal, assaultive, and other high-risk behavior; and

(e) Address skills in collaborating with other disciplines and services in promoting the safety of children and other family members and promoting the preservation of the family.

(2) The department and the administrative office of the (~~(administrator for the)~~) courts shall, within available funds, collaborate in providing training to judges, and others involved in the provision of services pursuant to this title, including service providers, on the function and use of preservation services.

Sec. 49. RCW 82.14.310 and 2001 2nd sp.s. c 7 s 915 are each amended to read as follows:

(1) The county criminal justice assistance account is created in the state treasury. Beginning in fiscal year 2000, the state treasurer shall transfer into the county criminal justice assistance account from the general fund the sum of twenty-three million two hundred thousand dollars divided into four equal deposits occurring on July 1, October 1, January 1, and April 1. For each fiscal year thereafter, the state treasurer shall increase the total transfer by the fiscal growth factor, as defined in RCW 43.135.025, forecast for that fiscal year by the office of financial management in November of the preceding year.

(2) The moneys deposited in the county criminal justice assistance account for distribution under this section, less any moneys appropriated for purposes under subsection (4) of this section, shall be distributed at such times as distributions are made under RCW 82.44.150 and on the relative basis of each county's funding factor as determined under this subsection.

(a) A county's funding factor is the sum of:

(i) The population of the county, divided by one thousand, and multiplied by two-tenths;

(ii) The crime rate of the county, multiplied by three-tenths; and

(iii) The annual number of criminal cases filed in the county superior court, for each one thousand in population, multiplied by five-tenths.

(b) Under this section and RCW 82.14.320 and 82.14.330:

(i) The population of the county or city shall be as last determined by the office of financial management;

(ii) The crime rate of the county or city is the annual occurrence of specified criminal offenses, as calculated in the most recent annual report on crime in Washington state as published by the Washington association of sheriffs and police chiefs, for each one thousand in population;

(iii) The annual number of criminal cases filed in the county superior court shall be determined by the most recent annual report of the courts of Washington, as published by the administrative office of the (~~administrator for the~~) courts;

(iv) Distributions and eligibility for distributions in the 1989-91 biennium shall be based on 1988 figures for both the crime rate as described under (ii) of this subsection and the annual number of criminal cases that are filed as described under (iii) of this subsection. Future distributions shall be based on the most recent figures for both the crime rate as described under (ii) of this subsection and the annual number of criminal cases that are filed as described under (iii) of this subsection.

(3) Moneys distributed under this section shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil or juvenile justice system occurs, and which includes (a) domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020, and (b) during the 2001-2003 fiscal biennium, juvenile dispositional hearings relating to petitions for at-risk youth, truancy, and children in need of services. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

(4) Not more than five percent of the funds deposited to the county criminal justice assistance account shall be available for appropriations for enhancements to the state patrol crime laboratory system and the continuing costs related to these enhancements. Funds appropriated from this account for such enhancements shall not supplant existing funds from the state general fund.

Passed by the House February 28, 2005.

Passed by the Senate April 14, 2005.

Approved by the Governor May 4, 2005, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 4, 2005.

Note: Governor's explanation of partial veto is as follows:

"I am returning, without my approval as to Section 18, House Bill No. 1668 entitled:

"AN ACT Relating to the administrative office of the courts."

Section 18, which amends RCW 9.94A.660, presents an irreconcilable conflict with the provisions of Engrossed Second Substitute House Bill No. 2015. Section 18 is rendered moot by language changes in Engrossed Second Substitute House Bill No. 2015, and has no substantive effect on either bill.

For these reasons, I have vetoed Section 18 of House Bill No. 1668.

With the exception of Section 18, House Bill No. 1668 is approved."

CHAPTER 283

[Engrossed Second Substitute House Bill 1688]

HEALTH PLANNING AND DEVELOPMENT—TASK FORCE

AN ACT Relating to creating a task force to review health care facilities and services supply issues; and creating new sections.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that:

(1) Since the enactment of health planning and development legislation in 1979, the widespread adoption of new health care technologies has resulted in significant advancements in the diagnosis and treatment of disease, and has enabled substantial expansion of sites where complex care and surgery can be performed;

(2) New and existing technologies, supply sensitive health services, and demographics have a substantial effect on health care expenditures. Yet, evidence related to their effectiveness is not routinely or systematically considered in decision making regarding widespread adoption of these technologies and services. The principles of evidence-based medicine call for comprehensive review of data and studies related to a particular health care service or device, with emphasis given to high quality, objective studies. Findings regarding the effectiveness of these health services or devices should then be applied to increase the likelihood that they will be used appropriately;

(3) The standards governing whether a certificate of need should be granted in RCW 70.38.115 focus largely on broad concepts of access to and availability of health services, with only limited consideration of cost-effectiveness. Moreover, the standards do not provide explicit guidance for decision making or evaluating competing certificate of need applications; and

(4) The certificate of need statute plays a vital role and should be reexamined and strengthened to reflect changes in health care delivery and financing since its enactment.

NEW SECTION. Sec. 2. (1) A task force is created to study and prepare recommendations to the governor and the legislature related to improving and updating the certificate of need program in chapter 70.38 RCW. The report must be submitted to the governor and appropriate committees of the legislature by November 1, 2006.

(2) Members of the task force must be appointed by the governor. The task force members shall elect a member of the task force to serve as chair. Members of the task force include:

(a) Four representatives of the legislature, including one member appointed by each caucus of the house of representatives and the senate;

(b) Two representatives of private employer-sponsored health benefits purchasers;

(c) One representative of labor organizations that purchase health benefits through Taft-Hartley plans;

(d) One representative of health carriers;

(e) Two representatives of health care consumers;

(f) One health care economist;

(g) The secretary of the department of social and health services, or his or her designee;

(h) The administrator of the health care authority, or his or her designee;

(i) The secretary of the department of health; and

(j) Two health care provider representatives, chosen by the members of the technical advisory committee established in subsection (3) of this section, from among the members of that committee.

(3) The task force shall establish one or more technical advisory committees composed of affected health care providers and other individuals or entities who can serve as a source of technical expertise. The task force shall actively consult with, and solicit recommendations from, the technical advisory committee or committees regarding issues under consideration by the task force.

(4) Subject to the availability of amounts appropriated for this specific purpose, staff support for the task force shall be provided by the health care authority. The health care authority shall contract for technical expertise necessary to complete the responsibilities of the task force. Legislative members of the task force shall be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050.

NEW SECTION. Sec. 3. (1) In conducting the certificate of need study and preparing recommendations, the task force shall be guided by the following principles:

(a) The supply of a health service can have a substantial impact on utilization of the service, independent of the effectiveness, medical necessity, or appropriateness of the particular health service for a particular individual;

(b) Given that health care resources are not unlimited, the impact of any new health service or facility on overall health expenditures in the state must be considered;

(c) Given our increasing ability to undertake technology assessment and measure the quality and outcomes of health services, the likelihood that a requested new health facility, service, or equipment will improve health care quality and outcomes must be considered; and

(d) It is generally presumed that the services and facilities currently subject to certificate of need should remain subject to those requirements.

(2) The task force shall, at a minimum, examine and develop recommendations related to the following issues:

(a) The need for a new and regularly updated set of service and facility specific policies that guide certificate of need decisions;

(b) A review of the purpose and goals of the current certificate of need program, including the relationship between the supply of health services and health care outcomes and expenditures in Washington state;

(c) The scope of facilities, services, and capital expenditures that should be subject to certificate of need review, including consideration of the following:

(i) Acquisitions of major medical equipment, meaning a single unit of medical equipment or a single system of components with related functions used to provide medical and other health services;

(ii) Major capital expenditures. Capital expenditures for information technology needed to support electronic health records should be encouraged;

(iii) The offering or development of any new health services, as defined in RCW 70.38.025, that meets any of the following:

(A) The obligation of substantial capital expenditures by or on behalf of a health care facility that is associated with the addition of a health service that was not offered on a regular basis by or on behalf of the health care facility within the twelve-month period prior to the time the services would be offered;

(B) The addition of equipment or services, by transfer of ownership, acquisition by lease, donation, transfer, or acquisition of control, through management agreement or otherwise, that was not offered on a regular basis by or on behalf of the health care facility or the private office of a licensed health care provider regulated under Title 18 RCW or chapter 70.127 RCW within the twelve-month period prior to the time the services would be offered and that for the third fiscal year of operation, including a partial first year following acquisition of that equipment or service, is projected to entail substantial incremental operating costs or annual gross revenue directly attributable to that health service;

(iv) The scope of health care facilities subject to certificate of need requirements, to include consideration of hospitals, including specialty hospitals, psychiatric hospitals, nursing facilities, kidney disease treatment centers including freestanding hemodialysis facilities, rehabilitation facilities, ambulatory surgical facilities, freestanding emergency rooms or urgent care facilities, home health agencies, hospice agencies and hospice care centers, freestanding radiological service centers, freestanding cardiac catheterization centers, or cancer treatment centers. "Health care facility" includes the office of a private health care practitioner in which surgical procedures are performed;

(d) The criteria for review of certificate of need applications, as currently defined in RCW 70.38.115, with the goal of having criteria that are consistent, clear, technically sound, and reflect state law, including consideration of:

(i) Public need for the proposed services as demonstrated by certain factors, including, but not limited to:

(A) Whether, and the extent to which, the project will substantially address specific health problems as measured by health needs in the area to be served by the project;

(B) Whether the project will have a positive impact on the health status indicators of the population to be served;

(C) Whether there is a substantial risk that the project would result in inappropriate increases in service utilization or the cost of health services;

(D) Whether the services affected by the project will be accessible to all residents of the area proposed to be served; and

(E) Whether the project will provide demonstrable improvements in quality and outcome measures applicable to the services proposed in the project,

including whether there is data to indicate that the proposed health services would constitute innovations in high quality health care delivery;

(ii) Impact of the proposed services on the orderly and economic development of health facilities and health resources for the state as demonstrated by:

(A) The impact of the project on total health care expenditures after taking into account, to the extent practical, both the costs and benefits of the project and the competing demands in the local service area and statewide for available resources for health care;

(B) The impact of the project on the ability of existing affected providers and facilities to continue to serve uninsured or underinsured residents of the community and meet demands for emergency care;

(C) The availability of state funds to cover any increase in state costs associated with utilization of the project's services; and

(D) The likelihood that more effective, more accessible, or less costly alternative technologies or methods of service delivery may become available;

(e) The timeliness and consistency of certificate of need reviews and decisions, the sufficiency and use of resources available to the department of health to conduct timely reviews, the means by which the department of health projects future need for services, the ability to reflect differences among communities and approaches to providing services, and clarification on the use of the concurrent review process; and

(f) Mechanisms to monitor ongoing compliance with the assumptions made by facilities that have received either a certificate of need or an exemption to a certificate of need, including those related to volume, the provision of charity care, and access to health services to medicaid and medicare beneficiaries as well as underinsured and uninsured members of the community.

(3) In developing its recommendations, the task force shall consider the results of a performance audit of the department of health regarding its administration and implementation of the certificate of need program. The audit shall be conducted by the joint legislative audit and review committee, and be completed by July 1, 2006.

NEW SECTION. Sec. 4. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2005, in the omnibus appropriations act, this act is null and void.

Passed by the House April 19, 2005.

Passed by the Senate April 7, 2005.

Approved by the Governor May 4, 2005.

Filed in Office of Secretary of State May 4, 2005.

CHAPTER 284

[Substitute House Bill 1694]

PUBLIC RECORDS—PERSONAL INFORMATION

AN ACT Relating to the release of personal information; and reenacting and amending RCW 42.17.310.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 42.17.310 and 2003 c 277 s 3 and 2003 c 124 s 1 are each reenacted and amended to read as follows:

(1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) 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.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

(m) 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 (i) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (ii) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed prior to July 28, 1991, with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to export projects pursuant to RCW 43.23.035.

(p) Financial disclosures filed by private vocational schools under chapters 28B.85 and 28C.10 RCW.

(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.

(r) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 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.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

(t) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(u) The residential addresses ((~~or~~)), residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, and emergency contact information of dependents of employees or volunteers of a public agency, which are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency. For purposes of this subsection, "employees" includes independent provider home care workers as defined in RCW 74.39A.240.

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support

enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order.

(w)(i) The federal social security number of individuals governed under chapter 18.130 RCW maintained in the files of the department of health, except this exemption does not apply to requests made directly to the department from federal, state, and local agencies of government, and national and state licensing, credentialing, investigatory, disciplinary, and examination organizations; (ii) the current residential address and current residential telephone number of a health care provider governed under chapter 18.130 RCW maintained in the files of the department, if the provider requests that this information be withheld from public inspection and copying, and provides to the department an accurate alternate or business address and business telephone number. On or after January 1, 1995, the current residential address and residential telephone number of a health care provider governed under RCW 18.130.040 maintained in the files of the department shall automatically be withheld from public inspection and copying unless the provider specifically requests the information be released, and except as provided for under RCW 42.17.260(9).

(x) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(y) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420.

(z) 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.

(aa) 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.

(bb) Financial and valuable trade information under RCW 51.36.120.

(cc) Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or 70.123.075 or a rape crisis center as defined in RCW 70.125.030.

(dd) Information that identifies a person who, while an agency employee: (i) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (ii) requests his or her identity or any identifying information not be disclosed.

(ee) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment.

(ff) Business related information protected from public inspection and copying under RCW 15.86.110.

(gg) 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.

(hh) Information and documents created specifically for, and collected and maintained by a quality improvement committee pursuant to RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW 4.24.250, regardless of which agency is in possession of the information and documents.

(ii) Personal information in files maintained in a data base created under RCW 43.07.360.

(jj) 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.

(kk) Names of individuals residing in emergency or transitional housing that are furnished to the department of revenue or a county assessor in order to substantiate a claim for property tax exemption under RCW 84.36.043.

(ll) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service. However, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides.

(mm) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons.

(nn) The personally identifying information of persons who acquire and use transit passes and other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose this information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media, or to the news media when reporting on public transportation or public safety. This information may also be disclosed at the agency's discretion to governmental agencies or groups concerned with public transportation or public safety.

(oo) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310. If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this section as exempt from disclosure. If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality.

(pp) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110.

(qq) Financial and commercial information supplied by or on behalf of a person, firm, corporation, or entity under chapter 28B.95 RCW relating to the

purchase or sale of tuition units and contracts for the purchase of multiple tuition units.

(rr) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b).

(ss) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law.

(tt) 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 liquor license, gambling license, or lottery retail license.

(uu) Records maintained by the employment security department and subject to chapter 50.13 RCW if provided to another individual or organization for operational, research, or evaluation purposes.

(vv) Individually identifiable information received by the work force training and education coordinating board for research or evaluation purposes.

(ww) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(i) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and

(ii) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism.

(xx) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher providing the catch data. However, this information may be released to government agencies concerned with the management of fish and wildlife resources.

(yy) Sensitive wildlife data obtained by the department of fish and wildlife. However, sensitive wildlife data may be released to government agencies concerned with the management of fish and wildlife resources. Sensitive wildlife data includes:

(i) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;

(ii) Radio frequencies used in, or locational data generated by, telemetry studies; or

(iii) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(A) The species has a known commercial or black market value;

(B) There is a history of malicious take of that species; or

(C) There is a known demand to visit, take, or disturb, and the species behavior or ecology renders it especially vulnerable or the species has an extremely limited distribution and concentration.

(zz) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW, except name, address of contact used by the department, and type of license, endorsement, or tag. However, the department of fish and wildlife may disclose personally identifying information to:

(i) Government agencies concerned with the management of fish and wildlife resources;

(ii) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and

(iii) Law enforcement agencies for the purpose of firearm possession enforcement under RCW 9.41.040.

(aaa)(i) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have not been commingled with other recorded documents. These records will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding that veteran's general power of attorney, or to anyone else designated in writing by that veteran to receive the records.

(ii) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have been commingled with other records, if the veteran has recorded a "request for exemption from public disclosure of discharge papers" with the county auditor. If such a request has been recorded, these records may be released only to the veteran filing the papers, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iii) Discharge papers of a veteran filed at the office of the county auditor after June 30, 2002, are not public records, but will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iv) For the purposes of this subsection (1)(aaa), next of kin of deceased veterans have the same rights to full access to the record. Next of kin are the veteran's widow or widower who has not remarried, son, daughter, father, mother, brother, and sister.

(bbb) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility or any individual's safety.

(ccc) Information compiled by school districts or schools in the development of their comprehensive safe school plans pursuant to RCW 28A.320.125, to the extent that they identify specific vulnerabilities of school districts and each individual school.

(ddd) Information regarding the infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities.

(eee) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW.

(fff) Proprietary data, trade secrets, or other information that relates to: (i) A vendor's unique methods of conducting business; (ii) data unique to the product or services of the vendor; or (iii) 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.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

Passed by the House March 9, 2005.

Passed by the Senate April 11, 2005.

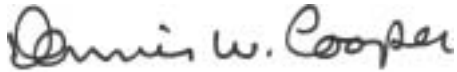
Approved by the Governor May 4, 2005.

Filed in Office of Secretary of State May 4, 2005.

AUTHENTICATION

I, Dennis W. Cooper, Code Reviser of the State of Washington, certify that, with the exception of such corrections as I have made in accordance with the powers vested in me by RCW 44.20.060, the laws published in this volume are a true and correct reproduction of the copies of the enrolled laws of the 2005 regular session (59th Legislature), chapters 1 through 284, as certified and transmitted to the Statute Law Committee by the Secretary of State under RCW 44.20.020.

IN TESTIMONY WHEREOF, I have hereunto set my hand at Olympia, Washington, this 23rd day of May, 2005.

A handwritten signature in dark ink that reads "Dennis W. Cooper". The signature is written in a cursive style with a large initial "D".

DENNIS W. COOPER
Code Reviser