

1995-1996
SESSION LAWS
OF THE
STATE OF WASHINGTON

3RD SPECIAL SESSION
FIFTY-FOURTH LEGISLATURE
Convened October 12, 1995. Adjourned October 14, 1995.

REGULAR SESSION
FIFTY-FOURTH LEGISLATURE
Convened January 8, 1996. Adjourned March 7, 1996.



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DENNIS W. COOPER
Code Reviser

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, Legislative Building, P.O. Box 40552, Olympia, Washington 98504-0552. The temporary pamphlet edition costs \$5.40 per set (\$5.00 plus \$0.40 for state and local sales tax at 8.0%). The permanent edition costs \$21.60 per volume (\$20.00 plus \$1.60 for state and local sales tax at 8.0%). 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 1996 regular session to be June 6, 1996 (midnight June 5th).
- (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

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WASHINGTON LAWS

1995 THIRD SPECIAL SESSION

CHAPTER 1

[Engrossed House Bill 2115]

BASEBALL STADIUM FINANCING

AN ACT Relating to financing public sports facilities; amending RCW 46.16.301, 46.16.313, 67.70.240, 82.14.360, 35.21.280, 36.38.010, 36.100.010, 36.100.020, 39.10.120, 39.10.902, and 82.29A.130; adding a new section to chapter 82.14 RCW; adding a new section to chapter 67.70 RCW; adding new sections to chapter 36.100 RCW; creating new sections; and declaring an emergency.

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

PART I**STATE CONTRIBUTION**

NEW SECTION. **Sec. 101.** A new section is added to chapter 82.14 RCW to read as follows:

(1) The legislative authority of a county with a population of one million or more may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax shall not exceed 0.017 percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax.

(2) The tax imposed under subsection (1) of this section shall be deducted from the amount of tax otherwise required to be collected or paid over to the department of revenue under chapter 82.08 or 82.12 RCW. The department of revenue shall perform the collection of such taxes on behalf of the county at no cost to the county.

(3) Moneys collected under this section shall only be used for the purpose of paying the principal and interest payments on bonds issued by a county to construct a baseball stadium.

(4) No tax may be collected under this section before January 1, 1996, and no tax may be collected under this section unless the taxes under RCW 82.14.360 are being collected. The tax imposed in this section shall expire when the bonds issued for the construction of the baseball stadium are retired, but not more than twenty years after the tax is first collected.

(5) As used in this section, "baseball stadium" means a baseball stadium with natural turf and a retractable roof or canopy, together with associated parking facilities, constructed in the largest city in a county with a population of one million or more.

Sec. 102. RCW 46.16.301 and 1994 c 194 s 2 are each amended to read as follows:

(1) The department may create, design, and issue special license plates that may be used in lieu of regular or personalized license plates for motor vehicles required to display two motor vehicle license plates, excluding vehicles

registered under chapter 46.87 RCW, upon terms and conditions established by the department. The special plates may:

(a) Denote the age or type of vehicle; or

(b) Denote special activities or interests; or

(c) Denote the status, or contribution or sacrifice for the United States, the state of Washington, or the citizens of the state of Washington, of a registered owner of that vehicle; or

(d) Display a depiction of the name and mascot or symbol of a state university, regional university, or state college as defined in RCW 28B.10.016.

(2) The department shall create, design, and issue a special baseball stadium license plate that may be used in lieu of regular or personalized license plates for motor vehicles required to display two motor vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. The special plates shall commemorate the construction of a baseball stadium, as defined in section 101 of this act. The department shall also issue to each recipient of a special baseball stadium license plate a certificate of participation in the construction of the baseball stadium.

(3) The department has the sole discretion to determine whether or not to create, design, or issue any series of special license plates, other than the special baseball stadium license plate under subsection (2) of this section, and whether any interest or status merits the issuance of a series of special license plates. In making this determination, the department shall consider whether or not an interest or status contributes or has contributed significantly to the public health, safety, or welfare of the citizens of the United States or of this state or to their significant benefit, or whether the interest or status is recognized by the United States, this state, or other states, in other settings or contexts. The department may also consider the potential number of persons who may be eligible for the plates and the cost and efficiency of producing limited numbers of the plates. The design of a special license plate shall conform to all requirements for plates for the type of vehicle for which it is issued, as provided elsewhere in this chapter.

Sec. 103. RCW 46.16.313 and 1994 c 194 s 4 are each amended to read as follows:

(1) The department may establish a fee for each type of special license plates issued under RCW 46.16.301(1) (a), (b), or (c) in an amount calculated to offset the cost of production of the special license plates and the administration of this program. The fee shall not exceed thirty-five dollars and 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, registration, and renewal registration of a motor vehicle, 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, minus the cost of plate production, 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 application, registration, and renewal registration of a motor vehicle, 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, 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 section 101 of this act, 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.

NEW SECTION. Sec. 104. A new section is added to chapter 67.70 RCW to read as follows:

The lottery commission shall conduct at least two but not more than four scratch games with sports themes per year. These games are intended to generate additional moneys sufficient to cover the distributions under RCW 67.70.240(5).

Sec. 105. RCW 67.70.240 and 1987 c 513 s 7 are each amended to read as follows:

The moneys in the state lottery account shall be used only: (1) For the payment of prizes to the holders of winning lottery tickets or shares; (2) for purposes of making deposits into the reserve account created by RCW 67.70.250 and into the lottery administrative account created by RCW 67.70.260; (3) for purposes of making deposits into the state's general fund; (4) for purposes of making deposits into the housing trust fund under the provisions of section 7 of this 1987 act; (5) for distribution 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 section 101 of this act, including reasonably necessary preconstruction costs; (6) for the purchase and promotion of lottery games and game-related services; and ~~((6))~~ (7) for the payment of agent compensation. Three million dollars shall be distributed under subsection (5) of this section during calendar year 1996. During subsequent years, such distributions shall equal the prior year's distributions increased by four percent. Distributions under subsection (5) of this section shall cease when the bonds issued for the construction of the baseball stadium are retired, but not more than twenty years after the tax under section 101 of this act is first imposed.

The office of financial management shall require the allotment of all expenses paid from the account and shall report to the ways and means committees of the senate and house of representatives any changes in the allotments.

NEW SECTION. Sec. 106. Sections 101 through 105 of this act constitute the entire state contribution for a baseball stadium, as defined in section 101 of this act. The state will not make any additional contributions based on revised cost or revenue estimates, cost overruns, unforeseen circumstances, or any other reason.

PART 11 LOCAL FUNDING

Sec. 201. RCW 82.14.360 and 1995 1st sp.s. c 14 s 7 are each amended to read as follows:

(1) The legislative authority of a county with a population of one million or more (~~operating under a county charter~~) may impose a special stadium sales and use tax (~~by resolution adopted on or before December 31, 1995, for collection following its approval by a majority of the voters in the county at a general or special election~~) upon the retail sale or use within the county by restaurants, taverns, and bars of food and beverages that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of the tax shall not exceed five-tenths of one percent of the selling price in the case of a sales tax, or value of the article used in the case of a use tax. The tax imposed under this subsection is in addition to an other taxes authorized b law and shall not be credited against any other tax imposed upon the same taxable event. As used in this section, "restaurant" does not include grocery stores, mini-markets, or convenience stores.

(2) The legislative authority of a county with a population of one million or more may impose a special stadium sales and use tax upon retail car rentals within the county that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of the tax shall (~~equal one-tenth of one~~) not exceed two percent of the selling price in the case of a sales tax, or rental value of the (~~article used~~) vehicle in the case of a use tax. The tax imposed under this (~~section~~) subsection is in addition to any other taxes authorized by law and shall not be credited against any other tax imposed upon the same taxable event.

(3) The revenue from the (~~tax~~) taxes imposed under this section shall be used for the purpose of principal and interest payments on bonds, issued by (~~a public facilities district, created within~~) the county (~~under chapter 36.100 RCW~~), to acquire, construct, own, remodel, maintain, equip, reequip, repair, and operate a baseball stadium (~~with a retractable roof or canopy and natural turf~~). Revenues from the taxes authorized in this section may be used for design and other preconstruction costs of the baseball stadium until bonds are issued for the baseball stadium. The county shall issue bonds, in an amount determined to be necessary by the public facilities district, for the district to

acquire, construct, own, and equip the baseball stadium. The county shall have no obligation to issue bonds in an amount greater than that which would be supported by the tax revenues under this section, section 101 of this act, and RCW 36.38.010(3)(a) and (b). If the revenue from the ~~((tax))~~ taxes imposed under this section exceeds the amount needed for such principal and interest payments in any year, the excess shall be used solely:

(a) For ~~((either or both: (a)))~~ early retirement of the bonds issued for the baseball stadium; ~~((or~~
~~—(b) retirement of bonds issued for expanding, remodeling, repairing, or~~
~~reequipping of a multipurpose stadium that has a seating capacity over forty five~~
~~thousand)) and~~

(b) If the revenue from the taxes imposed under this section exceeds the amount needed for the purposes in (a) of this subsection in any year, the excess shall be placed in a contingency fund which may only be used to pay unanticipated capital costs on the baseball stadium, excluding any cost overruns on initial construction.

(4) The ~~((tax))~~ taxes authorized under this section ~~((may))~~ shall not be collected ~~((only))~~ after June 30, 1997, unless the county executive has certified to the department of revenue that a professional major league baseball team has made a binding and legally enforceable contractual commitment to:

(a) Play at least ninety percent of its home games in the stadium for a period of time not shorter than the term of the bonds issued to finance the initial construction of the stadium;

(b) Contribute ~~((principal of))~~ forty-five million dollars toward the ~~((bonded))~~ reasonably necessary preconstruction costs including, but not limited to architectural, engineering, environmental, and legal services, and the cost of construction of the stadium, or to any associated public purpose separate from bond-financed property, including without limitation land acquisition, parking facilities, equipment, infrastructure, or other similar costs associated with the project, which contribution shall be made during a term not to exceed the term of the bonds issued to finance the initial construction of the stadium. If all or part of the contribution is made after the date of issuance of the bonds, the team shall contribute an additional amount equal to the accruing interest on the deferred portion of the contribution, calculated at the interest rate on the bonds maturing in the year in which the deferred contribution is made. No part of the contribution may be made without the consent of the county until a public facilities district is created under chapter 36.100 RCW to acquire, construct, own, remodel, maintain, equip, reequip, repair, and operate a baseball stadium. To the extent possible, contributions shall be structured in a manner that would allow for the issuance of bonds to construct the stadium that are exempt from federal income taxes; and

(c) Share a portion of the profits generated by the baseball team from the operation of the professional franchise for a period of time equal to the term of the bonds issued to finance the initial construction of the stadium, after offsetting

any losses incurred by the baseball team after the effective date of chapter 14, Laws of 1995 1st sp. sess. Such profits and the portion to be shared shall be defined by agreement between the public facilities district and the baseball team. The shared profits shall be used to retire the bonds issued to finance the initial construction of the stadium. If the bonds are retired before the expiration of their term, the shared profits shall be paid to the public facilities district.

(5) No tax may be collected under this section before January 1, 1996. Before collecting the taxes under this section or issuing bonds for a baseball stadium, the county shall create a public facilities district under chapter 36.100 RCW to acquire, construct, own, remodel, maintain, equip, reequip, repair, and operate a baseball stadium.

(6) The county shall assemble such real property as the district determines to be necessary as a site for the baseball stadium. Property which is necessary for this purpose that is owned by the county on the effective date of this section shall be contributed to the district, and property which is necessary for this purpose that is acquired by the county on or after the effective date of this section shall be conveyed to the district.

(7) The proceeds of any bonds issued for the baseball stadium shall be provided to the district.

(8) As used in this section, "baseball stadium" means "baseball stadium" as defined in section 101 of this act.

(9) The ~~((tax))~~ taxes imposed under this section shall expire when the bonds issued for the construction of the ~~((new public facilities))~~ baseball stadium are retired, but not later than twenty years after the ~~((tax-is))~~ taxes are first collected.

Sec. 202. RCW 35.21.280 and 1995 1st sp.s. c 14 s 8 are each amended to read as follows:

Every city and town may levy and fix a tax of not more than one cent on twenty cents or fraction thereof to be paid by the person who pays an admission charge to any place: PROVIDED, No city or town shall impose such tax on persons paying an admission to any activity of any elementary or secondary school. This includes a tax on persons who are admitted free of charge or at reduced rates to any place for which other persons pay a charge or a regular higher charge for the same privileges or accommodations. A city that is located in a county with a population of one million or more may not levy a tax on events in stadia constructed on or after January 1, 1995, that are owned by ~~((county government or))~~ a public facilities district under chapter 36.100 RCW and that have seating capacities over forty thousand. The city or town may require anyone who receives payment for an admission charge to collect and remit the tax to the city or town.

The term "admission charge" includes:

- (1) A charge made for season tickets or subscriptions;
- (2) A cover charge, or a charge made for use of seats and tables reserved or otherwise, and other similar accommodations;

(3) A charge made for food and refreshment in any place where free entertainment, recreation or amusement is provided;

(4) A charge made for rental or use of equipment or facilities for purposes of recreation or amusement; if the rental of the equipment or facilities is necessary to the enjoyment of a privilege for which a general admission is charged, the combined charges shall be considered as the admission charge;

(5) Automobile parking charges if the amount of the charge is determined according to the number of passengers in the automobile.

Sec. 203. RCW 36.38.010 and 1995 1st sp.s. c 14 s 9 are each amended to read as follows:

(1) Any county may by ordinance enacted by its county legislative authority, levy and fix a tax of not more than one cent on twenty cents or fraction thereof to be paid for county purposes by persons who pay an admission charge to any place, including a tax on persons who are admitted free of charge or at reduced rates to any place for which other persons pay a charge or a regular higher charge for the same or similar privileges or accommodations; and require that one who receives any admission charge to any place shall collect and remit the tax to the county treasurer of the county: PROVIDED, No county shall impose such tax on persons paying an admission to any activity of any elementary or secondary school.

(2) As used in this chapter, the term "admission charge" includes a charge made for season tickets or subscriptions, a cover charge, or a charge made for use of seats and tables, reserved or otherwise, and other similar accommodations; a charge made for food and refreshments in any place where any free entertainment, recreation, or amusement is provided; a charge made for rental or use of equipment or facilities for purpose of recreation or amusement, and where the rental of the equipment or facilities is necessary to the enjoyment of a privilege for which a general admission is charged, the combined charges shall be considered as the admission charge. It shall also include any automobile parking charge where the amount of such charge is determined according to the number of passengers in any automobile.

(3) The tax herein authorized shall not be exclusive and shall not prevent any city or town within the taxing county, when authorized by law, from imposing within its corporate limits a tax of the same or similar kind: PROVIDED, That whenever the same or similar kind of tax is imposed by any such city or town, no such tax shall be levied within the corporate limits of such city or town by the county, except that the legislative authority of a county with a population of one million or more may exclusively levy ~~((a-tax))~~ taxes on events in stadiums constructed on or after January 1, 1995, that are owned by ~~((county government or))~~ a public facilities district under chapter 36.100 RCW and that have seating capacities over forty thousand at the rate of:

(a) Not more than one cent on twenty cents or fraction thereof~~((-~~

~~—(4) By contract, the county shall obligate itself to provide the revenue from the tax authorized by this section on events in stadia owned, managed, or~~

~~operated by a public facilities district, having seating capacities over forty thousand, and constructed on or after January 1, 1995 to the public facilities district)), to be used for the purpose of paying the principal and interest payments on bonds issued by a county to construct a baseball stadium as defined in section 101 of this act. If the revenue from the tax exceeds the amount needed for that purpose, the excess shall be placed in a contingency fund which may only be used to pay unanticipated capital costs on the baseball stadium, excluding any cost overruns on initial construction; and~~

(b) Not more than one cent on twenty cents or fraction thereof, to be used for the purpose of paying the principal and interest payments on bonds issued by a county to construct a baseball stadium as defined in section 101 of this act. The tax imposed under this subsection (3)(b) shall expire when the bonds issued for the construction of the baseball stadium are retired, but not later than twenty years after the tax is first collected.

PART III MISCELLANEOUS

Sec. 301. RCW 36.100.010 and 1995 1st sp.s. c 14 s 1 are each amended to read as follows:

(1) A public facilities district may be created in any county and shall be coextensive with the boundaries of the county.

(2) A public facilities district shall be created upon adoption of a resolution providing for the creation of such a district by the county legislative authority in which the proposed district is located.

(3) A public facilities district is a municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

(4) No taxes authorized under this chapter may be assessed or levied unless a majority of the voters of the public facilities district has approved such tax at a general or special election. A single ballot proposition may both validate the imposition of the sales and use tax under RCW 82.14.048 and the excise tax under RCW 36.100.040.

(5) A public facilities district shall constitute a body corporate and shall possess all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, and to sue and be sued.

(6) The county legislative authority or the city council may transfer property to the public facilities district ~~((as part of the process of creating the public facilities district))~~ created under this chapter. No property that is encumbered with debt or that is in need of major capital renovation may be transferred to the district without the agreement of the district and revenues adequate to retire the existing indebtedness.

Sec. 302. RCW 36.100.020 and 1995 1st sp.s. c 14 s 2 are each amended to read as follows:

(1) A public facilities district shall be governed by a board of directors consisting of five or seven members as provided in this section. If the largest city in the county has a population that is at least forty percent of the total county population, the board of directors of the public facilities district shall consist of five members selected as follows: (a) Two members appointed by the county legislative authority to serve for four-year staggered terms; (b) two members appointed by the city council of the largest city in the county to serve for four-year staggered terms; and (c) one person to serve for a four-year term who is selected by the other directors. If the largest city in the county has a population of less than forty percent of the total county population, the county legislative authority shall establish in the resolution creating the public facilities district whether the board of directors of the public facilities district has either five or seven members, and the county legislative authority shall appoint the members of the board of directors to reflect the interests of cities and towns in the county, as well as the unincorporated area of the county. However, if the county has a population of one million or more, the largest city in the county has a population of less than forty percent of the total county population, and the county operates under a county charter, which provides for an elected county executive, three members shall be appointed by the governor and the remaining members shall be appointed by the county executive subject to confirmation by the county legislative authority. Of the members appointed by the governor, the speaker of the house of representatives and the majority leader of the senate shall each recommend to the governor a person to be appointed to the board.

(2) At least one member on the board of directors shall be representative of the lodging industry in the public facilities district before the public facilities district imposes the excise tax under RCW 36.100.040.

(3) Members of the board of directors shall serve four-year terms of office, except that two of the initial five board members or three of the initial seven board members shall serve two-year terms of office.

(4) A vacancy shall be filled in the same manner as the original appointment was made and the person appointed to fill a vacancy shall serve for the remainder of the unexpired term of the office for the position to which he or she was appointed.

(5) A director appointed by the governor may be removed from office by the governor. Any other director may be removed from office by action of at least two-thirds of the members of the legislative authority which made the appointment.

NEW SECTION. Sec. 303. A new section is added to chapter 36.100 RCW to read as follows:

In addition to other powers and restrictions on a public facilities district, the following shall apply to a public facilities district, located in a county with a population of one million or more, that constructs a baseball stadium:

(1) The public facilities district, in consultation with the professional baseball team that will use the stadium, shall have the authority to determine the stadium site;

(2) The public facilities district, in consultation with the professional baseball team that will use the stadium, shall have the authority to establish the overall scope of the stadium project, including, but not limited to, the stadium itself, associated parking facilities, associated retail and office development that are part of the stadium facility, and ancillary services or facilities;

(3) The public facilities district, in consultation with the professional baseball team that will use the stadium, shall have the final authority to make the final determination of the stadium design and specifications;

(4) The public facilities district shall have the authority to contract with the baseball team that will use the stadium to obtain architectural, engineering, environmental, and other professional services related to the stadium site and design options, environmental study requirements, and obtaining necessary permits for the stadium facility;

(5) The public facilities district, in consultation with the professional baseball team that will use the stadium, shall have the authority to establish the project budget and bidding specifications and requirements on the stadium project;

(6) The public facilities district, in consultation with the professional baseball team that will use the stadium and the county in which the public facilities district is located, shall have the authority to structure the financing of the stadium facility project; and

(7) The public facilities district shall consult with the house of representatives executive rules committee and the senate facilities and operations committee before selecting a name for the stadium.

As used in this section, "stadium" and "baseball stadium" mean a "baseball stadium" as defined in section 101 of this act.

NEW SECTION. Sec. 304. A new section is added to chapter 36.100 RCW to read as follows:

A public facilities district may accept and expend moneys that may be donated for the purpose of a baseball stadium as defined in section 101 of this act.

Sec. 305. RCW 39.10.120 and 1994 c 132 s 12 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the alternative public works contracting procedures authorized under this chapter are limited to public works contracts signed before July 1, 1997. Methods of public works

contracting authorized by RCW 39.10.050 and 39.10.060 shall remain in full force and effect until completion of contracts signed before July 1, 1997.

(2) For the purposes of a baseball stadium as defined in section 101 of this act, the design-build contracting procedures under RCW 39.10.050 shall remain in full force and effect until completion of contracts signed before December 31, 1997.

Sec. 306. RCW 39.10.902 and 1994 c 132 s 15 are each amended to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective July 1, 1997:

- (1) RCW 39.10.010 and 1994 c 132 s 1;
- (2) RCW 39.10.020 and 1994 c 132 s 2;
- (3) RCW 39.10.030 and 1994 c 132 s 3;
- (4) RCW 39.10.040 and 1994 c 132 s 4;
- (5) RCW 39.10.050 and 1994 c 132 s 5;
- (6) RCW 39.10.060 and 1994 c 132 s 6;
- (7) RCW 39.10.070 and 1994 c 132 s 7;
- (8) RCW 39.10.080 and 1994 c 132 s 8;
- (9) RCW 39.10.090 and 1994 c 132 s 9;
- (10) RCW 39.10.100 and 1994 c 132 s 10;
- (11) RCW 39.10.110 and 1994 c 132 s 11;
- (12) (~~RCW 39.10.120 and 1994 c 132 s 12;~~
- ~~(13))~~ RCW 39.10.900 and 1994 c 132 s 13;
- ~~((14))~~ (13) RCW 39.10.901 and 1994 c 132 s 14; and
- ~~((15))~~ (14) RCW 39.10.902 and 1994 c 132 s 15.

Sec. 307. RCW 82.29A.130 and 1995 c 138 s 1 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.

NEW SECTION. Sec. 308. The public facilities district, the county, and the city with the largest population in the county shall enter into an agreement regarding the construction of a baseball stadium as defined in section 101 of this act. The agreement shall address, but not be limited to:

- (1) Expedited permit processing for the design and construction of the project;
- (2) Expedited environmental review processing;
- (3) Expedited processing of requests for street, right of way, or easement vacations necessary for the construction of the project; and
- (4) Other items deemed necessary for the design and construction of the project.

NEW SECTION. Sec. 309. Part headings as used in this act constitute no part of the law.

NEW SECTION. Sec. 310. 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 shall take effect immediately.

Passed the House October 14, 1995.

Passed the Senate October 14, 1995.

Approved by the Governor October 17, 1995.

Filed in Office of Secretary of State October 17, 1995.

WASHINGTON LAWS

1996 REGULAR SESSION

CHAPTER 1

[Senate Bill 6117]

**BUSINESS AND OCCUPATION TAX REDUCTION BY SERVICE RATE REDUCTIONS
AND DISTRESSED AREA TAX CREDITS**

AN ACT Relating to reducing business and occupation taxes by reducing the 1993 service rate increases by fifty percent and increasing tax credits in distressed areas; amending RCW 82.04.255, 82.04.290, and 82.62.030; adding a new section to chapter 82.04 RCW; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 82.04.255 and 1993 sp.s. c 25 s 202 are each amended to read as follows:

Upon every person engaging within the state as a real estate broker; as to such persons, the amount of the tax with respect to such business shall be equal to the gross income of the business, multiplied by the rate of ~~((2-0))~~ 1.75 percent.

The measure of the tax on real estate commissions earned by the real estate broker shall be the gross commission earned by the particular real estate brokerage office including that portion of the commission paid to salesmen or associate brokers in the same office on a particular transaction: **PROVIDED, HOWEVER,** That where a real estate commission is divided between an originating brokerage office and a cooperating brokerage office on a particular transaction, each brokerage office shall pay the tax only upon their respective shares of said commission: **AND PROVIDED FURTHER,** That where the brokerage office has paid the tax as provided herein, salesmen or associate brokers within the same brokerage office shall not be required to pay a similar tax upon the same transaction.

Sec. 2. RCW 82.04.290 and 1995 c 229 s 3 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of providing selected business services other than or in addition to those enumerated in RCW 82.04.250 or 82.04.270; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of ~~((2-5))~~ 2.0 percent.

(2) Upon every person engaging within this state in banking, loan, security, investment management, investment advisory, or other financial businesses, other than or in addition to those enumerated in subsection (3) of this section; as to such persons, the amount of the tax with respect to such business shall be equal to the gross income of the business, multiplied by the rate of ~~((1-70))~~ 1.6 percent.

(3) Upon every person engaging within this state in the business of providing international investment management services, as to such persons, the amount of tax with respect to such business shall be equal to the gross income or gross proceeds of sales of the business multiplied by a rate of 0.275 percent.

(4) Upon every person engaging within this state in any business activity other than or in addition to those enumerated in RCW 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270, and 82.04.280, and subsections (1), (2), and (3) of this section; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of ~~((2-0))~~ 1.75 percent.

This section includes, among others, and without limiting the scope hereof (whether or not title to materials used in the performance of such business passes to another by accession, confusion or other than by outright sale), persons engaged in the business of rendering any type of service which does not constitute a "sale at retail" or a "sale at wholesale." The value of advertising, demonstration, and promotional supplies and materials furnished to an agent by his principal or supplier to be used for informational, educational and promotional purposes shall not be considered a part of the agent's remuneration or commission and shall not be subject to taxation under this section.

Sec. 3. RCW 82.62.030 and 1986 c 116 s 17 are each amended to read as follows:

(1) A person shall be allowed a credit against the tax due under chapter 82.04 RCW ~~((of an amount equal to))~~ as provided in this section. For an application approved before January 1, 1996, the credit shall equal one thousand dollars for each qualified employment position directly created in an eligible business project. For an application approved on or after January 1, 1996, the credit shall equal two thousand dollars for each qualified employment position directly created in an eligible business project.

(2) The department shall keep a running total of all credits granted under this chapter during each fiscal biennium. The department shall not allow any credits which would cause the tabulation for a biennium to exceed fifteen million dollars. If all or part of an application for credit is disallowed under this subsection, the disallowed portion shall be carried over for approval the next biennium. However, the applicant's carryover into the next biennium is only permitted if the tabulation for the next biennium does not exceed fifteen million dollars as of the date on which the department has disallowed the application.

(3) No recipient is eligible for tax credits in excess of three hundred thousand dollars.

(4) No recipient may use the tax credits to decertify a union or to displace existing jobs in any community in the state.

(5) No recipient may receive a tax credit on taxes which have not been paid during the taxable year.

NEW SECTION. Sec. 4. A new section is added to chapter 82.04 RCW to read as follows:

(1) There may be credited against the tax imposed by this chapter, the value of state-approved, employer-provided or sponsored job training services

designed to enhance the job-related performance of employees, for those businesses eligible for a tax deferral under chapter 82.60 RCW.

(2) The value of the state-approved, job training services provided by the employer to the employee, without charge, shall be determined by the allocation of the cost method using generally accepted accounting standards.

(3) The credit allowed under this section shall be limited to an amount equal to twenty percent of the value of the state-approved, job training services determined under subsection (2) of this section. The total credits allowed under this section for a business shall not exceed five thousand dollars per calendar year.

(4) Prior to claiming the credit under this section, the business must obtain approval of the proposed job training service from the employment security department. The employer's request for approval must include a description of the proposed job training service, how the job training will enhance the employee's performance, and the cost of the proposed job training.

(5) This section only applies to training in respect to eligible business projects for which an application is approved on or after January 1, 1996.

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 shall take effect January 1, 1996.

Passed the Senate January 9, 1996.

Passed the House January 12, 1996.

Vetoed by the Governor January 22, 1996.

Filed in Office of Secretary of State January 25, 1996.

CHAPTER 2

[Substitute House Bill 2125]

INTERSTATE BANKING—

AUTHORIZATION AND IMPLEMENTATION

AN ACT Relating to interstate banking; amending RCW 30.04.010, 30.04.232, 30.04.280, 30.08.140, 30.20.060, 39.29.040, 32.04.020, 32.08.140, 32.08.142, 32.08.146, and 32.12.020; reenacting and amending RCW 32.04.030 and 32.32.500; adding new sections to chapter 30.04 RCW; adding a new section to chapter 30.49 RCW; adding a new section to chapter 32.04 RCW; adding a new section to chapter 32.08 RCW; adding a new chapter to Title 30 RCW; creating a new section; repealing RCW 30.40.020; providing an effective date; and declaring an emergency.

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

NEW SECTION. Sec. 1. The purpose of this act is to modernize Washington's banking laws to promote the efficient delivery of financial services in this state by authorizing and implementing interstate branching under 12 U.S.C. Sec. 1831u(a)(3)(A) before June 1, 1997.

Sec. 2. RCW 30.04.010 and 1994 c 92 s 7 are each amended to read as follows:

Certain terms used in this title shall have the meanings ascribed in this section.

"Banking" shall include the soliciting, receiving or accepting of money or its equivalent on deposit as a regular business.

"Bank," unless a different meaning appears from the context, means any corporation organized under the laws of this state engaged in banking, other than a trust company, savings association, or a mutual savings bank.

"Branch (~~bank~~)" means any established office of deposit (~~(or discount)~~, domestic or otherwise, maintained by any bank or trust company (~~(, domestic or otherwise,)~~) other than its (~~(principal place of business, regardless of whether it be in the same city or locality,)~~) head office. "Branch" does not mean a machine permitting customers to leave funds in storage or communicate with bank employees who are not located at the site of the machine, unless employees of the bank at the site of the machine take deposits on a regular basis. An office or facility of an entity other than the bank shall not be deemed to be established by the bank, regardless of any affiliation, accommodation arrangement, or other relationship between the other entity and the bank.

The term "trust business" shall include the business of doing any or all of the things specified in RCW 30.08.150 (2), (3), (4), (5), (6), (7), (8), (9), (10) and (11).

"Trust company," unless a different meaning appears from the context, means any corporation organized under the laws of this state engaged in trust business.

~~((A "savings account" is an account of a bank in respect of which, (1) a passbook, certificate or other receipt may be required by the bank to be presented whenever a deposit or withdrawal is made and (2) the depositor at any time may be required by the bank to give notice of an intended withdrawal before the withdrawal is made.~~

~~—"Savings bank" shall include (1) any bank whose deposits shall be limited exclusively to savings accounts, and (2) the department of any bank or trust company that accepts, or offers to accept, deposits for savings accounts in accordance with the provisions of this title.~~

~~—"Commercial bank" shall include any bank other than one exclusively engaged in accepting deposits for savings accounts.)~~

"Person" unless a different meaning appears from the context, shall include a firm, association, partnership or corporation, or the plural thereof, whether resident, nonresident, citizen or not.

"Director" means the director of financial institutions.

"Foreign bank" and "foreign banker" shall include:

(1) Every corporation not organized under the laws of the territory or state of Washington doing a banking business, except a national bank;

(2) Every unincorporated company, partnership or association of two or more individuals organized under the laws of another state or country, doing a banking business;

(3) Every other unincorporated company, partnership or association of two or more individuals, doing a banking business, if the members thereof owning a majority interest therein or entitled to more than one-half of the net assets thereof are not residents of this state;

(4) Every nonresident of this state doing a banking business in his or her own name and right only.

Sec. 3. RCW 30.04.232 and 1994 c 92 s 23 are each amended to read as follows:

(1) In addition to an acquisition pursuant to RCW 30.04.230, an out-of-state bank holding company may acquire more than five percent 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, if ~~((the following terms or conditions are fulfilled:~~

~~—(a)) the bank, trust company, or national banking association or its predecessor, the voting stock of which is to be acquired, shall have been conducting business for a period of not less than ((three)) five years((;~~

~~—(b) The laws of the state in which the out of state bank holding company principally conducts its operations permit a domestic bank holding company to 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 that state, and permit the operation of the acquired bank, trust company, or national banking association within that state on terms and conditions no less favorable than other banks, trust companies, or national banking associations doing a banking business within that state;~~

~~—(c) The director, upon the request of any person, shall adopt a rule making a determination whether the law, of a particular state or states meets the qualifications of (b) of this subsection)).~~

(2) The director, consistent with 12 U.S.C. Sec. 1842(d)(2)(D), may approve an acquisition if the standard on which the approval is based does not discriminate against out-of-state banks, out-of-state bank holding companies, or subsidiaries of those banks or holding companies.

(3) As used in this section, the terms "bank holding company," "domestic bank holding company," and "out-of-state bank holding company" shall have the meanings provided in RCW 30.04.230.

Sec. 4. RCW 30.04.280 and 1955 c 33 s 30.04.280 are each amended to read as follows:

No person shall engage in banking except in compliance with and subject to the provisions of this title, ~~((except it be)) unless it is~~ a national bank or except insofar as it may be authorized so to do by the laws of this state relating to mutual savings banks~~((, nor shall any))~~ or savings and loan associations. A corporation shall not engage in a trust business except in compliance with and subject to the provisions of this title~~((, nor shall any))~~. A bank shall not engage

in a trust business except as (~~herein~~) authorized(~~, nor shall any~~) under this title. A bank or trust company shall not establish any branch except in accordance with the provisions of this title. (~~The practice of collecting or receiving deposits or cashing checks at any place or places other than the place where the usual business of a bank or trust company and its operations of discount and deposit are carried on shall be held and construed to be establishing a branch.~~)

Sec. 5. RCW 30.08.140 and 1994 c 92 s 58 are each amended to read as follows:

Upon the issuance of a certificate of authority to a bank, the persons named in the articles of incorporation and their successors shall thereupon become a corporation and shall have power:

- (1) To adopt and use a corporate seal.
- (2) To have perpetual succession.
- (3) To make contracts.
- (4) To sue and be sued, the same as a natural person.
- (5) To elect directors who, subject to the provisions of the corporation's bylaws, shall have power to appoint such officers as may be necessary or convenient, to define their powers and duties and to dismiss them at pleasure, and who shall also have general supervision and control of the affairs of such corporation.
- (6) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of its affairs.
- (7) To invest and reinvest its funds in marketable obligations evidencing the indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes, or debentures commonly known as investment securities except as may by regulation be limited by the director.
- (8) To discount and negotiate promissory notes, drafts, bills of exchange and other evidences of debt, to receive deposits of money and commercial paper, to lend money secured or unsecured, to issue all forms of letters of credit, to buy and sell bullion, coins and bills of exchange.
- (9) To take and receive as bailee for hire upon terms and conditions to be prescribed by the corporation, for safekeeping and storage, jewelry, plate, money, specie, bullion, stocks, bonds, mortgages, securities and valuable paper of any kind and other valuable personal property, and to rent vaults, safes, boxes and other receptacles for safekeeping and storage of personal property.
- (10) If the bank be located in a city of not more than five thousand inhabitants, to act as insurance agent. A bank exercising this power may continue to act as an insurance agent notwithstanding a change of the population of the city in which it is located.
- (11) To accept drafts or bills of exchange drawn upon it having not more than six months sight to run, which grow out of transactions involving the importation or exportation of goods; or which grow out of transactions involving

the domestic shipment of goods, providing shipping documents conveying or securing title are attached at the time of acceptance; or which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title to readily marketable staples. No bank shall accept, either in a foreign or a domestic transaction, for any one person, company, firm or corporation, to an amount equal at any one time in the aggregate to more than ten percent of its paid up and unimpaired capital stock and surplus unless the bank is secured by attached documents or by some other actual security growing out of the same transaction as the acceptance; and no bank shall accept such bills to an amount equal at any time in the aggregate to more than one-half of its paid up and unimpaired capital stock and surplus: PROVIDED, HOWEVER, That the director, under such general regulations applicable to all banks irrespective of the amount of capital or surplus, as the director may prescribe may authorize any bank to accept such bills to an amount not exceeding at any time in the aggregate one hundred percent of its paid up and unimpaired capital stock and surplus: PROVIDED, FURTHER, That the aggregate of acceptances growing out of domestic transactions shall in no event exceed fifty percent of such capital stock and surplus.

(12) To accept drafts or bills of exchange drawn upon it, having not more than three months sight to run, drawn under regulations to be prescribed by the director by banks or bankers in foreign countries or dependencies or insular possessions of the United States for the purpose of furnishing dollar exchange as required by the usages of trade in the respective countries, dependencies or insular possessions. Such drafts or bills may be acquired by banks in such amounts and subject to such regulations, restrictions and limitations as may be provided by the director: PROVIDED, HOWEVER, That no bank shall accept such drafts or bills of exchange referred to in this subdivision for any one bank to an amount exceeding in the aggregate ten percent of the paid up and unimpaired capital and surplus of the accepting bank unless the draft or bill of exchange is accompanied by documents conveying or securing title or by some other adequate security, and that no such drafts or bills of exchange shall be accepted by any bank in an amount exceeding at any time the aggregate of one-half of its paid up and unimpaired capital and surplus: PROVIDED FURTHER, That compliance by any bank which is a member of the federal reserve system of the United States with the rules, regulations and limitations adopted by the federal reserve board thereof with respect to the acceptance of drafts or bills of exchange by members of such federal reserve system shall be a sufficient compliance with the requirements of this subdivision or paragraph relating to rules, regulations and limitations prescribed by the director.

(13) To have and exercise all powers necessary or convenient to effect its purposes.

(14) To serve as custodian of an individual retirement account and pension and profit sharing plans qualified under internal revenue code section 401(a), the assets of which are invested in deposits of the bank or trust company or are

invested, pursuant to directions from the customer owning the account, in securities traded on a national securities market: PROVIDED, That the bank or trust company shall accept no investment responsibilities over the account unless it is granted trust powers by the director.

(15) To be a limited partner in a limited partnership that engages in only such activities as are authorized for the bank.

(16) To exercise any other power or authority permissible under applicable state or federal law conducted by out-of-state state banks with branches in Washington to the same extent if, in the opinion of the director, those powers and authorities affect the operations of banking in Washington or affect the delivery of financial services in Washington.

NEW SECTION. Sec. 6. A new section is added to chapter 30.04 RCW to read as follows:

The director's approval of a branch within the United States or any territory of the United States or in any foreign country shall be conditioned on a finding by the director that the bank has a satisfactory record of compliance with applicable laws and has a satisfactory financial condition. A bank chartered under this title may exercise any powers and authorities at any branch outside Washington that are permissible for a bank operating in that state where the branch is located, except to the extent those activities are expressly prohibited by the laws of this state or by any rule or order of the director applicable to the state bank. However, the director may waive any limitation in writing with respect to powers and authorities that the director determines do not threaten the safety or soundness of the state bank.

NEW SECTION. Sec. 7. A new section is added to chapter 30.04 RCW to read as follows:

On or before the date on which a bank enters into any agency agreement authorizing another entity, as agent of the bank, to receive deposits or renew time deposits, the bank shall give written notice to the director of the existence of that agency arrangement. The notice is not effective until it has been delivered to the office of the director.

Sec. 8. RCW 30.20.060 and 1986 c 279 s 38 are each amended to read as follows:

A bank or trust company shall repay all deposits to the depositor or his or her lawful representative when required at such time or times and with such interest as the regulations of the corporation shall prescribe. ~~((Such))~~ These regulations shall be prescribed by the directors of the bank or trust company and may contain provisions with respect to the terms and conditions upon which any account or deposit will be maintained by ~~((said))~~ the bank or trust company. ~~((Such))~~ These regulations and any amendments ~~((thereto))~~ shall be available to depositors on request, and shall be posted in a conspicuous place in ~~((a room where the deposit business of the bank or trust company shall be transacted and shall remain available to depositors upon request))~~ the principal office and each

branch in this state or, if the regulations and any amendments are not so posted, a description of changes in the regulations after an account is opened shall be mailed to depositors pursuant to 12 U.S.C. Sec. 4305(c) or otherwise. All ~~((such))~~ these rules and regulations and all amendments ~~((thereto from time to time in effect))~~ shall be binding upon all depositors. At the option of the bank, a passbook shall be issued to each savings account depositor, or a record maintained in lieu of a passbook. A deposit contract may be adopted by the bank or trust company in lieu of or in addition to account rules and regulations and shall be enforceable and amendable in the same manner as ~~((provided herein for))~~ account rules and regulations or as provided in the deposit contract. A copy of ~~((such))~~ the contract shall be provided to the depositor.

NEW SECTION. Sec. 9. A new section is added to chapter 30.49 RCW to read as follows:

(1) This section is applicable where the resulting bank would have branches inside and outside the state of Washington.

(2) As used in this section, unless a different meaning is required by the context, the following words and phrases have the following meanings:

(a) "Combination" means a merger or consolidation, or purchase or sale of all or substantially all of the assets, including all or substantially all of the branches.

(b) "Out-of-state bank" means a bank, as defined in 12 U.S.C. Sec. 1813(a), which is chartered under the laws of any state other than this state, or a national bank, the main office of which is located in any state other than this state.

(c) "State" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(3) A bank chartered under this title may engage in a combination or purchase and assumption of one or more branches of an out-of-state bank with an out-of-state bank with the prior approval of the director if the combination or purchase and assumption would result in a bank chartered under this title. Upon notice to the director a bank chartered under this title and an out-of-state bank may engage in a combination if the combination would result in an out-of-state bank. However, that combination shall comply with applicable Washington law as determined by the director, including but not limited to applicable state merger laws, and the conditions and requirements of this section.

(4) Applications for the director's approval under subsection (3) of this section shall be on a form prescribed by the director and conditioned upon payment of the fee prescribed pursuant to RCW 30.08.095. If the director finds that (a) the proposed combination will not be detrimental to the safety and soundness of the applicant or the resulting bank, (b) any new officers and directors of the resulting bank are qualified by character, experience, and financial responsibility to direct and manage the resulting bank, and (c) the

proposed merger is consistent with the convenience and needs of the communities to be served by the resulting bank in this state and is otherwise in the public interest, the director shall approve the interstate combination and the operation of branches outside of Washington by the applicant bank. This transaction may be consummated only after the applicant has received evidence of the director's written approval.

(5) Any out-of-state bank that will be the resulting bank pursuant to an interstate combination involving a bank chartered under this title shall notify the director of the proposed combination not later than three days after the date of filing of an application for the combination with the responsible federal bank supervisory agency, and shall submit a copy of that application to the director and pay applicable filing fees, if any, required by the director. In lieu of notice from the proposed resulting bank the director may accept notice from the bank's supervisory agency having primary responsibility for the bank. The director shall have the authority to waive any procedures required by Washington merger laws if the director finds that the procedures are in conflict with applicable federal law or in conflict with the applicable law of the state of the resulting bank.

(6) Subject to section 11(2) of this act, the deposit concentration limits stated in 12 U.S.C. Sec. 1831u(b)(2)(B) shall apply to the combination of an out-of-state bank and a nonaffiliated out-of-state bank or bank organized under this title or under the national bank act if the combination is an interstate merger transaction as defined by 12 U.S.C. Sec. 1831u(f)(6).

(7) A combination resulting in the acquisition, by an out-of-state bank that does not have branches in this state, of a bank organized under this title or the national bank act, shall not be permitted under this chapter unless the bank to be acquired, or its predecessors, have been in continuous operation, on the date of the combination, for a period of at least five years.

NEW SECTION. Sec. 10. As used in this chapter, unless a different meaning is required by the context, the following words and phrases have the following meanings:

(1) "Bank" means any national bank, state bank, and district bank, as those terms are defined in 12 U.S.C. Sec. 1813(a).

(2) "Bank holding company" has the meaning set forth in 12 U.S.C. Sec. 1841(a)(1).

(3) "Bank supervisory agency" means:

(a) Any agency of another state with primary responsibility for chartering and supervising banks; and

(b) The office of the comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system, and any successor to these agencies.

(4) "Control" shall be construed consistently with the provisions of 12 U.S.C. Sec. 1841(a)(2).

(5) "Home state" means with respect to a:

- (a) State bank, the state by which the bank is chartered; or
- (b) National bank, the state in which the main office of the bank is located under federal law;
- (6) "Home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which the bank is chartered.
- (7) "Host state" means a state, other than the home state of a bank, in which the bank maintains, or seeks to establish and maintain a branch.
- (8) "Interstate combination" means the:
 - (a) Merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; or
 - (b) Purchase of all or substantially all of the assets, including all or substantially all of the branches, of a bank whose home state is different from the home state of the acquiring bank.
- (9) "Out-of-state bank" means a bank whose home state is a state other than Washington.
- (10) "Out-of-state state bank" means a bank chartered under the laws of any state other than Washington.
- (11) "Resulting bank" means a bank that has resulted from an interstate combination under this chapter.
- (12) "State" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.
- (13) "Washington bank" means a bank whose home state is Washington.
- (14) "Washington state bank" means a bank organized under Washington banking law.

NEW SECTION. Sec. 11. (1) An out-of-state bank may engage in banking in this state without violating RCW 30.04.280 only if the conditions and filing requirements of this chapter are met and the bank was lawfully engaged in banking in this state on the effective date of this act or resulted from an interstate combination pursuant to section 9 or 28 of this act, or resulted from a relocation of a head office of a state bank pursuant to 12 U.S.C. Sec. 30 and RCW 30.04.215(3), or resulted from a relocation of a main office of a national bank pursuant to 12 U.S.C. Sec. 30, or from the establishment of a branch of a savings bank in compliance with RCW 32.04.030(2). Nothing in this section affects the authorities of alien banks as defined by RCW 30.42.020 to engage in banking within this state.

(2) The director, consistent with 12 U.S.C. Sec. 1831u(b)(2)(D), may approve an interstate combination if the standard on which the approval is based does not discriminate against out-of-state banks, out-of-state bank holding companies, or subsidiaries of those banks or holding companies.

NEW SECTION. Sec. 12. An out-of-state bank with host branches in this state may relocate its head office in Washington and reincorporate as a Washington state bank if the director finds that the bank meets the standards as to capital structures, operations, business experience, and character of officers and directors, and the bank follows the procedures specified in this section.

The bank shall file with the director on a form prescribed by the director, an application to relocate its head office to Washington. Within six months upon acceptance of a complete application, the director shall notify the bank to file, in triplicate, an executed and acknowledged certificate of reincorporation signed by a majority of the entire board of directors that at least two-thirds of each class of voting stock of the bank entitled to vote thereon has approved the: (1) Head office relocation; (2) change to a Washington state bank; and (3) new articles of incorporation.

Within thirty days after receipt of the certificate and articles, the director shall endorse upon each of the triplicate copies, over the director's official signature, the word "approved" or the word "refused," with the date of the endorsement. In case of refusal the director shall immediately return one of the triplicates, so endorsed, together with a statement explaining the reason for refusal to the bank from whom the certificate and articles were received. The refusal shall be conclusive, unless the bank, within ten days of the issuance of the notice of refusal, requests a hearing under chapter 34.05 RCW.

NEW SECTION. Sec. 13. (1) If authorized to engage in banking in this state under section 11 of this act, an out-of-state bank may maintain and operate the branches in Washington of a Washington bank with which the out-of-state bank or its predecessors engaged in an interstate combination.

(2) The out-of-state bank may establish or acquire and operate additional branches in Washington to the same extent that any Washington bank may establish or acquire and operate a branch in Washington under applicable federal and state law.

(3) The out-of-state state bank may, at such branches, unless otherwise limited by the bank's home state law, exercise any powers and authorities that are authorized under the laws of this state for Washington state banks.

(4) The out-of-state state bank may, at these branches, exercise additional powers and authorities that are authorized under the laws of its home state, only if the director determines in writing that the exercise of the additional powers and authorities in this state will not threaten the safety and soundness of banks in this state and serves the convenience and needs of Washington consumers. Washington state banks also may exercise the powers and authorities under RCW 30.08.140(16) or 32.08.140(15).

NEW SECTION. Sec. 14. (1) The director may make examinations of any branch in this state of an out-of-state state bank as the director deems necessary to determine whether the branch is being operated in compliance with the laws of this state or is conducting its activities in accordance with safe and

sound banking practices. The provisions applicable to examinations and sharing of information of Washington state banks shall apply to these examinations.

(2) The director may prescribe requirements for reports regarding any branches of an out-of-state bank that operates a branch in Washington pursuant to this chapter. The required reports shall be provided by the bank or by the bank supervisory agency having primary responsibility for the bank. Any reporting requirements prescribed by the director under this subsection shall be consistent with the reporting requirements applicable to Washington state banks and appropriate for the purpose of enabling the director to carry out his or her responsibilities under this chapter.

(3) The director may enter into supervisory agreements with any bank supervisory agency that has concurrent jurisdiction over a Washington state bank or an out-of-state state bank operating a branch in this state pursuant to this chapter to engage the services of that agency's examiners at a reasonable rate of compensation, or to provide the services of the director's examiners to that agency at a reasonable rate of compensation. These contracts are exempt from the requirements of chapter 39.29 RCW. The director also may enter into supervisory agreements with other appropriate bank supervisory agencies and the bank to prescribe the applicable laws governing powers and authorities, including but not limited to corporate governance and operational matters, of Washington branches of an out-of-state bank chartered by another state or out-of-state branches of a Washington state bank. The supervisory agreement may resolve conflict of laws among home and host states and specify the manner in which the examination, supervision, and application processes shall be coordinated among the home and host states.

(4) The director may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch in Washington of an out-of-state state bank or any branch of a Washington state bank in any host state. The director also may at any time take action independently if the director deems it necessary or appropriate to carry out his or her responsibilities under this chapter or to ensure compliance with the laws of this state. However, in the case of an out-of-state state bank, the director shall recognize the exclusive authority of the home state regulator over corporate governance and operational matters and the primary responsibility of the home state regulator with respect to safety and soundness matters, unless otherwise specified in the supervisory agreement executed pursuant to this section.

(5) Each out-of-state state bank that maintains one or more branches in this state may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the laws of this state and rules of the director. The director is authorized to enter into agreements to share fees with other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies.

NEW SECTION. Sec. 15. If the director determines that a branch maintained by an out-of-state state bank in this state is being operated in violation of the laws of this state, or that the branch is being operated in an unsafe and unsound manner, the director has the authority to take all enforcement actions he or she would be empowered to take if the branch were a Washington state bank. However, the director shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state state bank and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving the enforcement action.

NEW SECTION. Sec. 16. The director may adopt those rules necessary to implement chapter . . . , Laws of 1996 (this act).

NEW SECTION. Sec. 17. (1) Any out-of-state state bank that will be the resulting bank pursuant to an interstate combination involving any bank with branches in Washington, if section 9(5) of this act does not apply, shall notify the director of the proposed combination not later than three days after the date of filing of an application for the combination with the responsible federal bank supervisory agency, and shall submit a copy of the application to the director and pay applicable application fees, if any, required by the director. In lieu of notice from the out-of-state state bank the director may accept notice from the bank's home state regulator. The director has the authority to waive any procedures required by Washington merger laws if the director finds that the provision is in conflict with the applicable federal law or in conflict with the applicable law of the state of the resulting bank.

(2) An out-of-state state bank that has established and maintains a branch in this state pursuant to this chapter shall give at least thirty days' prior written notice or, in the case of an emergency transaction, shorter notice as is consistent with the applicable state or federal law, to the director of any transaction that would cause a change of control with respect to the bank or any bank holding company that controls the bank, with the result that an application would be required to be filed pursuant to the federal change in bank control act of 1978, as amended, 12 U.S.C. Sec. 1817(j), or the federal bank holding company act of 1956, as amended, 12 U.S.C. Sec. 1841 et seq., or any successor statutes. In lieu of notice from the out-of-state state bank the director may accept notice from the bank's home state regulator.

NEW SECTION. Sec. 18. (1) The laws of Washington applicable to Washington state banks regarding community reinvestment, consumer protection, fair lending, and the establishment of intrastate branches apply to any branch in Washington of an out-of-state national bank or out-of-state state bank to the same extent as Washington laws apply to a Washington state bank. In lieu of taking action directly against an out-of-state state bank to enforce compliance with these Washington laws on host state branches, the director may refer action to the home state regulator, but the director retains enforcement powers to ensure that compliance is satisfactory to the director.

(2) Any host state branch of a Washington state bank shall comply with all applicable host state laws concerning community reinvestment, consumer protection, fair lending, and the establishment of intrastate branches.

(3) In the event that the responsible federal chartering authority, pursuant to applicable federal law, or in the event a court of competent jurisdiction declares that any Washington state law is invalid with respect to an out-of-state or national bank, that Washington state law is also invalid with respect to Washington state banks and to host branches of out-of-state state banks to that same extent. The director may, from time to time, publish by rule Washington state laws that have been found invalidated pursuant to federal law and procedures. This subsection does not impair, in any manner, the authority of the state attorney general to enforce antitrust laws applicable to banks, bank holding companies, or affiliates of those banks or bank holding companies.

Sec. 19. RCW 39.29.040 and 1995 c 80 s 1 are each amended to read as follows:

This chapter does not apply to:

(1) Contracts specifying a fee of less than two thousand five hundred dollars if the total of the contracts from that agency with the contractor within a fiscal year does not exceed two thousand five hundred dollars;

(2) Contracts awarded to companies that furnish a service where the tariff is established by the utilities and transportation commission or other public entity;

(3) Intergovernmental agreements awarded to any governmental entity, whether federal, state, or local and any department, division, or subdivision thereof;

(4) Contracts awarded for services to be performed for a standard fee, when the standard fee is established by the contracting agency or any other governmental entity and a like contract is available to all qualified applicants;

(5) Contracts for services that are necessary to the conduct of collaborative research if prior approval is granted by the funding source;

(6) Contracts for client services;

(7) Contracts for architectural and engineering services as defined in RCW 39.80.020, which shall be entered into under chapter 39.80 RCW; ~~((and))~~

(8) Contracts for the employment of expert witnesses for the purposes of litigation; and

(9) Contracts for bank supervision authorized under section 14 of this act.

Sec. 20. RCW 32.04.020 and 1994 c 92 s 293 are each amended to read as follows:

The use of the term "savings bank" in this title refers to mutual savings banks and converted mutual savings banks only.

The use of the words "mutual savings" as part of a name under which business of any kind is or may be transacted by any person, firm, or corporation, except such as were organized and in actual operation on June 9, 1915, or

as may be thereafter organized and operated under the requirements of this title is hereby prohibited.

The use of the term "director" in this title refers to the director of financial institutions.

The use of the word "branch" in this title refers to an established (~~manned place of business or manned mobile facility or other manned facility of a savings bank~~) office or facility other than the principal office, at which employees of the savings bank take deposits (may be taken). The term "branch" in this title does not refer to a machine permitting customers to leave funds in storage or communicate with savings bank employees who are not located at the site of that machine, unless employees of the savings bank at the site of that machine take deposits on a regular basis. An office of an entity other than the savings bank is not established by the savings bank, regardless of any affiliation, accommodation arrangement, or other relationship between the other entity and the savings bank.

Sec. 21. RCW 32.04.030 and 1994 c 256 s 93 and 1994 c 92 s 294 are each reenacted and amended to read as follows:

A savings bank may not, without the written approval of the director, establish and operate branches in any place (~~within the state~~).

A savings bank headquartered in this state desiring to establish a branch shall file a written application with the director, who shall approve or disapprove the application.

The director's approval shall be conditioned on a finding that the (~~resources in the market area of the proposed location offer a reasonable promise of adequate support for the proposed branch and that the proposed branch is not being formed for other than the legitimate purposes under this title. A branch shall not be established or permitted if the capital of the savings bank, including paid-in surplus, guaranty fund, and undivided profits, is less than the aggregate paid-in capital which would be required by law as a prerequisite to the establishment and operation of an equal number of branches in like locations by a commercial bank~~) savings bank has a satisfactory record of compliance with applicable laws and has a satisfactory financial condition. In making such findings, the director may rely on an application in the form filed with the federal deposit insurance corporation pursuant to 12 U.S.C. Sec. 1828(d). If the application for a branch is not approved, the savings bank shall have the right to appeal in the same manner and within the same time as provided by RCW 32.08.050 and 32.08.060. The savings bank when delivering the application to the director shall transmit to the director a check in an amount established by rule to cover the expense of the investigation. A savings bank headquartered in this state shall not move its headquarters or any branch more than two miles from its existing location without prior approval of the director. On or before the date on which it opens any office at which it will transact business in any state, territory, province, or other jurisdiction, a savings bank shall give written

notice to the director of the location of this office. No such notice shall become effective until it has been delivered to the director.

The board of trustees of a savings bank, after notice to the director, may discontinue the operation of a branch. The savings bank shall keep the director informed in the matter and shall notify the director of the date operation of the branch is discontinued.

(1) A savings bank that is headquartered in this state and is operating branches in another state, territory, province, or other jurisdiction may provide copies of state examination reports and reports of condition of the savings bank to the regulator having oversight responsibility with regard to its operations in that ~~((state))~~ other jurisdiction, including the regulator of savings associations in the event such a savings bank is transacting savings and loan business pursuant to RCW 32.08.142 in that ~~((state))~~ other jurisdiction.

(2) No savings bank headquartered in another state may establish, or acquire pursuant to RCW 32.32.500, and operate branches as a savings bank in any place within the state unless:

(a) The savings bank has filed with the director an agreement to comply with the requirements of section 14 of this act for periodic reports by the savings bank or by the appropriate state superintendent or equivalent regulator of the savings bank under the laws of the state in which the savings bank is incorporated ~~((shall have agreed to supply the director with such examination reports and reports of condition as the director shall deem sufficient to allow the director to ascertain on a current basis the financial condition of the savings bank))~~, unless the laws expressly require the provision of all the reports to the director;

(b) The savings bank ~~((shall have))~~ has filed with the director (i) a duly executed instrument in writing, by its terms of indefinite duration and irrevocable, appointing the director and his or her successors its true and lawful attorney, upon whom all process in any action or proceeding against it in a cause of action arising out of business transacted by such savings bank in this state, may be served with the same force and effect as if it were a domestic corporation and had been lawfully served with process within the state, and (ii) a written certificate of designation, which may be changed from time to time by the filing of a new certificate of designation, specifying the name and address of the officer, agent, or other person to whom such process shall be forwarded by the director; and

(c) The savings bank ~~((shall have))~~ has supplied the director with such information as he or she shall require by rule, not to exceed the information on which the director may rely in approving a branch application pursuant to this section by a savings bank headquartered in this state.

A savings bank headquartered in another state may not establish and operate branches as a foreign savings association in any place within the state except upon compliance with chapter 33.32 RCW.

NEW SECTION. Sec. 22. A new section is added to chapter 32.04 RCW to read as follows:

On or before the date on which a mutual savings bank enters into any agency agreement authorizing another entity, as agent of the mutual savings bank, to receive deposits or renew time deposits, the mutual savings bank shall give written notice to the director of the existence of the agency agreement. The notice is not effective until it has been delivered to the office of the director.

Sec. 23. RCW 32.08.140 and 1994 c 92 s 319 are each amended to read as follows:

Every mutual savings bank incorporated under this title shall have, subject to the restrictions and limitations contained in this title, the following powers:

(1) To receive deposits of money, to invest the same in the property and securities prescribed in this title, to declare dividends in the manner prescribed in this title, and to exercise by its board of trustees or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of a savings bank.

(2) To issue transferable certificates showing the amounts contributed by any incorporator or trustee to the guaranty fund of such bank, or for the purpose of paying its expenses. Every such certificate shall show that it does not constitute a liability of the savings bank, except as otherwise provided in this title.

(3) To purchase, hold and convey real property as prescribed in RCW 32.20.280.

(4) To pay depositors as hereinafter provided, and when requested, pay them by drafts upon deposits to the credit of the savings bank in any city in the United States, and to charge current rates of exchange for such drafts.

(5) To borrow money in pursuance of a resolution adopted by a vote of a majority of its board of trustees duly entered upon its minutes whereon shall be recorded by ayes and noes the vote of each trustee, for the purpose of repaying depositors, and to pledge or hypothecate securities as collateral for loans so obtained. Immediate written notice shall be given to the director of all amounts so borrowed, and of all assets so pledged or hypothecated.

(6) Subject to such regulations and restrictions as the director finds to be necessary and proper, to borrow money in pursuance of a resolution adopted by a vote of a majority of its board of trustees duly entered upon its minutes whereon shall be recorded by ayes and noes the vote of each trustee, for purposes other than that of repaying depositors and to pledge or hypothecate its assets as collateral for any such loans, provided that no amount shall at any time be borrowed by a savings bank pursuant to this subsection (6), if such amount, together with the amount then remaining unpaid upon prior borrowings by such savings bank pursuant to this subsection (6), exceeds thirty percent of the assets of the savings bank.

The sale of securities or loans by a bank subject to an agreement to repurchase the securities or loans shall not be considered a borrowing. Borrowings from federal, state, or municipal governments or agencies or instrumentalities thereof shall not be subject to the limits of this subsection.

(7) To collect or protest promissory notes or bills of exchange owned by such bank or held by it as collateral, and remit the proceeds of the collections by drafts upon deposits to the credit of the savings bank in any city in the United States, and to charge the usual rates or fees for such collection and remittance for such protest.

(8) To sell gold or silver received in payment of interest or principal of obligations owned by the savings bank or from depositors in the ordinary course of business.

(9) To act as insurance agent for the purpose of writing fire insurance on property in which the bank has an insurable interest, the property to be located in the city in which the bank is situated and in the immediate contiguous suburbs, notwithstanding anything in any other statute to the contrary.

(10) To let vaults, safes, boxes or other receptacles for the safekeeping or storage of personal property, subject to laws and regulations applicable to, and with the powers possessed by, safe deposit companies.

(11) To elect or appoint in such manner as it may determine all necessary or proper officers, agents, boards, and committees, to fix their compensation, subject to the provisions of this title, and to define their powers and duties, and to remove them at will.

(12) To make and amend bylaws consistent with law for the management of its property and the conduct of its business.

(13) To wind up and liquidate its business in accordance with this title.

(14) To adopt and use a common seal and to alter the same at pleasure.

(15) To exercise any other power or authority permissible under applicable state or federal law exercised by other savings banks or by savings and loan associations with branches in Washington to the same extent as those savings institutions if, in the opinion of the director, the exercise of these powers and authorities by the other savings institutions affects the operations of savings banks in Washington or affects the delivery of financial services in Washington.

(16) To exercise the powers and authorities conferred by RCW 30.04.215, if upon a finding by the director that a determination made by a regulatory or judicial authority of competent jurisdiction will result in the imposition, on a transaction subject to RCW 32.32.500, of the concentration limits specified in section 9(6) of this act, notwithstanding the concentration limits specifically applied by RCW 32.32.500(3).

(17) To exercise the powers and authorities that may be carried on by a subsidiary of the mutual savings bank that has been determined to be a prudent investment pursuant to RCW 32.20.380.

(18) To do all other acts authorized by this title.

Sec. 24. RCW 32.08.142 and 1994 c 256 s 98 are each amended to read as follows:

Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a mutual savings bank has under the laws of this state, a mutual savings bank shall have the powers and

authorities ~~((of))~~ that a federal mutual savings bank ~~((formed under the provisions of 12 U.S.C. Sec. 1464))~~ had on July 28, 1985, or a subsequent date not later than the effective date of this act. As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance matters.

The restrictions, limitations, and requirements applicable to specific powers or authorities of federal mutual savings banks shall apply to mutual savings banks exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted mutual savings banks solely under this section.

Sec. 25. RCW 32.08.146 and 1994 c 256 s 99 are each amended to read as follows:

A mutual savings bank may exercise the powers and authorities granted, after the effective date of this act, to federal mutual savings banks ~~((formed under the provisions of 12 U.S.C. Sec. 1464 after July 28, 1985))~~ or their successors under federal law, only if the director finds that the exercise of such powers and authorities:

- (1) Serves the convenience and advantage of depositors and borrowers; and
- (2) Maintains the fairness of competition and parity between state-chartered savings banks and federal savings banks or their successors under federal law.

As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance matters.

The restrictions, limitations, and requirements applicable to specific powers or authorities of federal mutual savings banks or their successors under federal law shall apply to mutual savings banks exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted mutual savings banks solely under this section.

NEW SECTION. Sec. 26. A new section is added to chapter 32.08 RCW to read as follows:

In addition to all powers and authorities, express or implied, that a mutual savings bank has under the laws of this state, a mutual savings bank chartered under this title may exercise any powers and authorities at any branch outside Washington that are permissible for a savings bank operating in the jurisdiction where that branch is located, or for a bank, savings association, or similar financial institution operating in the jurisdiction if the laws of the jurisdiction do not provide for the operation of savings banks in the jurisdiction, except to the extent that the exercise of these powers and authorities is expressly prohibited or limited by the laws of this state or by any rule or order of the director applicable to the mutual savings bank. However, the director may waive any limitation in writing with respect to powers and authorities that the director determines do not threaten the safety or soundness of the mutual savings bank.

Sec. 27. RCW 32.12.020 and 1994 c 92 s 324 are each amended to read as follows:

The sums deposited with any savings bank, together with any dividends or interest credited thereto, shall be repaid to the depositors thereof respectively, or to their legal representatives, after demand in such manner, and at such times, and under such regulations, as the board of trustees shall prescribe, subject to the provisions of this section and chapter 30.22 RCW. ~~((Such))~~ These regulations shall be available to depositors upon request, and shall be posted in a conspicuous place in the ((room where the business of such savings bank shall be transacted, and shall be available to depositors upon request)) principal office and each branch in this state or, if the regulations are not so posted, a description of changes in the regulations after an account is opened shall be mailed to depositors pursuant to 12 U.S.C. Sec. 4305(c) or otherwise. All such rules and regulations, and all amendments thereto, from time to time in effect, shall be binding upon all depositors.

(1) Such bank may at any time by a resolution of its board of trustees require a notice of not more than six months before repaying deposits, in which event no deposit shall be due or payable until the required notice of intention to withdraw the same shall have been personally given by the depositor: PROVIDED, That such bank at its option may pay any deposit or deposits before the expiration of such notice. But no bank shall agree with its depositors or any of them in advance to waive the requirement of notice as herein provided: PROVIDED, That the bank may create a special class of depositors who shall be entitled to receive their deposits upon demand.

(2) Except as provided in subdivisions (3), (4), and (5) of this section the savings bank shall not pay any dividend, or interest, or deposit, or portion thereof, or any check drawn upon it by a depositor unless the certificate of deposit is produced or bears a legend stating it may be paid without production, or the passbook of the depositor is produced and the proper entry is made therein, at the time of the payment.

(3) The board of trustees of any such bank may by its bylaws provide for making payments in cases of loss of passbook or certificate of deposit, or other exceptional cases where the passbooks or certificates of deposit cannot be produced without loss or serious inconvenience to depositors, the right to make such payments to cease when so directed by the director upon his or her being satisfied that such right is being improperly exercised by any such bank; but payments may be made at any time upon the judgment or order of a court.

(4) The board of trustees of any such bank may by its bylaws provide for making payments to depositors at their request, of dividends or interest payable on any deposit, without requiring the production of the passbook or certificate of deposit of the depositor, and any payment made in accordance with any such request and the receipt or acquittance of the one to whom such payment is made shall be a valid and sufficient release and discharge to such savings bank for all payments made on account of such request prior to receipt by such savings bank

of notice in writing not to pay such sums in accordance with the terms of such request.

(5) The issuance of a passbook or certificate of deposit may be omitted for any account if an adequate record thereof is maintained, in lieu of a passbook or certificate of deposit, on which shall be entered deposits, withdrawals, and interest credited: PROVIDED, That in any event a passbook shall be issued upon the request of any passbook account depositor.

Sec. 28. RCW 32.32.500 and 1994 c 256 s 111 and 1994 c 92 s 404 are each reenacted and amended to read as follows:

(1) A savings bank may merge with, consolidate with, convert into, acquire ~~((the assets))~~ a branch or branches of, or sell its ~~((assets))~~ branch or branches to any other financial institution chartered or authorized to do business in this state under Titles 30, 32, or 33 RCW or under the federal laws relating to depository institutions as defined in 12 U.S.C. Sec. 461 or the laws of any other state, territory, province, or other jurisdiction of the United States or another nation, or to a holding company thereof, subject to ~~((4))~~ the approval of (a) the director of financial institutions if the surviving institution is one chartered under Title 30, 32, or 33 RCW, or ~~((2))~~ (b) if the surviving institution is to be a ~~((national))~~ bank, ~~((the comptroller of currency or its successor under 12 U.S.C. Sec. 35, 12 U.S.C. Sec. 215, 12 U.S.C. Sec. 215a, and 12 U.S.C. Sec. 1828e,~~ or (3) if the surviving institution is to be a federal savings and loan association or a federal savings and loan holding company, the office of thrift supervision or its successor under 12 U.S.C. Sec. 1464 (a), 12 U.S.C. Sec. 1467a, and 12 U.S.C. Sec. 1828(e), or (4)) savings bank, savings and loan association, or other depository institution that is federally chartered under the laws of the United States, the federal regulatory authority having jurisdiction over the transaction under the applicable laws, or (c) if the surviving institution is to be a bank, savings bank, savings and loan association, or other depository or financial institution that is chartered under the laws of another state or territory of the United States, the regulatory authority having jurisdiction over that transaction under the applicable laws, or (d) if the surviving institution is to be a bank, savings bank, savings and loan association, or other depository or financial institution that is chartered under the laws of a nation other than the United States or of a state, territory, province, or other jurisdiction of such nation, the director of financial institutions, or (e) if the surviving institution is to be a bank holding company, the Federal Reserve Board or its successor under 12 U.S.C. Sec. 1842 (a) and (d).

(2) In the case of a liquidation, acquisition, merger, consolidation, or conversion of a converted savings bank, chapter 32.34 RCW shall apply.

(3) The concentration limits applicable to these transactions, pursuant to 12 U.S.C. Sec. 1831u(b)(2)(C) with respect to interstate transactions, shall be those imposed pursuant to 12 U.S.C. Sec. 1828(c)(5), as applied by the federal regulatory authority having jurisdiction over that transaction under the applicable law, in lieu of the concentration limits of 12 U.S.C. Sec. 1831u(b)(2)(B).

NEW SECTION. Sec. 29. RCW 30.40.020 and 1994 c 92 s 79, 1986 c 279 s 39, 1981 c 73 s 2, 1973 1st ex.s. c 53 s 35, 1969 c 136 s 6, & 1955 c 33 s 30.40.020 are each repealed.

****NEW SECTION.** Sec. 30. 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 shall take effect June 1, 1996.*

*Sec. 30 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 31. Sections 10 through 18 of this act shall constitute a new chapter in Title 30 RCW.

NEW SECTION. Sec. 32. 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 the House January 19, 1996.

Passed the Senate February 14, 1996.

Approved by the Governor February 27, 1996, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State February 27, 1996.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 30, Substitute House Bill No. 2125 entitled:

"AN ACT Relating to interstate banking;"

This legislation modernizes state banking laws and authorizes interstate branching.

This legislation includes an emergency clause in section 30. Although the authorization of interstate branching is important, it is not a matter necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions. Preventing this bill from being subject to a referendum under Article II, section 1(b) of the state Constitution unnecessarily denies the people of this state their power, at their own option, to approve or reject this bill at the polls.

For this reason, I have vetoed section 30 of Substitute House Bill No. 2125.

With the exception of section 30, Substitute House Bill No. 2125 is approved."

CHAPTER 3

[Engrossed Substitute House Bill 2509]

MARITIME HISTORIC RESTORATION AND PRESERVATION—

GRAYS HARBOR HISTORICAL SEAPORT AND STEAMER VIRGINIA V FOUNDATION

AN ACT Relating to maritime historic restoration and preservation; adding a new section to chapter 88.02 RCW; and adding a new section to chapter 43.08 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 88.02 RCW to read as follows:

In conjunction with the registration of vessels under this chapter, the department shall provide an opportunity for each person registering a vessel to

make a voluntary donation to support the maritime historic restoration and preservation activities of the Grays Harbor Historical Seaport and the Steamer Virginia V Foundation. All voluntary donations collected under this section shall be deposited in the maritime historic restoration and preservation account created under section 2 of this act.

NEW SECTION. Sec. 2. A new section is added to chapter 43.08 RCW to read as follows:

(1) The maritime historic restoration and preservation account is created in the custody of the state treasurer. All receipts from the voluntary donations made simultaneously with the registration of vessels under chapter 88.02 RCW shall be deposited into this account. These deposits are not public funds and are not subject to allotment procedures under chapter 43.88 RCW.

(2) At the end of each fiscal year, the state treasurer shall pay from this account to the department of licensing an amount equal to the reasonable administrative expenses of that agency for that fiscal year for collecting the voluntary donations and transmitting them to the state treasurer and shall pay to the state treasurer an amount equal to the reasonable administrative expenses of that agency for that fiscal year for maintaining the account and disbursing funds from the account.

(3) At the end of each fiscal year, the state treasurer shall pay one-half of the balance of the funds in the account after payment of the administrative costs provided in subsection (2) of this section, to the Grays Harbor Historical Seaport or its corporate successor and the remainder to the Steamer Virginia V Foundation or its corporate successor.

(4) If either the Grays Harbor Historical Seaport and its corporate successors or the Steamer Virginia V Foundation and its corporate successors legally ceases to exist, the state treasurer shall, at the end of each fiscal year, pay the balance of the funds in the account to the remaining organization.

(5) If both the Grays Harbor Historical Seaport and its corporate successors and the Steamer Virginia V Foundation and its corporate successors legally cease to exist, the department of licensing shall discontinue the collection of the voluntary donations in conjunction with the registration of vessels under section 1 of this act, and the balance of the funds in the account escheat to the state. If funds in the account escheat to the state, one-half of the fund balance shall be provided to the office of archaeology and historic preservation and the remainder shall be deposited into the parks renewal and stewardship account.

(6) The secretary of state, the directors of the state historical societies, the director of the office of archaeology and historic preservation within the department of community, trade, and economic development, and two members representing the recreational boating community appointed by the secretary of state, shall review the success of the voluntary donation program for maritime historic restoration and preservation established under section 1 of this act and report their findings to the appropriate legislative committees by January 31,

1998. The findings must include the progress of the program and the potential to expand the voluntary funding to other historic vessels.

Passed the House February 6, 1996.

Passed the Senate February 23, 1996.

Approved by the Governor March 5, 1996.

Filed in Office of Secretary of State March 5, 1996.

CHAPTER 4

[Engrossed Substitute Senate Bill 6427]

UNFINISHED NUCLEAR ENERGY FACILITIES— RESTORATION AND REDEVELOPMENT

AN ACT Relating to the restoration and redevelopment of an unfinished nuclear energy facility; amending RCW 80.50.010; adding new sections to chapter 80.50 RCW; adding a new section to chapter 43.21C RCW; and declaring an emergency.

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

Sec. 1. RCW 80.50.010 and 1975-'76 2nd ex.s. c 108 s 29 are each amended to read as follows:

The legislature finds that the present and predicted growth in energy demands in the state of Washington requires the development of a procedure for the selection and utilization of sites for energy facilities and the identification of a state position with respect to each proposed site. The legislature recognizes that the selection of sites will have a significant impact upon the welfare of the population, the location and growth of industry and the use of the natural resources of the state.

It is the policy of the state of Washington to recognize the pressing need for increased energy facilities, and to ensure through available and reasonable methods, that the location and operation of such facilities will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.

It is the intent to seek courses of action that will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public. Such action will be based on these premises:

(1) To assure Washington state citizens that, where applicable, operational safeguards are at least as stringent as the criteria established by the federal government and are technically sufficient for their welfare and protection.

(2) To preserve and protect the quality of the environment; to enhance the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; to promote air cleanliness; and to pursue beneficial changes in the environment.

(3) To provide abundant energy at reasonable cost.

(4) To avoid costs of complete site restoration and demolition of improvements and infrastructure at unfinished nuclear energy sites, and to use unfinished

nuclear energy facilities for public uses, including economic development, under the regulatory and management control of local governments and port districts.

NEW SECTION. Sec. 2. A new section is added to chapter 80.50 RCW to read as follows:

(1) This section applies only to unfinished nuclear power projects that are not located on federal property. If a certificate holder stops construction of a nuclear energy facility before completion, terminates the project or otherwise resolves not to complete construction, never introduces or stores fuel for the energy facility on the site, and never operates the energy facility as designed to produce energy, the certificate holder may contract, establish interlocal agreements, or use other formal means to effect the transfer of site restoration responsibilities, which may include economic development activities, to any political subdivision or subdivisions of the state composed of elected officials. The contracts, interlocal agreements, or other formal means of cooperation may include, but are not limited to provisions effecting the transfer or conveyance of interests in the site and energy facilities from the certificate holder to other political subdivisions of the state, including costs of maintenance and security, capital improvements, and demolition and salvage of the unused energy facilities and infrastructure.

(2) If a certificate holder transfers all or a portion of the site to a political subdivision or subdivisions of the state composed of elected officials and located in the same county as the site, the council shall amend the site certification agreement to release those portions of the site that are transferred pursuant to this section. Immediately upon release of all or a portion of the site pursuant to this section, all responsibilities for maintaining the public welfare, including but not limited to health and safety, are transferred to the political subdivision or subdivisions of the state.

(3) The legislature finds that ensuring water for site restoration including economic development, completed pursuant to this section can best be accomplished by a transfer of existing surface water rights, and that such a transfer is best accomplished administratively through procedures set forth in existing statutes and rules. However, if a transfer of water rights is not possible, the department of ecology shall, within six months of the transfer of the site or portion thereof pursuant to subsection (1) of this section, create a trust water right under chapter 90.42 RCW containing between ten and twenty cubic feet per second for the benefit of the appropriate political subdivision or subdivisions of the state. The trust water right shall be used in fulfilling site restoration responsibilities, including economic development. The trust water right shall be from existing valid water rights within the basin where the site is located.

NEW SECTION. Sec. 3. A new section is added to chapter 80.50 RCW to read as follows:

Council actions pursuant to the transfer of the site or portions of the site under section 2 of this act are exempt from the provisions of chapter 43.21C RCW.

NEW SECTION. Sec. 4. A new section is added to chapter 43.21C RCW to read as follows:

Council actions pursuant to the transfer of the site or portions of the site under section 2 of this act are exempt from the provisions of this chapter.

NEW SECTION. Sec. 5. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 6. 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 shall take effect immediately.

Passed the Senate February 8, 1996.

Passed the House February 28, 1996.

Approved by the Governor March 6, 1996.

Filed in Office of Secretary of State March 6, 1996.

CHAPTER 5

[Substitute Senate Bill 6579]

WASHINGTON CREDIT UNION SHARE GUARANTY ASSOCIATION

AN ACT Relating to the Washington credit union share guaranty association; amending RCW 31.12A.050 and 31.12A.090; adding a new section to chapter 31.12A RCW; adding new sections to chapter 31.12 RCW; creating a new section; repealing RCW 31.12A.005, 31.12A.010, 31.12A.020, 31.12A.030, 31.12A.040, 31.12A.050, 31.12A.060, 31.12A.070, 31.12A.080, 31.12A.090, 31.12A.100, 31.12A.110, 31.12A.120, 31.12A.130, 31.12A.140, 31.12A.900, 31.12A.910, 31.12A.920, 31.12A.930, and 31.12A.940; repealing 1996 c . . . s 4 (section 4 of this act); 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 since its creation in 1975 the Washington credit union share guaranty association has provided security to member share accounts and other valuable services to members.

The legislature further finds that although during that period thirty member credit unions have been required to liquidate or merge with other members with the assistance of the association, no depositor has experienced any loss.

The legislature further finds that the changing financial services environment, and ever-increasing competitive pressures have caused the association to review its operation and capacity with the result that the membership has recommended an orderly dissolution, and now seeks the adoption of standards and procedures by the legislature that will direct and ensure an orderly transition to federal share insurance.

Therefore, it is the intent of the legislature to effectuate a fair and orderly transition of association members to federal share insurance, and provide the

highest available level of safety for share accounts in keeping with depositors' expectations.

Sec. 2. RCW 31.12A.050 and 1994 c 92 s 227 are each amended to read as follows:

(1) Funding of the association shall be by transfers to a share guaranty association contingency reserve as follows:

(a) Credit unions approved by the director and ratified by the board for membership subsequent to those initial members shall establish a share guaranty association contingency reserve by transferring from their guaranty fund an amount equal to one-half of one percent of the total guaranteeable outstanding share and deposit balances as of the date of membership. When one member credit union is merged into another member credit union, the continuing credit union shall include in its share guaranty contingency reserve the share guaranty contingency reserve of the merged credit union. A nonmember credit union merging with a member credit union must transfer into the share guaranty contingency reserve of the continuing credit union an amount equal to one-half of one percent of the total guaranteeable outstanding share and deposit balances of the nonmember credit union as of the effective date of the merger, as determined by the director.

(b) On the first business day of each year, member credit unions shall make a transfer of an amount sufficient to adjust the contingency reserve to a level of one-half of one percent of the guaranteeable outstanding share and deposit balances as of December 31st of the previous year. If the member's guaranteeable outstanding share and deposit balances decrease from the previous year, any excess which may then appear in the contingency reserve may be transferred to the guaranty fund.

(c) The board may require one additional transfer during the calendar year of an amount not to exceed one-half of one percent of the guaranteeable outstanding share and deposit balances as of December 31st of the previous year. Credit unions which have merged during the year and credit unions which have joined during the year will be subject to the one additional transfer, even if that required transfer occurred before ratification of the joining member or the merger of the two credit unions. The transfer will be based on the guaranteeable share and deposit balances of those credit unions as of the following dates:

- (i) For new members, the balances as of the date of membership;
- (ii) For members that merge, the sum of the balances as of December 31st of the previous year;
- (iii) For a nonmember merging with a member, the sum of the member's balances as of December 31st of the previous year, and of the nonmember's balances as of the effective date of the merger.

(2) Sums specified in subsection (1) of this section may be offset from the statutory transfer requirement to the guaranty fund and shall be retained in the credit union share guaranty contingency reserve as an integral part of its

guaranty fund until such time and if necessary to be drawn for the purposes set forth in this chapter.

(3) Members' share guaranty association contingency reserve funds shall be invested in investments as permitted in the bylaws of the association.

(4) The board, in concurrence with the director, may also suspend or diminish the transfer in any given period after reaching a normal operating sufficiency as provided in the bylaws.

~~((5) Membership in this association may be terminated upon approval by a majority of the credit union members responding to such a proposal and subject further to acceptance by the national credit union administration of continued share insurance coverage under the national credit union administration share insurance program. Notice of such intentions shall be in writing to the association's board of directors at least twelve months prior to such contemplated action: PROVIDED, That in the event that the credit union board has voted to recommend to the membership liquidation, conversion from state to federal credit union charter, or merger with or conversion to a credit union organized under the laws of another state, the liquidating, converting, or merging member will notify the association in writing within seven days after the credit union board has taken such action. Share guarantee coverage through the association will terminate with the effective date of the new charter or completion of the liquidation or merger as determined by the director.~~

~~—(6) Except for a credit union merging with a member credit union, any credit union terminating membership in the association shall be assessed its pro rata share of the difference, if any, between the association's current liability for contracted guarantees and the amount from previous assessments currently held for contracted guarantees by the association. Such difference shall be determined by the director at the time the membership is terminated. If the amount of the assessment exceeds the amount of the actual obligation when finalized, the excess shall be refunded in the same proportion as paid.)~~

Sec. 3. RCW 31.12A.090 and 1994 c 92 s 230 are each amended to read as follows:

(1) In the event a member of the association is placed in liquidation, either voluntary or involuntary, the director or his or her representative shall determine as soon as is reasonably possible the probable assessment, if any, resulting therefrom to its shareholders. If an assessment seems to be indicated, the director or his or her representative shall promptly inform the association in writing of the probable amount of such assessment. In determining the probable assessment for the liquidating member, charges, if any, for services of the director or his or her representative, or his or her staff, as well as accrued but unpaid interest or dividends on share accounts, shall not be deemed liabilities of the liquidating credit union; and, with the consent of the association, all illiquid holdings (furniture, fixtures and other personal property) of the liquidating member, at the fair recoverable value thereof, as determined by the director or his or her representative, may be excluded as assets. In determining the

assessment as to a particular share account, the director or his or her representative shall first deduct the amount of any accrued and currently payable obligation of the shareholder to the liquidating credit union.

(2) Within thirty days after receipt by the association of the foregoing information, the board shall notify the remaining members of the association of the aggregate amount required to make good the probable net loss to share accounts, subject to the following conditions:

(a) The amount of loss to be made good to any shareholder shall not be less than provided by the national credit union administration share insurance program, with authority vested in the association to increase the coverage.

(b) To the amount of the assessment as otherwise determined pursuant to this section, the board may add such amount as it may deem to be reasonably necessary to cover its clerical, mailing and other expense connected with the assessment and distribution of the proceeds thereof to shareholders of the liquidating credit union, not to exceed actual costs of such mailing and clerical services.

(c) The amount of the assessment shall be prorated among the assessed members against their share guaranty contingency reserve: PROVIDED, That members shall not be liable for any amount of assessment exceeding their share guaranty contingency reserve or for any assessments exceeding those permitted in RCW 31.12A.050 as now or hereafter amended.

(d) That a plan for an orderly and expeditious liquidation be presented to the board of directors for their consideration and approval. In cases where a central or other eligible credit union is authorized to act as liquidator or liquidating agent, the association would provide an indemnity against loss to such authorized credit union.

(3) In case of liquidation the board shall cause written notice to each member only if a potential assessment is indicated and the probable amount of such contingency as it relates to a percentage of their total share guaranty contingency reserve. The actual assessment shall be paid by members upon completion of liquidation or sooner, as determined by the board of directors. In all cases the total reserve structure of a liquidating credit union, including its share guaranty contingency reserve, shall be utilized in concluding the liquidation.

(4) The association may also assess members under this section, as if a credit union were placed in liquidation, in order to provide financial assistance to facilitate conversion of the credit union to federal insurance or merger with another credit union that is federally insured or has applied for federal insurance.

NEW SECTION. Sec. 4. A new section is added to chapter 31.12A RCW to read as follows:

(1) Members with a composite capital, asset quality, management, earnings, and liquidity rating by the department of three, four, or five shall, by September 1, 1996, file a:

(a) Completed application for insurance of share accounts with the national credit union administration to become insured under the federal share insurance program, with a copy promptly forwarded to the director by the applicant;

(b) Completed application to merge into a credit union with the director under RCW 31.12.695; or

(c) Detailed notice of liquidation of the credit union with the director under RCW 31.12.725.

Members with a composite capital adequacy, asset quality, management, earnings, and liquidity rating of one or two shall accomplish one of the acts set forth in (a) through (c) of this subsection by December 1, 1996.

Each member shall promptly forward a copy of the application or notice to the association.

If a member fails to file the application or notice as required by this section the failure will constitute an unsafe and unsound condition or practice that seriously jeopardizes the interests of the member's depositors and shareholders. The failure shall constitute grounds for the director to issue a temporary order under RCW 31.12.595 requiring the member to complete the application or notice and to take such other action as the director deems necessary, and shall constitute grounds for the director to issue a notice of charges under RCW 31.12.585.

(2) The association's guarantee of a member credit union will cease upon the member's completion of conversion to insurance of share accounts under the federal share insurance program, or merger into a federally insured credit union, or liquidation, as applicable.

(3) If a member whose application for insurance of share accounts is approved by the national credit union administration fails to complete the insurance conversion in the time allowed by the national credit union administration, the failure will constitute an unsafe and unsound condition or practice that seriously jeopardizes the interests of the member's depositors and shareholders. The failure shall constitute grounds for the director to issue a temporary order under RCW 31.12.595 requiring the member to complete the insurance conversion and to take such other action as the director deems necessary, and shall constitute grounds for the director to issue a notice of charges under RCW 31.12.585. The authority granted to the director under this subsection may be exercised only after January 1, 1998.

(4) In addition to the action authorized in subsection (3) of this section, if a member fails to obtain federal share insurance, merge into a federally insured credit union, or liquidate by December 31, 1998, the director may appoint a liquidating agent for the involuntary liquidation of the member under RCW 31.12.675 and 31.12.685 as if the member were insolvent.

(5) Members that obtain share insurance under the federal share insurance program or merge with a credit union insured under the federal share insurance program shall continue to maintain their contingency reserve under RCW 31.12A.050, and capital reserve required by the association, and shall continue

to be liable for assessments under RCW 31.12A.090, as if they were members, until December 31, 1998.

(6) The contingency and capital reserve required by the association shall be included as capital for determining composite capital adequacy, asset quality, management, and earnings and liquidity ratings by regulatory authorities.

NEW SECTION. Sec. 5. A new section is added to chapter 31.12 RCW to read as follows:

Credit unions must be insured by the federal share insurance program under the national credit union administration on or before December 31, 1998.

NEW SECTION. Sec. 6. A new section is added to chapter 31.12 RCW to read as follows:

(1) After December 31, 1998, credit unions must be insured under the federal share insurance program or an equivalent share insurance program as defined in this section. For the purposes of this section an equivalent share insurance program is a program that: (a) Holds reserves proportionately equal to the federal share insurance program; (b) maintains adequate reserves and access to additional sources of funds through replenishment features, reinsurance, or other sources of funds; and (c) has share insurance contracts that reflect a national geographic diversity.

(2) Before any credit union may insure its share deposits with a share insurance program other than the federal share insurance program, the director must make a finding that the alternative share insurance program meets the standards set forth in this section, following a public hearing and a report on the basis for such finding to the appropriate standing committees of the legislature. All such findings shall be made before December 1st of any year and shall not take effect until the end of the regular legislative session of the following year.

(3) Any alternative share insurance program approved under this section shall be reviewed annually by the director to determine whether the program currently meets the standards in this section. The director shall prepare a written report of his or her findings including supporting analysis and forward the report to the appropriate standing committees of the legislature. If the director finds that the alternative share insurance program does not currently meet the standards of this section the director shall notify all credit unions that insure their shares under the alternative share insurance program, and shall include notice of a public hearing for the purpose of receiving comment on the director's finding. Following the hearing the director may either rescind his or her finding or reaffirm the finding that the alternative share insurance program does not meet the standards in this section. If the finding is reaffirmed, the director shall order all credit unions whose shares are insured with the alternative share insurance program to file, immediately, an application with the national credit union administration to convert to the federal share insurance program.

NEW SECTION. Sec. 7. The following acts or parts of acts are each repealed:

- (1) RCW 31.12A.005 and 1982 c 67 s 1 & 1975 1st ex.s. c 80 s 2;
- (2) RCW 31.12A.010 and 1994 c 92 s 225, 1985 c 7 s 98, 1983 c 48 s 1, 1982 c 67 s 2, 1980 c 41 s 11, & 1975 1st ex.s. c 80 s 3;
- (3) RCW 31.12A.020 and 1975 1st ex.s. c 80 s 4;
- (4) RCW 31.12A.030 and 1985 c 7 s 99, 1982 c 67 s 3, & 1975 1st ex.s. c 80 s 5;
- (5) RCW 31.12A.040 and 1994 c 92 s 226, 1982 c 67 s 4, & 1975 1st ex.s. c 80 s 6;
- (6) RCW 31.12A.050 and 1996 c . . . s 2 (section 2 of this act), 1994 c 92 s 227, 1983 c 48 s 2, 1982 c 67 s 5, 1980 c 41 s 12, & 1975 1st ex.s. c 80 s 7;
- (7) RCW 31.12A.060 and 1982 c 67 s 6 & 1975 1st ex.s. c 80 s 8;
- (8) RCW 31.12A.070 and 1994 c 92 s 228 & 1975 1st ex.s. c 80 s 9;
- (9) RCW 31.12A.080 and 1994 c 92 s 229 & 1975 1st ex.s. c 80 s 10;
- (10) RCW 31.12A.090 and 1996 c . . . s 3 (section 3 of this act), 1994 c 92 s 230, 1982 c 67 s 7, & 1975 1st ex.s. c 80 s 11;
- (11) RCW 31.12A.100 and 1994 c 92 s 231 & 1975 1st ex.s. c 80 s 12;
- (12) RCW 31.12A.110 and 1975 1st ex.s. c 80 s 13;
- (13) RCW 31.12A.120 and 1994 c 92 s 232 & 1975 1st ex.s. c 80 s 14;
- (14) RCW 31.12A.130 and 1975 1st ex.s. c 80 s 15;
- (15) RCW 31.12A.140 and 1994 c 92 s 233 & 1975 1st ex.s. c 80 s 16;
- (16) RCW 31.12A.900 and 1975 1st ex.s. c 80 s 17;
- (17) RCW 31.12A.910 and 1975 1st ex.s. c 80 s 18;
- (18) RCW 31.12A.920 and 1975 1st ex.s. c 80 s 19;
- (19) RCW 31.12A.930 and 1975 1st ex.s. c 80 s 21;
- (20) RCW 31.12A.940 and 1975 1st ex.s. c 80 s 20; and
- (21) 1996 c . . . s 4 (section 4 of this act).

NEW SECTION. Sec. 8. (1) Sections 1 through 4 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

(2) Section 7 of this act shall take effect December 31, 2000.

NEW SECTION. Sec. 9. 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 the Senate February 9, 1996.

Passed the House February 27, 1996.

Approved by the Governor March 6, 1996.

Filed in Office of Secretary of State March 6, 1996.

CHAPTER 6

[House Bill 1601]

TUITION AND FEE WAIVERS—
MEMBERS OF WASHINGTON NATIONAL GUARD

AN ACT Relating to tuition and fee waivers; and amending RCW 28B.15.535.

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

Sec. 1. RCW 28B.15.535 and 1992 c 231 s 15 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 full-time employees of their respective institutions of higher education and for members of the Washington national guard enrolled in said institutions' courses on a space available basis pursuant to the following conditions:

(a) Employees of the institutions and members of the Washington national guard shall register for and be enrolled in courses on a space available basis, and no new course sections shall be created as a direct result of such registration;

(b) Enrollment information on employees and on members of the Washington national guard registered on a space available basis shall be maintained separately from other enrollment information and shall not be included in official enrollment reports, nor shall persons enrolled pursuant to the provisions of this section be considered in any enrollment statistics which would affect budgetary determinations;

(c) Employees of the institutions and members of the Washington national guard registering on a space available basis shall be charged a registration fee ~~((of not less than five dollars))~~ that will fully cover institutional costs of administering the student's enrollment.

(2) The governing boards of the respective colleges and universities may waive all or a portion of tuition and services and activities fees for full-time intercollegiate center for nursing education, cooperative extension service, and agricultural research employees of Washington State University for such employees stationed off the Pullman, Whitman county campus: PROVIDED, That such waiver complies with the conditions spelled out in subsection (1) (a), (b), and (c) of this section.

(3) The governing boards of the state universities, the regional universities, and The Evergreen State College and the state board for community and technical colleges shall adopt guidelines for the implementation of institutional employee and Washington national guard waivers granted pursuant to this section.

Passed the House January 12, 1996.

Passed the Senate February 27, 1996.

Approved by the Governor March 6, 1996.

Filed in Office of Secretary of State March 6, 1996.

CHAPTER 7

[House Bill 2187]

**GRANTS FOR VOCATIONAL REHABILITATION EQUIPMENT
AND MATERIALS—LIMITATION**

AN ACT Relating to grants for vocational rehabilitation equipment and materials; and amending RCW 74.18.150.

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

Sec. 1. RCW 74.18.150 and 1983 c 194 s 15 are each amended to read as follows:

The department may grant to vocational rehabilitation clients equipment and materials ~~((with an individual value of not more than one thousand dollars))~~ not to exceed the amount allowed by state financial policies and regulations, provided that the equipment or materials are required by the client's individual written rehabilitation program and are used by the client or former client in a manner consistent therewith. The department shall adopt rules to implement this section.

Passed the House February 6, 1996.

Passed the Senate February 27, 1996.

Approved by the Governor March 6, 1996.

Filed in Office of Secretary of State March 6, 1996.

CHAPTER 8

[House Bill 2322]

**INDUSTRIAL INSURANCE—
EXEMPTIONS FOR WORKERS ON FAMILY FARMS**

AN ACT Relating to exemptions from industrial insurance coverage for persons under age twenty-one employed on the family farm; and adding a new section to chapter 51.12 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 51.12 RCW to read as follows:

(I) The parent or parents of a person at least eighteen years of age but under twenty-one years of age may elect to exclude from mandatory coverage under this title the parent's employment of that person in agricultural activities on their family farm if:

(a) The person resides with his or her parent or parents or resides on their family farm; and

(b) The parent or parents file a written notice with the department electing exclusion from coverage.

(2) A parent or parents who have elected to exclude a person under this subsection may subsequently obtain coverage for that person under RCW 51.12.110.

Passed the House February 5, 1996.

Passed the Senate February 27, 1996.

Approved by the Governor March 6, 1996.

Filed in Office of Secretary of State March 6, 1996.

CHAPTER 9

[House Bill 2392]

**PROSECUTING STANDARDS RECOMMENDED FOR
JUVENILE CHARGING AND PLEA DISPOSITIONS**

AN ACT Relating to recommended prosecuting standards for juvenile charging and plea dispositions; adding a new section to chapter 13.40 RCW; creating a new section; 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 13.40 RCW to read as follows:

**RECOMMENDED PROSECUTING STANDARDS
FOR CHARGING AND PLEA DISPOSITIONS**

INTRODUCTION: These standards are intended solely for the guidance of prosecutors in the state of Washington. They are not intended to, do not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party in litigation with the state.

Evidentiary sufficiency.

(I) Decision not to prosecute.

STANDARD: A prosecuting attorney may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question, or would result in decreased respect for the law. The decision not to prosecute or divert shall not be influenced by the race, gender, religion, or creed of the suspect.

GUIDELINES/COMMENTARY:

Examples

The following are examples of reasons not to prosecute which could satisfy the standard.

(a) Contrary to Legislative Intent - It may be proper to decline to charge where the application of criminal sanctions would be clearly contrary to the intent of the legislature in enacting the particular statute.

(b) Antiquated Statute - It may be proper to decline to charge where the statute in question is antiquated in that:

(i) It has not been enforced for many years;

(ii) Most members of society act as if it were no longer in existence;

- (iii) It serves no deterrent or protective purpose in today's society; and
- (iv) The statute has not been recently reconsidered by the legislature.

This reason is not to be construed as the basis for declining cases because the law in question is unpopular or because it is difficult to enforce.

(c) De Minimis Violation - It may be proper to decline to charge where the violation of law is only technical or insubstantial and where no public interest or deterrent purpose would be served by prosecution.

(d) Confinement on Other Charges - It may be proper to decline to charge because the accused has been sentenced on another charge to a lengthy period of confinement; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iii) Conviction of the new offense would not serve any significant deterrent purpose.

(e) Pending Conviction on Another Charge - It may be proper to decline to charge because the accused is facing a pending prosecution in the same or another county; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) Conviction in the pending prosecution is imminent;

(iii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iv) Conviction of the new offense would not serve any significant deterrent purpose.

(f) High Disproportionate Cost of Prosecution - It may be proper to decline to charge where the cost of locating or transporting, or the burden on, prosecution witnesses is highly disproportionate to the importance of prosecuting the offense in question. The reason should be limited to minor cases and should not be relied upon in serious cases.

(g) Improper Motives of Complainant - It may be proper to decline charges because the motives of the complainant are improper and prosecution would serve no public purpose, would defeat the underlying purpose of the law in question, or would result in decreased respect for the law.

(h) Immunity - It may be proper to decline to charge where immunity is to be given to an accused in order to prosecute another where the accused information or testimony will reasonably lead to the conviction of others who are responsible for more serious criminal conduct or who represent a greater danger to the public interest.

(i) Victim Request - It may be proper to decline to charge because the victim requests that no criminal charges be filed and the case involves the following crimes or situations:

- (i) Assault cases where the victim has suffered little or no injury;

(ii) Crimes against property, not involving violence, where no major loss was suffered;

(iii) Where doing so would not jeopardize the safety of society.

Care should be taken to insure that the victim's request is freely made and is not the product of threats or pressure by the accused.

The presence of these factors may also justify the decision to dismiss a prosecution which has been commenced.

Notification

The prosecutor is encouraged to notify the victim, when practical, and the law enforcement personnel, of the decision not to prosecute.

(2) Decision to prosecute.

STANDARD:

Crimes against persons will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact-finder. With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and 9A.64.020 the prosecutor should avoid pre-filing agreements or diversions intended to place the accused in a program of treatment or counseling, so that treatment, if determined to be beneficial, can be proved under RCW 13.40.160(5).

Crimes against property/other crimes will be filed if the admissible evidence is of such convincing force as to make it probable that a reasonable and objective fact-finder would convict after hearing all the admissible evidence and the most plausible defense that could be raised.

The categorization of crimes for these charging standards shall be the same as found in RCW 9.94A.440(2).

The decision to prosecute or use diversion shall not be influenced by the race, gender, religion, or creed of the respondent.

(3) Selection of Charges/Degree of Charge

(a) The prosecutor should file charges which adequately describe the nature of the respondent's conduct. Other offenses may be charged only if they are necessary to ensure that the charges:

(i) Will significantly enhance the strength of the state's case at trial; or

(ii) Will result in restitution to all victims.

(b) The prosecutor should not overcharge to obtain a guilty plea. Overcharging includes:

(i) Charging a higher degree;

(ii) Charging additional counts.

This standard is intended to direct prosecutors to charge those crimes which demonstrate the nature and seriousness of a respondent's criminal conduct, but to decline to charge crimes which are not necessary to such an indication. Crimes which do not merge as a matter of law, but which arise from the same course of conduct, do not all have to be charged.

(4) Police Investigation

A prosecuting attorney is dependent upon law enforcement agencies to conduct the necessary factual investigation which must precede the decision to prosecute. The prosecuting attorney shall ensure that a thorough factual investigation has been conducted before a decision to prosecute is made. In ordinary circumstances the investigation should include the following:

(a) The interviewing of all material witnesses, together with the obtaining of written statements whenever possible;

(b) The completion of necessary laboratory tests; and

(c) The obtaining, in accordance with constitutional requirements, of the suspect's version of the events.

If the initial investigation is incomplete, a prosecuting attorney should insist upon further investigation before a decision to prosecute is made, and specify what the investigation needs to include.

(5) Exceptions

In certain situations, a prosecuting attorney may authorize filing of a criminal complaint before the investigation is complete if:

(a) Probable cause exists to believe the suspect is guilty; and

(b) The suspect presents a danger to the community or is likely to flee if not apprehended; or

(c) The arrest of the suspect is necessary to complete the investigation of the crime.

In the event that the exception that the standard is applied, the prosecuting attorney shall obtain a commitment from the law enforcement agency involved to complete the investigation in a timely manner. If the subsequent investigation does not produce sufficient evidence to meet the normal charging standard, the complaint should be dismissed.

(6) Investigation Techniques

The prosecutor should be fully advised of the investigatory techniques that were used in the case investigation including:

(a) Polygraph testing;

(b) Hypnosis;

(c) Electronic surveillance;

(d) Use of informants.

(7) Prefiling Discussions with Defendant

Discussions with the defendant or his or her representative regarding the selection or disposition of charges may occur prior to the filing of charges, and potential agreements can be reached.

(8) Plea dispositions:**STANDARD**

(a) Except as provided in subsection (2) of this section, a respondent will normally be expected to plead guilty to the charge or charges which adequately describe the nature of his or her criminal conduct or go to trial.

(b) In certain circumstances, a plea agreement with a respondent in exchange for a plea of guilty to a charge or charges that may not fully describe the nature of his or her criminal conduct may be necessary and in the public interest. Such situations may include the following:

(i) Evidentiary problems which make conviction of the original charges doubtful;

(ii) The respondent's willingness to cooperate in the investigation or prosecution of others whose criminal conduct is more serious or represents a greater public threat;

(iii) A request by the victim when it is not the result of pressure from the respondent;

(iv) The discovery of facts which mitigate the seriousness of the respondent's conduct;

(v) The correction of errors in the initial charging decision;

(vi) The respondent's history with respect to criminal activity;

(vii) The nature and seriousness of the offense or offenses charged;

(viii) The probable effect of witnesses.

(c) No plea agreement shall be influenced by the race, gender, religion, or creed of the respondent. This includes but is not limited to the prosecutor's decision to utilize such disposition alternatives as "Option B," the Special Sex Offender Disposition Alternative, and manifest injustice.

(9) Disposition recommendations:

STANDARD

The prosecutor may reach an agreement regarding disposition recommendations.

The prosecutor shall not agree to withhold relevant information from the court concerning the plea agreement.

NEW SECTION. Sec. 2. A juvenile prosecutorial standards pilot project shall be established in two counties. The purpose of the juvenile prosecutorial standards pilot project is to demonstrate how juvenile prosecutorial standards when formally implemented facilitate uniformity of compliance in the filing of charges and plea negotiations. The counties selected as pilot projects shall collect data on juvenile criminal prosecutions for their respective counties. The data shall include aggregated charging decisions, the reasons for the charging decisions cross tabulated by the demographic characteristics of the offenders including, but not limited to, race, age, and the type of crime, and other data as defined by the Washington association of prosecuting attorneys in coordination with the commission on African-American affairs, commission on Hispanic affairs, Washington state commission on Asian Pacific American affairs, and the governor's office of Indian affairs. The two counties selected as juvenile prosecutorial pilot projects shall be selected by the Washington association of prosecuting attorneys and shall consist of one county in eastern Washington and one in western Washington. The counties selected to participate in the pilot project shall agree to participate voluntarily.

The prosecuting attorney of each of the pilot project sites shall report his or her findings to the appropriate committees of the legislature by December 12, 1996.

Passed the House February 5, 1996.

Passed the Senate February 27, 1996.

Approved by the Governor March 6, 1996.

Filed in Office of Secretary of State March 6, 1996.

CHAPTER 10

[House Bill 2531]

COUNCIL FOR THE PREVENTION OF CHILD ABUSE AND NEGLECT— MEMBERSHIP

AN ACT Relating to the council for the prevention of child abuse and neglect; and amending RCW 43.121.020.

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

Sec. 1. RCW 43.121.020 and 1994 c 48 s 1 are each amended to read as follows:

(1) There is established in the executive office of the governor a Washington council for the prevention of child abuse and neglect subject to the jurisdiction of the governor.

(2) The council shall be composed of the chairperson and ~~((twelve))~~ thirteen other members as follows:

(a) The chairperson and six other members shall be appointed by the governor and shall be selected for their interest and expertise in the prevention of child abuse. A minimum of four designees by the governor shall not be affiliated with governmental agencies. The appointments shall be made on a geographic basis to assure state-wide representation. Members appointed by the governor shall serve for three-year terms. Vacancies shall be filled for any unexpired term by appointment in the same manner as the original appointments were made.

(b) The secretary of social and health services or the secretary's designee ((and)), the superintendent of public instruction or the superintendent's designee, and the secretary of the department of health or the secretary's designee shall serve as voting members of the council.

(c) In addition to the members of the council, four members of the legislature shall serve as nonvoting, ex officio members of the council, one from each political caucus of the house of representatives to be appointed by the

speaker of the house of representatives and one from each political caucus of the senate to be appointed by the president of the senate.

Passed the House February 6, 1996.
Passed the Senate February 27, 1996.
Approved by the Governor March 6, 1996.
Filed in Office of Secretary of State March 6, 1996.

CHAPTER 11

[House Bill 2691]

**STATE EVEN START PROGRAM--
CORRECTION OF OBSOLETE PROVISIONS**

AN ACT Relating to obsolete provisions in the state even start program; and amending RCW 28B.06.040 and 28B.06.050.

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

Sec. 1. RCW 28B.06.040 and 1987 c 518 s 107 are each amended to read as follows:

The ~~((superintendent of public instruction))~~ state board for community and technical colleges is authorized and directed, whenever possible, to fund or cooperatively work with existing adult literacy programs and parenting related programs offered through the common school and community and technical college systems~~((,--vocational technical institutes,))~~ or community-based, nonprofit organizations to provide services for eligible parents before developing and funding new adult literacy programs to carry out the purposes of project even start.

Sec. 2. RCW 28B.06.050 and 1987 c 518 s 108 are each amended to read as follows:

The ~~((superintendent of public instruction shall evaluate and submit to the legislature by January 15, 1988, a report on the effectiveness of project even start. The initial report shall include, if appropriate, recommendations relating to the expansion of project even start. The superintendent))~~ state board for community and technical colleges shall submit a report to the legislature on project even start ~~((every two years after the initial report))~~ January 15th of even-numbered years.

Passed the House February 6, 1996.
Passed the Senate February 27, 1996.
Approved by the Governor March 6, 1996.
Filed in Office of Secretary of State March 6, 1996.

CHAPTER 12

[Substitute House Bill 2733]

WELL CONSTRUCTION—DELEGATION OF ADMINISTRATION
AND ENFORCEMENT AUTHORITY

AN ACT Relating to well construction; amending RCW 18.104.043; creating a new section; repealing 1993 c 387 s 28 (uncodified); repealing 1992 c 67 s 3 (uncodified); and providing an expiration date.

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

NEW SECTION. Sec. 1. The legislature finds that experimental delegation of portions of the well drilling administration and enforcement authority of the department of ecology to willing and able local governments has been successful to date. Delegation has provided a more effective and efficient means of assuring proper well construction and decommissioning and protection of public health and safety than could be accomplished by the department of ecology acting alone. The legislature further finds that without legislative action, the authority for such delegation will expire June 30, 1996. Therefore, it is the intent of the legislature to extend the authority for delegation an additional four years.

Sec. 2. RCW 18.104.043 and 1993 c 387 s 5 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.

(4) ~~((The local governing body shall exercise any authority delegated under this section in accordance with this chapter, other applicable laws, the memorandum of agreement, and applicable ordinances.))~~ 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.

(9) This section expires June 30, 2000.

NEW SECTION. Sec. 3. The following acts or parts of acts are each repealed:

- (1) 1993 c 387 s 28 (uncodified); and
- (2) 1992 c 67 s 3 (uncodified).

Passed the House February 6, 1996.

Passed the Senate February 27, 1996.

Approved by the Governor March 6, 1996.

Filed in Office of Secretary of State March 6, 1996.

CHAPTER 13

[House Bill 2810]

CHECK CASHER AND CHECK SELLER LICENSES AND SMALL LOAN ENDORSEMENTS—REGULATION

AN ACT Relating to the fees and period of duration for check casher and check seller licenses and small loan endorsements; and amending RCW 31.45.040 and 31.45.050.

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

Sec. 1. RCW 31.45.040 and 1995 c 18 s 5 are each amended to read as follows:

(1) The director shall conduct an investigation of every applicant to determine the financial responsibility, experience, character, and general fitness of the applicant. The director shall issue the applicant a license to engage in the business of cashing or selling checks, or both, or a small loan endorsement, if the director determines to his or her satisfaction that:

(a) The applicant is financially responsible and appears to be able to conduct the business of cashing or selling checks or making small loans in an honest, fair, and efficient manner with the confidence and trust of the community; and

(b) The applicant has the required bonds, or has provided an acceptable alternative form of financial security.

(2) The director may refuse to issue a license or small loan endorsement if he or she finds that the applicant, or any person who is a director, officer, partner, agent, or substantial stockholder of the applicant, has been convicted of a felony in any jurisdiction or is associating or consorting with any person who has been convicted of a felony in any jurisdiction. The term "substantial stockholder" as used in this subsection, means a person owning or controlling ten percent or more of the total outstanding shares of the applicant corporation.

(3) No license or small loan endorsement may be issued to an applicant whose license to conduct business under this chapter had been revoked by the director within the twelve-month period preceding the application.

(4) A license or small loan endorsement issued under this chapter shall be conspicuously posted in the place of business of the licensee. The license is not transferable or assignable.

(5) A license or small loan endorsement issued in accordance with this chapter remains in force and effect ~~((for a period of five years from the date it is issued unless earlier))~~ until surrendered, suspended, or revoked. ~~((However, the initial small loan endorsement is effective until the next expiration date of the underlying license, unless earlier surrendered, suspended, or revoked.~~

~~—(6) The director's investigation and fees required under this chapter shall differentiate between check cashing and check selling and making small loans, and take into consideration the level of risk and potential harm to the public related to each such activity--))~~

Sec. 2. RCW 31.45.050 and 1995 c 18 s 6 are each amended to read as follows:

(1) ~~((A license or small loan endorsement may be renewed upon the filing of an application containing such information as the director may require and by the payment of a))~~ Each applicant and licensee shall pay to the director an investigation fee and an annual assessment fee in an amount determined by rule of the director as necessary to cover the ((costs of supervision--Such)) operation of the program. In establishing the fees, the director shall differentiate between check cashing and check selling and making small loans, and consider at least the volume of business, level of risk, and potential harm to the public related to each activity. The fees collected shall be deposited to the credit of the banking examination fund in accordance with RCW 43.320.110. ((The director shall renew the license in accordance with the standards for issuance of a new license--))

(2) If a licensee intends to do business at a new location, to close an existing place of business, or to relocate an existing place of business, the licensee shall provide written notification of that intention to the director no less

than thirty days before the proposed establishing, closing, or moving of a place of business.

Passed the House February 6, 1996.

Passed the Senate February 27, 1996.

Approved by the Governor March 6, 1996.

Filed in Office of Secretary of State March 6, 1996.

CHAPTER 14

[Substitute Senate Bill 5140]

DRUG-FREE ZONES

AN ACT Relating to drug-free zones in publicly owned or publicly operated civic centers; amending RCW 69.50.435; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that a large number of illegal drug transactions occur in or near publicly owned places used for recreational, educational, and cultural purposes. The legislature also finds that this activity places the people using these facilities at risk for drug-related crimes, discourages the use of recreational, educational, and cultural facilities, blights the economic development around these facilities, and increases the general level of fear among the residents of the areas surrounding these facilities. The intent of the legislature is to allow local governments to designate a perimeter of one thousand feet around publicly owned places used primarily for recreation, education, and cultural activities as drug-free zones.

Sec. 2. RCW 69.50.435 and 1991 c 32 s 4 are each amended to read as follows:

(a) Any person who violates RCW 69.50.401(a) by manufacturing, selling, delivering, or possessing with the intent to manufacture, sell, or deliver a controlled substance listed under that subsection or who violates RCW 69.50.410 by selling for profit any controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204, except leaves and flowering tops of marihuana to a person;

(1) In a school ((~~or~~));

(2) On a school bus ((~~or~~));

(3) Within one thousand feet of a school bus route stop designated by the school district ((~~or~~));

(4) Within one thousand feet of the perimeter of the school grounds((~~or~~));

(5) In a public park ((~~or~~));

(6) On a public transit vehicle((~~or~~));

(7) In a public transit stop shelter;

(8) At a civic center designated as a drug-free zone by the local governing authority; or

(9) Within one thousand feet of the perimeter of a facility designated under (8) of this subsection, if the local governing authority specifically designates the one thousand foot perimeter

may be punished by a fine of up to twice the fine otherwise authorized by this chapter, but not including twice the fine authorized by RCW 69.50.406, or by imprisonment of up to twice the imprisonment otherwise authorized by this chapter, but not including twice the imprisonment authorized by RCW 69.50.406, or by both such fine and imprisonment. The provisions of this section shall not operate to more than double the fine or imprisonment otherwise authorized by this chapter for an offense.

(b) It is not a defense to a prosecution for a violation of this section that the person was unaware that the prohibited conduct took place while in a school or school bus or within one thousand feet of the school or school bus route stop, in a public park, on a public transit vehicle, ~~((or))~~ in a public transit stop shelter, at a civic center designated as a drug-free zone by the local governing authority, or within one thousand feet of the perimeter of a facility designated under subsection (a)(8) of this section, if the local governing authority specifically designates the one thousand foot perimeter.

(c) It is not a defense to a prosecution for a violation of this section or any other prosecution under this chapter that persons under the age of eighteen were not present in the school, the school bus, the public park, or the public transit vehicle, or at the school bus route stop ~~((or))~~, the public transit vehicle stop shelter, at a civic center designated as a drug-free zone by the local governing authority, or within one thousand feet of the perimeter of a facility designated under subsection (a)(8) of this section, if the local governing authority specifically designates the one thousand foot perimeter at the time of the offense or that school was not in session.

(d) It is an affirmative defense to a prosecution for a violation of this section that the prohibited conduct took place entirely within a private residence, that no person under eighteen years of age or younger was present in such private residence at any time during the commission of the offense, and that the prohibited conduct did not involve delivering, manufacturing, selling, or possessing with the intent to manufacture, sell, or deliver any controlled substance in RCW 69.50.401(a) for profit. The affirmative defense established in this section shall be proved by the defendant by a preponderance of the evidence. This section shall not be construed to establish an affirmative defense with respect to a prosecution for an offense defined in any other section of this chapter.

(e) In a prosecution under this section, a map produced or reproduced by any municipal, school district, county, or transit authority engineer for the purpose of depicting the location and boundaries of the area on or within one thousand feet of any property used for a school, school bus route stop, public park, ~~((or))~~ public transit vehicle stop shelter, or a civic center designated as a drug-free zone by a local governing authority, or a true copy of such a map,

shall under proper authentication, be admissible and shall constitute prima facie evidence of the location and boundaries of those areas if the governing body of the municipality, school district, county, or transit authority has adopted a resolution or ordinance approving the map as the official location and record of the location and boundaries of the area on or within one thousand feet of the school, school bus route stop, public park, ~~((or))~~ public transit vehicle stop shelter, or civic center designated as a drug-free zone by a local governing authority. Any map approved under this section or a true copy of the map shall be filed with the clerk of the municipality or county, and shall be maintained as an official record of the municipality or county. This section shall not be construed as precluding the prosecution from introducing or relying upon any other evidence or testimony to establish any element of the offense. This section shall not be construed as precluding the use or admissibility of any map or diagram other than the one which has been approved by the governing body of a municipality, school district, county, or transit authority if the map or diagram is otherwise admissible under court rule.

(f) As used in this section the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "School" has the meaning under RCW 28A.150.010 or 28A.150.020. The term "school" also includes a private school approved under RCW 28A.195.010;

(2) "School bus" means a school bus as defined by the superintendent of public instruction by rule which is owned and operated by any school district and all school buses which are privately owned and operated under contract or otherwise with any school district in the state for the transportation of students. The term does not include buses operated by common carriers in the urban transportation of students such as transportation of students through a municipal transportation system;

(3) "School bus route stop" means a school bus stop as designated on maps submitted by school districts to the office of the superintendent of public instruction;

(4) "Public park" means land, including any facilities or improvements on the land, that is operated as a park by the state or a local government;

(5) "Public transit vehicle" means any motor vehicle, street car, train, trolley vehicle, or any other device, vessel, or vehicle which is owned or operated by a transit authority and which is used for the purpose of carrying passengers on a regular schedule;

(6) "Transit authority" means a city, county, or state transportation system, transportation authority, public transportation benefit area, public transit authority, or metropolitan municipal corporation within the state that operates public transit vehicles;

(7) "Stop shelter" means a passenger shelter designated by a transit authority;

(8) "Civic center" means a publicly owned or publicly operated place or facility used for recreational, educational, or cultural activities.

Passed the Senate January 17, 1996.

Passed the House February 27, 1996.

Approved by the Governor March 7, 1996.

Filed in Office of Secretary of State March 7, 1996.

CHAPTER 15

[Substitute Senate Bill 5050]

BURGLARY—REVISION OF ELEMENTS

AN ACT Relating to burglary in the first degree; and amending RCW 9A.52.020.

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

Sec. 1. RCW 9A.52.020 and 1995 c 129 s 9 (Initiative Measure No. 159) are each amended to read as follows:

(1) A person is guilty of burglary in the first degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building and if, in entering or while in the building or in immediate flight therefrom, the actor or another participant in the crime (a) is armed with a deadly weapon, or (b) assaults any person (~~therein~~).

(2) Burglary in the first degree is a class A felony.

Passed the Senate January 12, 1996.

Passed the House February 26, 1996.

Approved by the Governor March 7, 1996.

Filed in Office of Secretary of State March 7, 1996.

CHAPTER 16

[Substitute Senate Bill 5522]

PRO TEMPORE JUDGES AND COURT COMMISSIONERS—USE

AN ACT Relating to the use of pro tempore judges and court commissioners; amending RCW 3.34.130 and 35.20.200; and adding a new section to chapter 35.20 RCW.

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

Sec. 1. RCW 3.34.130 and 1994 c 18 s 1 are each amended to read as follows:

(1) Each district court shall designate one or more persons as judge pro tempore who shall serve during the temporary absence, disqualification, or incapacity of a district judge or to serve as an additional judge for excess caseload or special set cases. The qualifications of a judge pro tempore shall be the same as for a district judge, except that with respect to RCW 3.34.060(1), the person appointed need only be a registered voter of the state. A district that has a population of not more than ten thousand and that has no person available who meets the qualifications under RCW 3.34.060(2) (a) or (b), may appoint as a pro tempore judge a person who has taken and passed the qualifying

examination for the office of district judge as is provided by rule of the supreme court. A judge pro tempore may sit in any district of the county for which he or she is appointed. A judge pro tempore shall be paid the salary authorized by the county legislative authority.

(2) For each day that a judge pro tempore serves in excess of thirty days during any calendar year, the annual salary of the district judge in whose place ~~((he or she))~~ the judge pro tempore serves shall be reduced by an amount equal to one-two hundred fiftieth of such salary: PROVIDED, That each full time district judge shall have up to fifteen days annual leave without reduction for service on judicial commissions established by the legislature or the chief justice of the supreme court. No reduction in salary shall occur when a judge pro tempore serves:

(a) While a district judge is using sick leave granted in accordance with RCW 3.34.100 ~~((or))~~;

(b) While a district court judge is disqualified from serving following the filing of an affidavit of prejudice;

(c) As an additional judge for excess case load or special set cases; or

(d) While a district judge is otherwise involved in administrative, educational, or judicial functions related to the performance of the judge's duties: PROVIDED, That the appointment of judge pro tempore authorized under subsection (2)(c) and (d) of this section is subject to an appropriation for this purpose by the county legislative authority.

~~((2))~~ (3) The legislature may appropriate money for the purpose of reimbursing counties for the salaries of judges pro tempore for certain days in excess of thirty worked per year that the judge pro tempore was required to work as the result of service by a judge on a commission as authorized under subsection ~~((1))~~ (2) of this section. No later than September 1 of each year, each county treasurer shall certify to the administrator for the courts for the year ending the preceding June 30, the number of days in excess of thirty that any judge pro tempore was required to work as the result of service by a judge on a commission as authorized under subsection ~~((1))~~ (2) of this section. Upon receipt of the certification, the administrator for the courts shall reimburse the county from money appropriated for that purpose.

Sec. 2. RCW 35.20.200 and 1990 c 182 s 1 are each amended to read as follows:

The mayor shall, from attorneys residing in the city and qualified to hold the position of judge of the municipal court as provided in RCW 35.20.170, appoint judges pro tempore who shall act in the absence of the regular judges of the court or in addition to the regular judges when the administration of justice and the accomplishment of the work of the court make it necessary. The mayor may appoint, as judges pro tempore, any full-time district court judges serving in the county in which the city is situated. The judges of the municipal court shall promulgate rules establishing general standards for the use of judges pro tempore. A copy of said rules shall be filed with the legislative authority

of the city at the time of budget consideration. Such appointments of attorneys shall be made from a list of attorneys in accordance herewith furnished by the judges of the municipal court(~~(, which list shall contain not less than five names in addition to the number of judges pro tempore requested. Appointment of judges pro tempore shall be for the term of office of the regular judges unless sooner removed in the same manner as they were appointed)~~). While acting as judge of the court judges pro tempore shall have all of the powers of the regular judges. Before entering upon his or her duties, each judge pro tempore shall take, subscribe and file an oath as is taken by a municipal judge. Judges pro tempore shall not practice before the municipal court during their term of office as judge pro tempore. Such municipal judges pro tempore shall receive such compensation as shall be fixed by ordinance by the legislative body of the city and such compensation shall be paid by the city except that district court judges shall not be compensated by the city other than pursuant to an interlocal agreement.

NEW SECTION. Sec. 3. A new section is added to chapter 35.20 RCW to read as follows:

When so authorized by the city legislative authority, the judges of the city may appoint one or more municipal court commissioners. A commissioner must be a registered voter of the city, and shall hold office at the pleasure of the appointing judges. A person appointed as a commissioner authorized to hear or dispose of cases must be a lawyer who is admitted to the practice of law in the state of Washington. A commissioner has such power, authority, and jurisdiction in criminal and civil matters as the appointing judges possess and may prescribe.

Passed the Senate January 17, 1996.

Passed the House February 26, 1996.

Approved by the Governor March 7, 1996.

Filed in Office of Secretary of State March 7, 1996.

CHAPTER 17

[Engrossed Substitute Senate Bill 5605]

ALCOHOL AND DRUG USE IN STATE-OWNED COLLEGE OR UNIVERSITY RESIDENCES—PROHIBITION

AN ACT Relating to prohibiting alcohol and drug use in state-owned college or university residences; adding a new section to chapter 28B.10 RCW; creating new sections; and prescribing penalties.

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

NEW SECTION. Sec. 1. The state makes a substantial investment of finances and resources in students who are attending state institutions of higher education. In exchange, students are expected to actively pursue their education and contribute to an academic environment that is conducive to learning. Students who abuse liquor and drugs, however, are unable to make full use of

this educational opportunity. More important, students who abuse liquor and drugs create an environment that interferes with the ability of other students to pursue their education. This is especially true in university-owned student housing where liquor and drug abuse contribute to noise, vandalism, theft, and violence. While the universities and colleges may not be able to stop all liquor and drug abuse among student populations, the very least they can do is ensure that the vast majority of students without drug or liquor problems are provided with a living environment that is safe and conducive to the pursuit of higher education.

NEW SECTION. Sec. 2. A new section is added to chapter 28B.10 RCW to read as follows:

(1) Each public institution of higher education shall notify all students applying for college or university-owned student housing of the availability of housing in an area in which all liquor use is prohibited.

(2) Each public institution of higher education, upon request, shall provide students access to student housing on a residence hall floor, designated area, or in a building where liquor use is prohibited.

(3) Each public institution shall have in place, and distribute to students in college or university-owned student housing, a process for reporting violations and complaints of liquor and illegal drug use.

(4) Each public institution shall have in place, distribute to students, and vigorously enforce policies and procedures for investigating complaints regarding liquor and illegal drug use in college or university-owned student housing, including the sanctions that may be applied for violations of the institution's liquor and illegal drug use policies.

(5) Students who violate the institution's liquor and illegal drug use policies are subject to disciplinary action. Sanctions that may be applied for violations of the institution's liquor or illegal drug use policies include warnings, restitution for property damage, probation, expulsion from college or university-owned housing, and suspension from the institution.

(6) As used in this section:

(a) "Liquor" has the meaning in RCW 66.04.010; and

(b) "Illegal drug use" refers to the unlawful use of controlled substances under chapter 69.50 RCW or legend drugs under chapter 69.41 RCW.

NEW SECTION. Sec. 3. By December 1, 1996, each institution of higher education that has state-owned college or university student housing shall report to the house of representatives and senate higher education committees of the legislature on the following:

(1) Policies governing liquor and illegal drug use and abuse in college and university-owned student housing;

(2) Aggregate information on reported violations and actions taken to address those violations;

(3) Efforts taken by institutions to prevent the use of, and educate students on the effect of, liquor and illegal drugs; and

(4) Copies of the drug free schools and community act biennial review required by the secretary of education, United States department of education.

Passed the Senate January 19, 1996.

Passed the House February 27, 1996.

Approved by the Governor March 7, 1996.

Filed in Office of Secretary of State March 7, 1996.

CHAPTER 18

[Second Substitute Senate Bill 5757]

BIDDING REQUIREMENTS

AN ACT Relating to bidding requirements; amending RCW 36.32.250, 36.77.040, 39.04.220, 39.10.060, 47.28.100, 47.60.778, 53.08.130, 54.04.080, 56.08.070, 57.08.050, 70.44.140, and 91.08.530; reenacting and amending RCW 35.23.352; adding a new section to chapter 35.22 RCW; adding a new section to chapter 43.19 RCW; adding a new section to chapter 52.14 RCW; 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 35.22 RCW to read as follows:

A low bidder who claims error and fails to enter into a contract with a city for a public works project is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

Sec. 2. RCW 35.23.352 and 1994 c 273 s 9 and 1994 c 81 s 18 are each reenacted and amended to read as follows:

(1) Any second class city or any town may construct any public works, as defined in RCW 39.04.010, by contract or day labor without calling for bids therefor whenever the estimated cost of the work or improvement, including cost of materials, supplies and equipment will not exceed the sum of thirty thousand dollars if more than one craft or trade is involved with the public works, or twenty thousand dollars if a single craft or trade is involved with the public works or the public works project is street signalization or street lighting. A public works project means a complete project. The restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by day labor on a single project.

Whenever the cost of the public work or improvement, including materials, supplies and equipment, will exceed these figures, the same shall be done by contract. All such contracts shall be let at public bidding upon publication of notice calling for sealed bids upon the work. The notice shall be published in the official newspaper, or a newspaper of general circulation most likely to bring responsive bids, at least thirteen days prior to the last date upon which bids will be received. The notice shall generally state the nature of the work to be done

that plans and specifications therefor shall then be on file in the city or town hall for public inspections, and require that bids be sealed and filed with the council or commission within the time specified therein. Each bid shall be accompanied by a bid proposal deposit in the form of a cashier's check, postal money order, or surety bond to the council or commission for a sum of not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal deposit. The council or commission of the city or town shall let the contract to the lowest responsible bidder or shall have power by resolution to reject any or all bids and to make further calls for bids in the same manner as the original call.

When the contract is let then all bid proposal deposits shall be returned to the bidders except that of the successful bidder which shall be retained until a contract is entered into and a bond to perform the work furnished, with surety satisfactory to the council or commission, in accordance with RCW 39.08.030. If the bidder fails to enter into the contract in accordance with his or her bid and furnish a bond within ten days from the date at which he or she is notified that he or she is the successful bidder, the check or postal money order and the amount thereof shall be forfeited to the council or commission or the council or commission shall recover the amount of the surety bond. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

If no bid is received on the first call the council or commission may readvertise and make a second call, or may enter into a contract without any further call or may purchase the supplies, material or equipment and perform the work or improvement by day labor.

(2) The allocation of public works projects to be performed by city or town employees shall not be subject to a collective bargaining agreement.

(3) In lieu of the procedures of subsection (1) of this section, a second class city or a town may use the small works roster process provided in RCW 39.04.155 to award public works contracts with an estimated value of one hundred thousand dollars or less.

Whenever possible, the city or town shall invite at least one proposal from a minority or woman contractor who shall otherwise qualify under this section.

(4) The form required by RCW 43.09.205 shall be to account and record costs of public works in excess of five thousand dollars that are not let by contract.

(5) The cost of a separate public works project shall be the costs of the materials, equipment, supplies, and labor on that construction project.

(6) Any purchase of supplies, material, or equipment, except for public work or improvement, where the cost thereof exceeds seven thousand five hundred dollars shall be made upon call for bids.

(7) Bids shall be called annually and at a time and in the manner prescribed by ordinance for the publication in a newspaper of general circulation in the city

or town of all notices or newspaper publications required by law. The contract shall be awarded to the lowest responsible bidder.

(8) For advertisement and formal sealed bidding to be dispensed with as to purchases between seven thousand five hundred and fifteen thousand dollars, the council or commission must authorize by resolution, use of the uniform procedure provided in RCW 39.04.190.

(9) These requirements for purchasing may be waived by resolution of the city or town council or commission which declared that the purchase is clearly and legitimately limited to a single source or supply within the near vicinity, or the materials, supplies, equipment, or services are subject to special market conditions, and recites why this situation exists. Such actions are subject to RCW 39.30.020.

(10) This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(3), that are negotiated under chapter 39.35A RCW.

(11) Nothing in this section shall prohibit any second class city or any town from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

Sec. 3. RCW 36.32.250 and 1993 c 198 s 8 are each amended to read as follows:

No contract for public works may be entered into by the county legislative authority or by any elected or appointed officer of the county until after bids have been submitted to the county upon specifications therefor. Such specifications shall be in writing and shall be filed with the clerk of the county legislative authority for public inspection. An advertisement shall be published in the county official newspaper stating the time and place where bids will be opened, the time after which bids will not be received, the character of the work to be done, the materials and equipment to be furnished, and that specifications therefor may be seen at the office of the clerk of the county legislative authority. An advertisement shall also be published in a legal newspaper of general circulation in or as near as possible to that part of the county in which such work is to be done. If the county official newspaper is a newspaper of general circulation covering at least forty percent of the residences in that part of the county in which such public works are to be done, then the publication of an advertisement of the applicable specifications in the county official newspaper shall be sufficient. Such advertisements shall be published at least once at least thirteen days prior to the last date upon which bids will be received. The bids shall be in writing, shall be filed with the clerk, shall be opened and read in public at the time and place named therefor in the advertisements, and after being opened, shall be filed for public inspection. No bid may be considered for public work unless it is accompanied by a bid deposit in the form of a surety bond, postal money order, cash, cashier's check, or certified check in an amount equal to five percent of the amount of the bid proposed. The contract for the public work shall be awarded to the lowest responsible bidder. Any or all bids may be rejected for good cause. The county legislative authority shall require

from the successful bidder for such public work a contractor's bond in the amount and with the conditions imposed by law. If the bidder to whom the contract is awarded fails to enter into the contract and furnish the contractor's bond as required within ten days after notice of the award, exclusive of the day of notice, the amount of the bid deposit shall be forfeited to the county and the contract awarded to the next lowest and best bidder. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. The bid deposit of all unsuccessful bidders shall be returned after the contract is awarded and the required contractor's bond given by the successful bidder is accepted by the county legislative authority. In the letting of any contract for public works involving less than ten thousand dollars, advertisement and competitive bidding may be dispensed with on order of the county legislative authority. Immediately after the award is made, the bid quotations obtained shall be recorded and open to public inspection and shall be available by telephone inquiry.

For advertisement and competitive bidding to be dispensed with as to public works projects with an estimated value of ten thousand dollars up to one hundred thousand dollars, a county must use a small works roster process as provided in RCW 39.04.155.

This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(3), that are negotiated under chapter 39.35A RCW.

Sec. 4. RCW 36.77.040 and 1963 c 4 s 36.77.040 are each amended to read as follows:

The board shall proceed to award the contract to the lowest and best bidder but may reject any or all bids if in its opinion good cause exists therefor. The board shall require from the successful bidder a contractor's bond in the amount and with the conditions imposed by law. Should the bidder to whom the contract is awarded fail to enter into the contract and furnish the contractor's bond as required within ten days after notice of the award, exclusive of the day of notice, the amount of the bid deposit shall be forfeited to the county and placed in the county road fund and the contract awarded to the next lowest and best bidder. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. The bid deposit of all unsuccessful bidders shall be returned after the contract is awarded and the required contractor's bond given by the successful bidder is accepted by the board.

Sec. 5. RCW 39.04.220 and 1994 c 80 s 2 are each amended to read as follows:

(1) In addition to currently authorized methods of public works contracting, and in lieu of the requirements of RCW 39.04.010 and 39.04.020 through 39.04.060, capital projects funded for over ten million dollars authorized by the legislature for the department of corrections to construct or repair facilities may be accomplished under contract using the general contractor/construction

manager method described in this section. In addition, the general contractor/construction manager method may be used for up to two demonstration projects under ten million dollars for the department of corrections. Each demonstration project shall aggregate capital projects authorized by the legislature at a single site to total no less than three million dollars with the approval of the office of financial management. The department of general administration shall present its plan for the aggregation of projects under each demonstration project to the oversight advisory committee established under subsection (2) of this section prior to soliciting proposals for general contractor/construction manager services for the demonstration project.

(2) For the purposes of this section, "general contractor/construction manager" means a firm with which the department of general administration has selected and negotiated a maximum allowable construction cost to be guaranteed by the firm, after competitive selection through a formal advertisement, and competitive bids to provide services during the design phase that may include life-cycle cost design considerations, value engineering, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work, and to act as the construction manager and general contractor during the construction phase. The department of general administration shall establish an independent oversight advisory committee with representatives of interest groups with an interest in this subject area, the department of corrections, and the private sector, to review selection and contracting procedures and contracting documents. The oversight advisory committee shall discuss and review the progress of the demonstration projects. The general contractor/construction manager method is limited to projects authorized on or before July 1, 1997.

(3) Contracts for the services of a general contractor/construction manager awarded under the authority of this section shall be awarded through a competitive process requiring the public solicitation of proposals for general contractor/construction manager services. Minority and women enterprise total project goals shall be specified in the bid instructions to the general contractor/construction manager finalists. The director of general administration is authorized to include an incentive clause in any contract awarded under this section for savings of either time or cost or both from that originally negotiated. No incentives granted shall exceed five percent of the maximum allowable construction cost. The director of general administration or his or her designee shall establish a committee to evaluate the proposals considering such factors as: Ability of professional personnel; past performance in negotiated and complex projects; ability to meet time and budget requirements; location; recent, current, and projected work loads of the firm; and the concept of their proposal. After the committee has selected the most qualified finalists, these finalists shall submit sealed bids for the percent fee, which is the percentage amount to be earned by the general contractor/construction manager as overhead and profit, on the estimated maximum allowable construction cost and the fixed amount for

the detailed specified general conditions work. The maximum allowable construction cost may be negotiated between the department of general administration and the selected firm after the scope of the project is adequately determined to establish a guaranteed contract cost for which the general contractor/construction manager will provide a performance and payment bond. The guaranteed contract cost includes the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable construction cost, the percent fee on the negotiated maximum allowable construction cost, and sales tax. If the department of general administration is unable to negotiate a satisfactory maximum allowable construction cost with the firm selected that the department of general administration determines to be fair, reasonable, and within the available funds, negotiations with that firm shall be formally terminated and the department of general administration shall negotiate with the next low bidder and continue until an agreement is reached or the process is terminated. If the maximum allowable construction cost varies more than fifteen percent from the bid estimated maximum allowable construction cost due to requested and approved changes in the scope by the state, the percent fee shall be renegotiated. All subcontract work shall be competitively bid with public bid openings. Specific contract requirements for women and minority enterprise participation shall be specified in each subcontract bid package that exceeds ten percent of the department's estimated project cost. All subcontractors who bid work over two hundred thousand dollars shall post a bid bond and the awarded subcontractor shall provide a performance and payment bond for their contract amount if required by the general contractor/construction manager. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. Bidding on subcontract work by the general contractor/construction manager or its subsidiaries is prohibited. The general contractor/construction manager may negotiate with the low-responsive bidder only in accordance with RCW 39.04.015 or, if unsuccessful in such negotiations, rebid.

(4) If the project is completed for less than the agreed upon maximum allowable construction cost, any savings not otherwise negotiated as part of an incentive clause shall accrue to the state. If the project is completed for more than the agreed upon maximum allowable construction cost, excepting increases due to any contract change orders approved by the state, the additional cost shall be the responsibility of the general contractor/construction manager.

(5) The powers and authority conferred by this section shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained ~~((herein shall))~~ in this section may be construed as limiting any other powers or authority of the department of general administration. However, all actions taken pursuant to the powers and authority granted to the director or the department of general administration under this section may only be taken with the concurrence of the department of corrections.

Sec. 6. RCW 39.10.060 and 1994 c 132 s 6 are each amended to read as follows:

(1) Notwithstanding any other provision of law, and after complying with RCW 39.10.030, the following public bodies may utilize the general contractor/construction manager procedure of public works contracting for public works projects authorized under subsection (2) of this section: The state department of general administration; the University of Washington; Washington State University; every city with a population greater than one hundred fifty thousand; every county with a population greater than four hundred fifty thousand; and every port district with a population greater than five hundred thousand. For the purposes of this section, "general contractor/construction manager" means a firm with which a public body has selected and negotiated a maximum allowable construction cost to be guaranteed by the firm, after competitive selection through formal advertisement and competitive bids, to provide services during the design phase that may include life-cycle cost design considerations, value engineering, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work, and to act as the construction manager and general contractor during the construction phase.

(2) Public bodies authorized under this section may utilize the general contractor/construction manager procedure for public works projects valued over ten million dollars where:

- (a) Implementation of the project involves complex scheduling requirements;
- (b) The project involves construction at an existing facility which must continue to operate during construction; or
- (c) The involvement of the general contractor/construction manager during the design stage is critical to the success of the project.

(3) Contracts for the services of a general contractor/construction manager under this section shall be awarded through a competitive process requiring the public solicitation of proposals for general contractor/construction manager services. Minority and women business enterprise total project goals shall be specified in the public solicitation of proposals and the bid instructions to the general contractor/construction manager finalists. A public body is authorized to include an incentive clause in any contract awarded under this section for savings of either time or cost or both from that originally negotiated. No incentives granted shall exceed five percent of the maximum allowable construction cost. A public body shall establish a committee to evaluate the proposals considering such factors as: Ability of professional personnel; past performance in negotiated and complex projects; ability to meet time and budget requirements; location; recent, current, and projected work loads of the firm; and the concept of their proposal. After the committee has selected the most qualified finalists, these finalists shall submit scaled bids for the percent fee, which is the percentage amount to be earned by the general contractor/construction manager as overhead and profit, on the estimated maximum allowable construction cost and the fixed amount for the detailed specified

general conditions work. The maximum allowable construction cost may be negotiated between the public body and the selected firm after the scope of the project is adequately determined to establish a guaranteed contract cost for which the general contractor/construction manager will provide a performance and payment bond. The guaranteed contract cost includes the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable construction cost, the percent fee on the negotiated maximum allowable construction cost, and sales tax. If the public body is unable to negotiate a satisfactory maximum allowable construction cost with the firm selected that the public body determines to be fair, reasonable, and within the available funds, negotiations with that firm shall be formally terminated and the public body shall negotiate with the next low bidder and continue until an agreement is reached or the process is terminated. If the maximum allowable construction cost varies more than fifteen percent from the bid estimated maximum allowable construction cost due to requested and approved changes in the scope by the public body, the percent fee shall be renegotiated. All subcontract work shall be competitively bid with public bid openings. Specific contract requirements for women and minority enterprise participation shall be specified in each subcontract bid package that exceeds ten percent of the public body's estimated project cost. All subcontractors who bid work over two hundred thousand dollars shall post a bid bond and all subcontractors who are awarded a contract over two hundred thousand dollars shall provide a performance and payment bond for their contract amount. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. All other subcontractors shall provide a performance and payment bond if required by the general contractor/construction manager. Bidding on subcontract work by the general contractor/construction manager or its subsidiaries is prohibited. The general contractor/construction manager may negotiate with the low-responsive bidder in accordance with RCW 39.10.080 or, if unsuccessful in such negotiations, rebid.

(4) If the project is completed for less than the agreed upon maximum allowable construction cost, any savings not otherwise negotiated as part of an incentive clause shall accrue to the public body. If the project is completed for more than the agreed upon maximum allowable construction cost, excepting increases due to any contract change orders approved by the public body, the additional cost shall be the responsibility of the general contractor/construction manager.

NEW SECTION. Sec. 7. A new section is added to chapter 43.19 RCW to read as follows:

A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same purchase or project if a second or subsequent call for bids is made for the project.

Sec. 8. RCW 47.28.100 and 1984 c 7 s 171 are each amended to read as follows:

If the successful bidder fails to enter into the contract and furnish satisfactory bond as provided by law within twenty days from the award, exclusive of the day of the award, his or her deposit shall be forfeited to the state and deposited by the state treasurer to the credit of the motor vehicle fund, and the department may award the contract to the second lowest responsible bidder. If the second lowest responsible bidder fails to enter into the contract and furnish bond within twenty days after award to him or her, forfeiture of his or her deposit shall also be made, and the contract may be awarded to the third lowest responsible bidder, and in like manner until the contract and bond are executed by a responsible bidder to whom award is made, or further bid proposals are rejected, or the number of bid proposals are exhausted. If the contract is not executed or no contractor's bond provided within the time required, and there appear circumstances that are deemed to warrant an extension of time, the department may extend the time for execution of the contract or furnishing bond for not to exceed twenty additional days. After awarding the contract the deposits of unsuccessful bidders shall be returned, but the department may retain the deposit of the next lowest responsible bidder or bidders as it desires until such time as the contract is entered into and satisfactory bond is provided by the bidder to whom the award is ultimately made. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

If in the opinion of the department the acceptance of the bid of the lowest responsible bidder or bidders, or on prior failure of the lowest responsible bidder or bidders the acceptance of the bid of the remaining lowest responsible bidder or bidders, will not be for the best interest of the state, it may reject all bids or all remaining bids and republish a call for bids in the same manner as for an original publication thereof.

Sec. 9. RCW 47.60.778 and 1993 c 493 s 6 are each amended to read as follows:

Bids submitted by firms under this section constitute an offer and shall remain open for ninety days. When submitted, each bid shall be accompanied by a deposit in cash, certified check, cashier's check, or surety bond in an amount equal to five percent of the bid amount, and no bid may be considered unless the deposit is enclosed. If the department awards a contract to a firm and the firm fails to enter into a contract or fails to furnish a satisfactory contract security as required by RCW 39.08.100, its deposit shall be forfeited to the state and be deposited by the state treasurer to the credit of the Puget Sound capital construction account. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. Upon the execution of a ferry construction contract for the construction of new jumbo ferries, all bid deposits shall be returned.

NEW SECTION. Sec. 10. A new section is added to chapter 52.14 RCW to read as follows:

A low bidder who claims error and fails to enter into a contract with a fire protection district for a public works project is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

Sec. 11. RCW 53.08.130 and 1971 ex.s. c 258 s 2 are each amended to read as follows:

The notice shall state generally the nature of the work to be done and require that bids be sealed and filed with the commission at a time specified therein. Each bid shall be accompanied by a bid proposal deposit in the form of a cashier's check, money order, or surety bid bond to the commission for a sum not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal deposit. At the time and place named the bids shall be publicly opened and read and the commission shall proceed to canvass the bids and, except as otherwise in this section provided, shall let the contract to the lowest responsible bidder upon plans and specifications on file, or to the best bidder submitting his or her own plans and specifications. If, in the opinion of the commission, all bids are unsatisfactory, they may reject all of them and readvertise, and in such case all such bid proposal deposits shall be returned to the bidders; but if the contract is let, then all bid proposal deposits shall be returned to the bidders, except that of the successful bidder which shall be retained until a contract is entered into for the purchase of such materials or doing such work, and a bond given to the port district for the performance of the contract and otherwise conditioned as required by law, with sureties satisfactory to the commission, in an amount to be fixed by the commission, but not in any event less than twenty-five percent of the contract price. If ~~((said))~~ the bidder fails to enter into the contract in accordance with his or her bid and furnish such bond within ten days from the date at which he or she is notified that he or she is the successful bidder, the check or money order and the amount thereof shall be forfeited to the port district or the port district shall recover the amount of the surety bid bond. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

Sec. 12. RCW 54.04.080 and 1972 ex.s. c 41 s 1 are each amended to read as follows:

Any notice inviting sealed bids shall state generally the work to be done, or the material to be purchased and shall call for proposals for furnishing it, to be sealed and filed with the commission on or before the time named therein. Each bid shall be accompanied by a certified or cashier's check, payable to the order of the commission, for a sum not less than five percent of the amount of the bid, or accompanied by a bid bond in an amount not less than five percent of the bid with a corporate surety licensed to do business in the state, conditioned that the bidder will pay the district as liquidated damages the amount

specified in the bond unless he or she enters into a contract in accordance with his or her bid and furnishes the performance bond (~~(herein-mentioned)~~) within ten days from the date on which he or she is notified that he or she is the successful bidder. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

At the time and place named, the bids shall be publicly opened and read, and the commission shall canvass the bids, and may let the contract to the lowest responsible bidder upon the plans and specifications on file, or to the best bidder submitting his or her own plans or specifications; or if the contract to be let is to construct or improve electrical facilities, the contract may be let to the lowest bidder prequalified according to the provisions of RCW 54.04.085 upon the plans and specifications on file, or to the best bidder submitting his or her own plans and specifications: PROVIDED, That no contract shall be let for more than fifteen percent in excess of the estimated cost of the materials or work. The commission may reject all bids and readvertise, and in such case all checks shall be returned to the bidders. The commission may procure materials in the open market, have its own personnel perform the work or negotiate a contract for such work to be performed by others, in lieu of readvertising, if it receives no bid. If the contract is let, all checks shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract is entered into and a bond to perform the work furnished, with sureties satisfactory to the commission, in an amount to be fixed by the commission, not less than twenty-five percent of the contract price, in accordance with the bid. If the bidder fails to enter into the contract and furnish the bond within ten days from the date at which he or she is notified that he or her is the successful bidder, his or her check and the amount thereof shall be forfeited to the district.

The commission shall, by resolution, define the term "same kind of materials, equipment, and supplies" with respect to purchase of items under the provisions of RCW 54.04.070.

The term "construction or improvement of any electrical facility" as used in this section and in RCW 54.04.085, shall mean the construction, the moving, maintenance, modification, or enlargement of facilities primarily used or to be used for the transmission or distribution of electricity at voltages above seven hundred fifty volts, including structures directly supporting transmission or distribution conductors but not including site preparation, housing, or protective fencing associated with but not included in a contract for such construction, moving, modification, maintenance, or enlargement of such facilities.

The commission shall be the final authority with regard to whether a bid is responsive to the call for bids and as to whether a bidder is a responsible bidder under the conditions of his or her bid. No award of contract shall be invalidated solely because of the failure of any prospective bidder to receive an invitation to bid.

Sec. 13. RCW 56.08.070 and 1994 c 31 s 1 are each amended to read as follows:

(1) All materials purchased and work ordered, the estimated cost of which is in excess of five thousand dollars shall be let by contract. All contract projects, the estimated cost of which is less than fifty thousand dollars, may be awarded to a contractor using the small works roster process provided in RCW 39.04.155 or the process provided in RCW 39.04.190 for purchases. The board of sewer commissioners may set up uniform procedures to prequalify contractors for inclusion on the small works roster. All contract projects equal to or in excess of fifty thousand dollars shall be let by competitive bidding. Before awarding any competitive contract the board of sewer commissioners shall publish a notice in a newspaper of general circulation where the district is located at least once, thirteen days before the last date upon which bids will be received, inviting sealed proposals for such work, plans and specifications which must at the time of publication of such notice be on file in the office of the board of sewer commissioners subject to public inspection. Such notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the board of sewer commissioners on or before the day and hour named therein.

(2) Each bid shall be accompanied by a bid proposal deposit in the form of a certified check, cashier's check, postal money order, or surety bond payable to the order of the county treasurer for a sum not less than five percent of the amount of the bid and no bid shall be considered unless accompanied by such bid proposal deposit. At the time and place named such bids shall be publicly opened and read and the board of sewer commissioners shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications: PROVIDED, That no contract shall be let in excess of the cost of the materials or work. The board of sewer commissioners may reject all bids for good cause and readvertise and in such case all checks, cash or bid bonds shall be returned to the bidders. If such contract be let, then all checks, cash or bid bonds shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for the purchase of such materials or doing such work, and a bond to perform such work furnished with sureties satisfactory to the board of sewer commissioners in the full amount of the contract price between the bidder and the commission in accordance with bid. If the bidder fails to enter into the contract in accordance with the bid and furnish such bond within ten days from the date at which the bidder is notified that he or she is the successful bidder, the check, cash, or bid bonds and the amount thereof shall be forfeited to the sewer district. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

(3) In the event of an emergency when the public interest or property of the sewer district would suffer material injury or damage by delay, upon resolution

of the board of sewer commissioners, or proclamation of an official designated by the board to act for the board during such emergencies, declaring the existence of such emergency and reciting the facts constituting the same, the board, or the official acting for the board, may waive the requirements of this chapter with reference to any purchase or contract. In addition, these requirements may be waived for purchases which are clearly and legitimately limited to a single source of supply and purchases involving special facilities, services, or market conditions, in which instances the purchase price may be best established by direct negotiation.

Sec. 14. RCW 57.08.050 and 1994 c 31 s 2 are each amended to read as follows:

(1) The board of water commissioners shall have authority to create and fill such positions and fix salaries and bonds thereof as it may by resolution provide.

(2) All materials purchased and work ordered, the estimated cost of which is in excess of five thousand dollars shall be let by contract. All contract projects, the estimated cost of which is less than fifty thousand dollars, may be awarded to a contractor using a small works roster process provided in RCW 39.04.155 or the process provided in RCW 39.04.190 for purchases. The board of water commissioners may set up uniform procedures to prequalify contractors for inclusion on the small works roster. All contract projects equal to or in excess of fifty thousand dollars shall be let by competitive bidding. Before awarding any such contract the board of water commissioners shall publish a notice in a newspaper of general circulation where the district is located at least once thirteen days before the last date upon which bids will be received, inviting sealed proposals for such work, plans and specifications which must at the time of publication of such notice be on file in the office of the board of water commissioners subject to public inspection. Such notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the board of water commissioners on or before the day and hour named therein.

(3) Each bid shall be accompanied by a certified or cashier's check or postal money order payable to the order of the county treasurer for a sum not less than five percent of the amount of the bid, or accompanied by a bid bond in an amount not less than five percent of the bid with a corporate surety licensed to do business in the state, conditioned that the bidder will pay the district as liquidated damages the amount specified in the bond, unless the bidder enters into a contract in accordance with his or her bid, and no bid shall be considered unless accompanied by such check, cash or bid bond. At the time and place named such bids shall be publicly opened and read and the board of water commissioners shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications on file or to the best bidder submitting his or her own plans and specifications: PROVIDED, That no contract shall be let in excess of the cost of the materials or work. The board of water commissioners may reject all bids for good cause and readvertise

and in such case all checks, cash or bid bonds shall be returned to the bidders. If such contract be let, then all checks, cash or bid bonds shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for the purchase of such materials or doing such work, and a bond to perform such work furnished with sureties satisfactory to the board of water commissioners in the full amount of the contract price between the bidder and the commission in accordance with the bid. If the bidder fails to enter into the contract in accordance with the bid and furnish such bond within ten days from the date at which the bidder is notified that he or she is the successful bidder, the check, cash or bid bonds and the amount thereof shall be forfeited to the water district: PROVIDED, That if the bidder fails to enter into a contract in accordance with his or her bid, and the board of water commissioners deems it necessary to take legal action to collect on any bid bond required (~~herein~~) in this section, then the water district shall be entitled to collect from the bidder any legal expenses, including reasonable attorneys' fees occasioned thereby. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

(4) In the event of an emergency when the public interest or property of the water district would suffer material injury or damage by delay, upon resolution of the board of water commissioners, or proclamation of an official designated by the board to act for the board during such emergencies, declaring the existence of such emergency and reciting the facts constituting the same, the board, or official acting for the board, may waive the requirements of this chapter with reference to any purchase or contract. In addition, these requirements may be waived for purchases which are clearly and legitimately limited to a single source of supply and purchases involving special facilities, services, or market conditions, in which instances the purchase price may be best established by direct negotiation.

Sec. 15. RCW 70.44.140 and 1993 c 198 s 22 are each amended to read as follows:

(1) All materials purchased and work ordered, the estimated cost of which is in excess of five thousand dollars, shall be by contract. Before awarding any such contract, the commission shall publish a notice at least thirteen days before the last date upon which bids will be received, inviting sealed proposals for such work. The plans and specifications must at the time of the publication of such notice be on file at the office of the public hospital district, subject to public inspection: PROVIDED, HOWEVER, That the commission may at the same time, and as part of the same notice, invite tenders for the work or materials upon plans and specifications to be submitted by bidders. The notice shall state generally the work to be done, and shall call for proposals for doing the same, to be sealed and filed with the commission on or before the day and hour named therein. Each bid shall be accompanied by bid proposal security in the form of a certified check, cashier's check, postal money order, or surety bond made

payable to the order of the commission, for a sum not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal security. At the time and place named, such bids shall be publicly opened and read, and the commission shall proceed to canvass the bids, and may let such contract to the lowest responsible bidder upon plans and specifications on file, or to the best bidder submitting his or her own plans and specifications: PROVIDED, HOWEVER, That no contract shall be let in excess of the estimated cost of the materials or work, or if, in the opinion of the commission, all bids are unsatisfactory, they may reject all of them and readvertise, and in such case all bid proposal security shall be returned to the bidders; but if such contract be let, then and in such case all bid proposal security shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for the purchase of such materials for doing such work, and a bond to perform such work furnished, with sureties satisfactory to the commission, in an amount to be fixed by the commission, not less than twenty-five percent of contract price in any case, between the bidder and commission, in accordance with the bid. If such bidder fails to enter into the contract in accordance with the bid and furnish such bond within ten days from the date at which the bidder is notified that he or she is the successful bidder, the bid proposal security and the amount thereof shall be forfeited to the public hospital district. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

(2) In lieu of the procedures of subsection (1) of this section, a public hospital district may use a small works roster process and award public works contracts for projects in excess of five thousand dollars up to fifty thousand dollars as provided in RCW 39.04.155.

(3) For advertisement and formal sealed bidding to be dispensed with as to purchases between five thousand and fifteen thousand dollars, the commission must authorize by resolution a procedure as provided in RCW 39.04.190.

Sec. 16. RCW 91.08.530 and 1911 c 23 s 52 are each amended to read as follows:

After the confirmation of the assessment roll of any improvement district provided for herein, the board shall proceed at once with the construction of the improvement, and in carrying on ~~((said))~~ the construction it shall have full charge and management thereof and the power to employ such assistants as it may deem necessary, and purchase all material required in such construction; and it shall have power to let the whole or any part of the work of ~~((said))~~ the improvement to the lowest and best bidder therefor, after public advertisement and call for bids; and in case of such letting of a contract it shall have the power also to enter into all necessary agreements with the contractor in the premises: PROVIDED, That in the case of the letting of a contract the board shall require the contractor to give a bond in the amount of the contract price, with sureties to be approved by the board and running to the board as obligee therein,

conditioned for the faithful and accurate performance of his or her contract by ((said)) the contractor, and that he or she will pay, or cause to be paid, all just claims of all persons performing labor upon or rendering services in doing ((said)) the work, or furnishing materials, merchandise or provisions used by ((said)) the contractor in the construction of ((said)) the improvement. ((Said)) The bond shall be filed and recorded in the office of the auditor of the county and every subcontractor on any such work shall file and record a like bond in the full amount of his or her subcontract. Unless otherwise paid their claims for labor or services, materials, merchandise or provisions, the claimants may have recourse by suit upon such bond in their own names: PROVIDED, That no such claim or suit shall be maintained unless the persons making ((said)) the claim shall within thirty days after the completion of ((said)) the improvement, file their claims, duly verified, to the effect that the amounts thereof are just and due and are unpaid, with the clerk of the board. Each bidder for a contract to be let under this section shall deliver with his or her bid a check for five percent of the amount of the bid, drawn upon a bank in this state and certified by the bank, as surety to the board that the bidder will enter into the contract with the board. The checks of unsuccessful bidders will be returned to them when an award of the contract has been made by the board. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

NEW SECTION. Sec. 17. Section 6 of this act shall expire July 1, 1997.

Passed the Senate January 17, 1996.

Passed the House February 26, 1996.

Approved by the Governor March 7, 1996.

Filed in Office of Secretary of State March 7, 1996.

CHAPTER 19

[Engrossed Substitute Senate Bill 6093]

SIDEWALK RECONSTRUCTION

AN ACT Relating to sidewalk reconstruction; and amending RCW 35.68.010, 35.69.010, 35.69.020, 35.70.010, and 35.70.020.

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

Sec. 1. RCW 35.68.010 and 1965 c 7 s 35.68.010 are each amended to read as follows:

Any city or town, hereinafter referred to as city, is authorized to construct, reconstruct, and repair sidewalks, gutters and curbs along and driveways across sidewalks, which work is hereafter referred to as the improvement, and to pay the costs thereof from any available funds, or to require the abutting property owner to construct the improvement at ((his)) the owner's own cost or expense, or, subject to the limitations in RCW 35.69.020 (2) and (3), to assess all or any portion of the costs thereof against the abutting property owner.

Sec. 2. RCW 35.69.010 and 1994 c 81 s 61 are each amended to read as follows:

The term "street" as used herein includes boulevard, avenue, street, alley, way, lane, square or place.

The term "city" includes any city of the first or second class or any other city of equal population working under a special charter.

The term "sidewalk" includes any and all pedestrian structures or forms of ~~((street))~~ improvement for pedestrians included in the space between the street margin, as defined by a curb or the edge of the traveled road surface, and the ~~((roadway))~~ line where the public right of way meets the abutting property.

Sec. 3. RCW 35.69.020 and 1965 c 7 s 35.69.020 are each amended to read as follows:

(1) Whenever a portion, not longer than one block in length, of any street in any city is not improved by the construction of a sidewalk thereon, or the sidewalk thereon has become unfit or unsafe for purposes of public travel, and such street adjacent to both ends of said portion is so improved and in good repair, and the city council of such city by resolution finds that the improvement of such portion of such street by the construction or reconstruction of a sidewalk thereon is necessary for the public safety and convenience, the duty, burden, and expense of constructing or reconstructing such sidewalk shall devolve upon the property directly abutting upon such portion ~~((: PROVIDED, That such))~~ except as provided in subsections (2) and (3) of this section.

(2) An abutting property shall not be charged with any costs of construction or reconstruction under this chapter, or under chapter 35.68 or 35.70 RCW, in excess of fifty percent of the valuation of such abutting property, exclusive of improvements thereon, according to the valuation last placed upon it for purposes of general taxation.

(3) An abutting property shall not be charged with any costs of reconstruction under this chapter, or under chapter 35.68 or 35.70 RCW, if the reconstruction is required to correct deterioration of or damage to the sidewalk that is the direct result of actions by the city or its agents or to correct deterioration of or damage to the sidewalk that is the direct result of the failure of the city to enforce its ordinances.

Sec. 4. RCW 35.70.010 and 1965 c 7 s 35.70.010 are each amended to read as follows:

For the purposes of this chapter all property having a frontage on the side or margin of any street ~~((or other public place))~~ shall be deemed abutting property, and such property shall be chargeable, as provided in this chapter, with all costs of construction of any form of sidewalk improvement, between the margin of ~~((said))~~ the street ~~((or other public place)),~~ as defined by a curb or the edge of the traveled road surface, and the ~~((roadway lying in front of and adjacent to said))~~ line where the public right of way meets the abutting property, and the term sidewalk as used in this chapter shall be construed to mean and

include any and all pedestrian structures or forms of improvement for pedestrians included in the space between the street margin, as defined by a curb or the edge of the traveled road surface, and the ~~((roadway known as the sidewalk area))~~ line where the public right of way meets the abutting property.

Sec. 5. RCW 35.70.020 and 1994 c 81 s 62 are each amended to read as follows:

In all cities of the second class and towns the burden and expense of constructing sidewalks along the side of any street or other public place shall devolve upon and be borne by the property directly abutting thereon. The cost of reconstructing or repairing existing sidewalks may devolve upon the abutting property subject to the limitations in RCW 35.69.020 (2) and (3).

Passed the Senate February 2, 1996.

Passed the House February 27, 1996.

Approved by the Governor March 7, 1996.

Filed in Office of Secretary of State March 7, 1996.

CHAPTER 20

[Substitute Senate Bill 6101]

FOOD FISH AND SHELLFISH LICENSE REQUIREMENTS

AN ACT Relating to food fish and shellfish license requirements; amending RCW 75.25.095 and 77.32.025; and providing an effective date.

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

Sec. 1. RCW 75.25.095 and 1995 1st sp.s. c 2 s 31 (Referendum Bill No. 45) are each amended to read as follows:

The commission may adopt rules designating times and places for the purposes of family fishing days when a recreational fishing license is not required to fish for food fish or shellfish. Family fishing days for food fish need not coincide with family fishing days for shellfish. All other applicable laws and rules shall remain in effect, except that a catch record card is not required on family fishing days for food fish.

Sec. 2. RCW 77.32.025 and 1987 c 506 s 103 are each amended to read as follows:

Notwithstanding RCW 77.32.010, the commission may adopt rules designating times and places for the purposes of family fishing days when licenses and catch record cards are not required to fish for game fish, including steelhead trout.

NEW SECTION. Sec. 3. This act shall take effect July 1, 1996.

Passed the Senate February 7, 1996.

Passed the House February 27, 1996.

Approved by the Governor March 7, 1996.

Filed in Office of Secretary of State March 7, 1996.

CHAPTER 21

[Substitute Senate Bill 6113]

PATERNITY—REBUTTAL OF PRESUMPTION

AN ACT Relating to paternity; and amending RCW 74.20A.055.

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

Sec. 1. RCW 74.20A.055 and 1991 c 367 s 46 are each amended to read as follows:

(1) The secretary may, in the absence of a superior court order, serve on the responsible parent or parents a notice and finding of financial responsibility requiring a responsible parent or parents to appear and show cause in an adjudicative proceeding why the finding of responsibility and/or the amount thereof is incorrect, should not be finally ordered, but should be rescinded or modified. This notice and finding shall relate to the support debt accrued and/or accruing under this chapter and/or RCW 26.16.205, including periodic payments to be made in the future. The hearing shall be held pursuant to this section, chapter 34.05 RCW, the Administrative Procedure Act, and the rules of the department.

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

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

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

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

(c) A statement that the responsible parent may object to all or any part of the notice and finding, and file an application for an adjudicative proceeding to show cause why said responsible parent should not be determined to be liable for any or all of the debt, past and future;

(d) A statement that the alleged responsible parent may challenge the presumption of paternity;

(e) A statement that, if the responsible parent fails in timely fashion to file an application for an adjudicative proceeding, the support debt and payments stated in the notice and finding, including periodic support payments in the future, shall be assessed and determined and ordered by the department and that this debt and amounts due under the notice shall be subject to collection action;

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

(4) A responsible parent who objects to the notice and finding of financial responsibility may file an application for an adjudicative proceeding within twenty days of the date of service of the notice or thereafter as provided under this subsection. An adjudicative proceeding shall be held in the county of residence or other place convenient to the responsible parent.

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

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

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

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

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

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

set current and future support under chapter 26.19 RCW. The responsible parent need show neither good cause nor a substantial change of circumstances to justify modification of current and future support;

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

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

(b) If a responsible parent provides credible evidence at an adjudicative proceeding that would rebut the presumption of paternity set forth in RCW 26.26.040, the presiding officer shall direct the department to refer the issue for scheduling of an appropriate hearing in superior court to determine whether the presumption should be rebutted.

(6) If the responsible parent fails to attend or participate in the hearing or other stage of an adjudicative proceeding, upon a showing of valid service, the presiding officer shall enter an administrative order declaring the support debt and payment provisions stated in the notice and finding of financial responsibility to be assessed and determined and subject to collection action.

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

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

Passed the Senate February 12, 1996.

Passed the House February 26, 1996.

Approved by the Governor March 7, 1996.

Filed in Office of Secretary of State March 7, 1996.

CHAPTER 22

[Substitute Senate Bill 6150]

HEALTH CARE PROFESSIONALS—PROFESSIONAL SERVICE CORPORATIONS
AND LIMITED LIABILITY COMPANIES—COMPOSITION

AN ACT Relating to health care professionals doing business as professional service corporations or limited liability companies; and amending RCW 18.100.050 and 25.15.045.

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

Sec. 1. RCW 18.100.050 and 1991 c 72 s 3 are each amended to read as follows:

(1) An individual or group of individuals duly licensed or otherwise legally authorized to render the same professional services within this state may organize and become a shareholder or shareholders of a professional corporation for pecuniary profit under the provisions of Title 23B RCW for the purpose of rendering professional service(~~(+ PROVIDED, That)~~). One or more of ((such)) the legally authorized individuals shall be the incorporators of ((such)) the professional corporation((+ PROVIDED FURTHER, That)).

(2) Notwithstanding any other provision of this chapter, registered architects and registered engineers may own stock in and render their individual professional services through one professional service corporation((+ PROVIDED FURTHER, That)).

(3) Licensed health care professionals, providing services to enrolled participants either directly or through arrangements with a health maintenance organization registered under chapter 48.46 RCW or federally qualified health maintenance organization, may own stock in and render their individual professional services through one professional service corporation((+ AND PROVIDED FURTHER, That)).

(4) Professionals may organize a nonprofit nonstock corporation under this chapter and chapter 24.03 RCW to provide professional services, and the provisions of this chapter relating to stock and referring to Title 23B RCW shall not apply to any such corporation.

(5)(a) Notwithstanding any other provision of this chapter, health care professionals who are licensed or certified pursuant to chapters 18.06, 18.19, 18.22, 18.25, 18.29, 18.34, 18.35, 18.36A, 18.50, 18.53, 18.55, 18.64, 18.79, 18.83, 18.89, 18.108, and 18.138 RCW may own stock in and render their individual professional services through one professional service corporation and are to be considered, for the purpose of forming a professional service corporation, as rendering the "same specific professional services" or "same professional services" or similar terms.

(b) Notwithstanding any other provision of this chapter, health care professionals who are licensed pursuant to chapters 18.57 and 18.71 RCW may own stock in and render their individual professional services through one professional service corporation and are to be considered, for the purpose of forming a professional service corporation, as rendering the "same specific professional services" or "same professional services" or similar terms.

(c) Formation of a professional service corporation under this subsection does not restrict the application of the uniform disciplinary act under chapter 18.130 RCW, or applicable health care professional statutes under Title 18 RCW, including but not limited to restrictions on persons practicing a health profession without being appropriately credentialed and persons practicing beyond the scope of their credential.

Sec. 2. RCW 25.15.045 and 1995 c 337 s 14 are each amended to read as follows:

(1) A person or group of persons licensed or otherwise legally authorized to render professional services within this state may organize and become a member or members of a professional limited liability company under the provisions of this chapter for the purposes of rendering professional service. A "professional limited liability company" is subject to all the provisions of chapter 18.100 RCW that apply to a professional corporation, and its managers, members, agents, and employees shall be subject to all the provisions of chapter 18.100 RCW that apply to the directors, officers, shareholders, agents, or employees of a professional corporation, except as provided otherwise in this section. Nothing in this section prohibits a person duly licensed or otherwise legally authorized to render professional services in any jurisdiction other than this state from becoming a member of a professional limited liability company organized for the purpose of rendering the same professional services. Nothing in this section prohibits a professional limited liability company from rendering professional services outside this state through individuals who are not duly licensed or otherwise legally authorized to render such professional services within this state. Notwithstanding RCW 18.100.065, persons engaged in a profession and otherwise meeting the requirements of this chapter may operate under this chapter as a professional limited liability company so long as each member personally engaged in the practice of the profession in this state is duly licensed or otherwise legally authorized to practice the profession in this state and:

(a) At least one manager of the company is duly licensed or otherwise legally authorized to practice the profession in this state; or

(b) Each member in charge of an office of the company in this state is duly licensed or otherwise legally authorized to practice the profession in this state.

(2) If the company's members are required to be licensed to practice such profession, and the company fails to maintain for itself and for its members practicing in this state a policy of professional liability insurance, bond, or other evidence of financial responsibility of a kind designated by rule by the state insurance commissioner and in the amount of at least one million dollars or ~~((such))~~ a greater amount as the state insurance commissioner may establish by rule for a licensed profession or for any specialty within a profession, taking into account the nature and size of the business, then the company's members ~~((shall be))~~ are personally liable to the extent that, had ~~((such))~~ the insurance,

bond, or other evidence of responsibility been maintained, it would have covered the liability in question.

(3) For purposes of applying the provisions of chapter 18.100 RCW to a professional limited liability company, the terms "director" or "officer" (~~(shall)~~) means manager, "shareholder" (~~(shall)~~) means member, "corporation" (~~(shall)~~) means professional limited liability company, "articles of incorporation" (~~(shall)~~) means certificate of formation, "shares" or "capital stock" (~~(shall)~~) means a limited liability company interest, "incorporator" (~~(shall)~~) means the person who executes the certificate of formation, and "bylaws" (~~(shall)~~) means the limited liability company agreement.

(4) The name of a professional limited liability company must contain either the words "Professional Limited Liability Company," or the words "Professional Limited Liability" and the abbreviation "Co.," or the abbreviation "P.L.L.C." provided that the name of a professional limited liability company organized to render dental services shall contain the full names or surnames of all members and no other word than "chartered" or the words "professional services" or the abbreviation "P.L.L.C."

(5) Subject to the provisions in article VII of this chapter, the following may be a member of a professional limited liability company and may be the transferee of the interest of an ineligible person or deceased member of the professional limited liability company:

(a) A professional corporation, if its shareholders, directors, and its officers other than the secretary and the treasurer, are licensed or otherwise legally authorized to render the same specific professional services as the professional limited liability company; and

(b) Another professional limited liability company, if the managers and members of both professional limited liability companies are licensed or otherwise legally authorized to render the same specific professional services.

(6)(a) Notwithstanding any other provision of this chapter, health care professionals who are licensed or certified pursuant to chapters 18.06, 18.19, 18.22, 18.25, 18.29, 18.34, 18.35, 18.36A, 18.50, 18.53, 18.55, 18.64, 18.79, 18.83, 18.89, 18.108, and 18.138 RCW may own membership interests in and render their individual professional services through one limited liability company and are to be considered, for the purpose of forming a limited liability company, as rendering the "same specific professional services" or "same professional services" or similar terms.

(b) Notwithstanding any other provision of this chapter, health care professionals who are licensed pursuant to chapters 18.57 and 18.71 RCW may own membership interests in and render their individual professional services through one limited liability company and are to be considered, for the purpose of forming a limited liability company, as rendering the "same specific professional services" or "same professional services" or similar terms.

(c) Formation of a limited liability company under this subsection does not restrict the application of the uniform disciplinary act under chapter 18.130

RCW, or any applicable health care professional statutes under Title 18 RCW, including but not limited to restrictions on persons practicing a health profession without being appropriately credentialed and persons practicing beyond the scope of their credential.

Passed the Senate February 8, 1996.

Passed the House February 27, 1996.

Approved by the Governor March 7, 1996.

Filed in Office of Secretary of State March 7, 1996.

CHAPTER 23

[Senate Bill 6167]

PETITIONS FOR DISSOLUTION OF MARRIAGE—JURISDICTION

AN ACT Relating to jurisdiction of petitions for dissolution of marriage; and amending RCW 26.09.030.

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

Sec. 1. RCW 26.09.030 and 1973 1st ex.s. c 157 s 3 are each amended to read as follows:

When a party who (1) is a resident of this state, or ~~((who))~~ (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) 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) 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) 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) Make a finding that the marriage is irretrievably broken and enter a decree of dissolution of the marriage; or

(b) 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:

(i) Find that the parties have agreed to reconciliation and dismiss the petition; or

(ii) 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.

(4) 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.

Passed the Senate February 7, 1996.

Passed the House February 26, 1996.

Approved by the Governor March 7, 1996.

Filed in Office of Secretary of State March 7, 1996.

CHAPTER 24

[Senate Bill 6181]

PETITION FOR DEFERRED PROSECUTION—REQUIREMENTS

AN ACT Relating to requirements of a petition for deferred prosecution; and amending RCW 10.05.020.

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

Sec. 1. RCW 10.05.020 and 1985 c 352 s 6 are each amended to read as follows:

(1) The petitioner shall allege under oath in the petition that the wrongful conduct charged is the result of or caused by alcoholism, drug addiction, or mental problems for which the person is in need of treatment and unless treated the probability of future reoccurrence is great, along with a statement that the person agrees to pay the cost of a diagnosis and treatment of the alleged problem or problems if financially able to do so. The petition shall also contain a case history and written assessment prepared by an approved alcoholism treatment ((facility)) program as designated in chapter 70.96A RCW if the petition alleges alcoholism, an approved drug program as designated in chapter 71.24 RCW if the petition alleges drug addiction, or by an approved mental health center if the petition alleges a mental problem.

(2) Before entry of an order deferring prosecution, a petitioner shall be advised of his or her rights as an accused and execute, as a condition of receiving treatment, a statement that contains: (a) An acknowledgement of his or her rights; (b) an acknowledgement and waiver of the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in his or her defense, and the right to a jury trial; (c) a stipulation to the admissibility and sufficiency of the facts contained in the written police report; and ((e)) (d) an acknowledgement that the statement will be entered and used to support a finding of guilty if the court finds cause to revoke the order granting deferred prosecution. The petitioner shall also be advised that he or she may, if he or she proceeds to trial and is found guilty, be allowed to seek suspension of some or all of the fines and incarceration that may be ordered upon the condition that he or she seek treatment and, further, that he or she may

seek treatment from public and private agencies at any time without regard to whether or not he or she is found guilty of the offense charged. He or she shall also be advised that the court will not accept a petition for deferred prosecution from a person who sincerely believes that he or she is innocent of the charges or sincerely believes that he or she does not, in fact, suffer from alcoholism, drug addiction, or mental problems.

(3) Before entering an order deferring prosecution, the court shall make specific findings that: (a) The petitioner has stipulated to the admissibility and sufficiency of the facts as contained in the written police report; (b) the petitioner has acknowledged the admissibility of the stipulated facts in any criminal hearing (~~(or trial)~~) on the underlying offense or offenses held subsequent to revocation of the order granting deferred prosecution; (~~and~~) (c) the petitioner has acknowledged and waived the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in his or her defense, and the right to a jury trial; and (d) the petitioner's statements were made knowingly and voluntarily. Such findings shall be included in the order granting deferred prosecution.

Passed the Senate February 13, 1996.

Passed the House February 26, 1996.

Approved by the Governor March 7, 1996.

Filed in Office of Secretary of State March 7, 1996.

CHAPTER 25

[Senate Bill 6216]

STATE BOARD OF EDUCATION OFFICE STAFF

AN ACT Relating to state board of education office staff; and amending RCW 28A.305.110 and 28A.300.020.

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

Sec. 1. RCW 28A.305.110 and 1990 c 33 s 265 are each amended to read as follows:

The state board of education (~~(shall)~~) may appoint (~~(some person to be ex officio secretary of said board who shall not be entitled to a vote in its proceedings)~~) an executive director who shall also serve as secretary of the board. The state board of education may also appoint other state board office assistants and clerical persons to perform duties in support of the activities of the state board and such other duties including duties involving supervision over matters pertaining to the public schools as the superintendent of public instruction may delegate to the state board. The secretary shall keep a correct record of board proceedings(~~(, which shall be kept in the office of the superintendent of public instruction. He or she shall also)~~) and, upon request, furnish to ((interested school officials)) any person a copy of such proceedings. The executive director, his or her confidential secretary, and administrative assistants in the offices of the state board of education and superintendent of

public instruction designated by the superintendent are exempt from civil service, together with other staff as now or hereafter designated as exempt in accordance with chapter 41.06 RCW.

Sec. 2. RCW 28A.300.020 and 1969 ex.s. c 223 s 28A.03.020 are each amended to read as follows:

The superintendent of public instruction may appoint assistant superintendents of public instruction, a deputy superintendent of public instruction, and may employ such other assistants and clerical help as are necessary to carry out the duties of the superintendent and the state board of education. However, the superintendent shall employ without undue delay the executive director of the state board of education and other state board of education office assistants and clerical help, appointed by the state board under RCW 28A.305.110, whose positions are allotted and funded in accordance with moneys appropriated exclusively for the operation of the state board of education. The rate of compensation and termination of any such executive director, state board office assistants, and clerical help shall be subject to the prior consent of the state board of education. The assistant superintendents, deputy superintendent, and such other officers and employees as are exempted from the provisions of chapter 41.06 RCW, shall serve at the pleasure of the superintendent or at the pleasure of the superintendent and the state board of education as provided in this section. Expenditures by the superintendent of public instruction for direct and indirect support of the state board of education are valid operational expenditures by and in behalf of the office of the superintendent of public instruction.

Passed the Senate February 10, 1996.

Passed the House February 26, 1996.

Approved by the Governor March 7, 1996.

Filed in Office of Secretary of State March 7, 1996.

CHAPTER 26

[Substitute Senate Bill 6271]

VEHICLES REBUILT FROM SALVAGE—TITLE BRANDING

AN ACT Relating to vehicles that have been rebuilt from salvage; and amending RCW 46.12.005, 46.12.050, and 46.12.075.

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

Sec. 1. RCW 46.12.005 and 1967 c 140 s 5 are each amended to read as follows:

~~((As used in this amendatory act,))~~ The definitions set forth in this section apply throughout this chapter.

(1) The words "delivery,"((;)) "notice,"((;)) "send," and "security interest" ((shall)) have the same meaning as these terms are defined in RCW 62A.1-201 ((as now and hereafter amended)); the word((;)) "secured party" ((shall have))

has the same meaning as this term is defined in RCW 62A.9-105 ((as now and hereafter amended)).

(2) "Salvage vehicle" means a vehicle whose certificate of ownership has been surrendered to the department under RCW 46.12.070 due to the vehicle's destruction or declaration as a total loss or for which there is documentation indicating that the vehicle has been declared salvage or has been damaged to the extent that the owner, an insurer, or other person acting on behalf of the owner, has determined that the cost of parts and labor plus the salvage value has made it uneconomical to repair the vehicle. The term does not include a motor vehicle having a model year designation of a calendar year that is at least six years before the calendar year in which the vehicle was wrecked, destroyed, or damaged.

Sec. 2. RCW 46.12.050 and 1993 c 307 s 1 are each amended to read as follows:

The department, if satisfied from the statements upon the application that the applicant is the legal owner of the vehicle or otherwise entitled to have a certificate of ownership thereof in the applicant's name, shall issue an appropriate electronic record of ownership or a written certificate of ownership, over the director's signature, authenticated by seal, and if required, a new written certificate of license registration if certificate of license registration is required.

The certificates of ownership and the certificates of license registration shall contain upon the face thereof, the date of application, the registration number assigned to the registered owner and to the vehicle, the name and address of the registered owner and legal owner, the vehicle identification number, and such other description of the vehicle and facts as the department shall require, and in addition thereto, if the vehicle described in such certificates shall have ever been licensed and operated as an exempt vehicle or a taxicab, or if it ~~((is less than four years old and))~~ has been rebuilt after ((having been totaled out by an insurance carrier)) becoming a salvage vehicle, such fact shall be clearly shown thereon.

All certificates of ownership of motor vehicles issued after April 30, 1990, shall reflect the odometer reading as provided by the odometer disclosure statement submitted with the title application involving a transfer of ownership.

A blank space shall be provided on the face of the certificate of license registration for the signature of the registered owner.

Upon issuance of the certificate of license registration and certificate of ownership and upon any reissue thereof, the department shall deliver the certificate of license registration to the registered owner and the certificate of ownership to the legal owner, or both to the person who is both the registered owner and legal owner.

Sec. 3. RCW 46.12.075 and 1995 c 256 s 24 are each amended to read as follows:

(1) Effective January 1, 1997, the department shall issue a unique certificate of ownership and certificate of license registration, as required by chapter 46.16 RCW, for vehicles (~~less than four years old~~) that are 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~~) becoming a salvage vehicle. Each certificate shall conspicuously display across its front, a word indicating that the vehicle was rebuilt.

(2) Beginning January 1, 1997, upon inspection of a salvage vehicle that has been rebuilt under RCW 46.12.030, the state patrol shall securely affix or inscribe a marking at the driver's door latch pillar indicating that the vehicle has previously been destroyed or declared a total loss.

(3) It is a class C felony for a person to remove the marking prescribed in subsection (2) of this section.

(4) The department may adopt rules as necessary to implement this section.

Passed the Senate February 8, 1996.

Passed the House February 26, 1996.

Approved by the Governor March 7, 1996.

Filed in Office of Secretary of State March 7, 1996.

CHAPTER 27

[Engrossed Substitute Senate Bill 6398]

SPECIAL COMMITMENT CENTER—EMPLOYEE BACKGROUND CHECKS

AN ACT Relating to background checks of employees at the special commitment center; and adding a new section to chapter 71.09 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 71.09 RCW to read as follows:

(1) The safety and security needs of the secure facility operated by the department of social and health services pursuant to RCW 71.09.060(1) make it vital that employees working in the facility meet necessary character, suitability, and competency qualifications. The secretary shall require a record check through the Washington state patrol criminal identification system under chapter 10.97 RCW and through the federal bureau of investigation. The record check must include a fingerprint check using a complete Washington state criminal identification fingerprint card. The criminal history record checks shall be at the expense of the department. The secretary shall use the information only in making the initial employment or engagement decision, except as provided in subsection (2) of this section. Further dissemination or use of the record is prohibited.

(2) This section applies to all current employees hired prior to the effective date of this act who have not previously submitted to a department of social and health services criminal history records check. The secretary shall use the information only in determining whether the current employee meets the

necessary character, suitability, and competency requirements for employment or engagement.

Passed the Senate February 6, 1996.

Passed the House February 26, 1996.

Approved by the Governor March 7, 1996.

Filed in Office of Secretary of State March 7, 1996.

CHAPTER 28

[Senate Bill 6414]

UNEMPLOYMENT INSURANCE BENEFIT PAYMENTS— VOLUNTARY WITHHOLDING OR FEDERAL INCOME TAX

AN ACT Relating to the voluntary withholding of federal income tax from unemployment insurance benefit payments; adding a new section to chapter 50.20 RCW; creating new sections; 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) The unique federal and state partnership of the unemployment insurance program places a special responsibility on states, and selected Congressional legislation requires conforming legislation at the state level;

(2) The most recent conformity legislation requires states to offer unemployed workers the option of having the employment security department withhold federal income tax from unemployment insurance benefits;

(3) Unemployment benefits have been subject to income tax for several years, and voluntary withholding is a reasonable strategy some claimants will use to spread the payment of their federal income tax liability over several weeks or months rather than a single payment at income tax time; and

(4) Conformity with federal law supports the federal and state partnership and responds to the needs of this state's unemployed workers.

NEW SECTION. Sec. 2. A new section is added to chapter 50.20 RCW to read as follows:

(1) An individual filing a new claim for unemployment insurance must, at the time of filing such claim, be advised that:

(a) Unemployment insurance is subject to federal income tax;

(b) Requirements exist pertaining to estimated tax payments;

(c) The individual may elect to have federal income tax deducted and withheld from the individual's payment of unemployment insurance at the amount specified in the federal internal revenue code; and

(d) The individual is permitted to change a previously elected withholding status.

(2) Amounts deducted and withheld from unemployment compensation must remain in the unemployment fund until transferred to the federal taxing authority as a payment of income tax.

(3) The commissioner shall follow all procedures specified by the United States department of labor and the federal internal revenue service pertaining to the deducting and withholding of income tax.

(4) The commissioner shall adopt rules to implement this section. Amounts shall be deducted and withheld in accordance with the priorities established in rules adopted by the commissioner.

NEW SECTION. Sec. 3. 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 hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall 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. 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. This act shall take effect December 31, 1996, and shall apply to payments made after December 31, 1996.

Passed the Senate January 26, 1996.

Passed the House February 26, 1996.

Approved by the Governor March 7, 1996.

Filed in Office of Secretary of State March 7, 1996.

CHAPTER 29

[Senate Bill 6467]

POLLUTION SOURCE FEES—COLLECTION

AN ACT Relating to pollution source fees; and amending RCW 70.94.152 and 70.94.154. Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 70.94.152 and 1993 c 252 s 4 are each amended to read as follows:

(1) The department of ecology or board of any authority may require notice of the establishment of any proposed new sources except single family and duplex dwellings. The department of ecology or board may require such notice to be accompanied by a fee and determine the amount of such fee: PROVIDED, That the amount of the fee may not exceed the cost of reviewing the plans, specifications, and other information and administering such notice: PROVIDED FURTHER, That any such notice given or notice of construction application submitted to either the board or to the department of ecology shall preclude a further submittal of a duplicate application to any board or to the department of ecology.

(2) The department shall, after opportunity for public review and comment, adopt rules that establish a workload-driven process for determination and review of the fee covering the direct and indirect costs of processing a notice of construction application and a methodology for tracking revenues and expenditures. ~~((All new source fees collected by the department from permit program sources shall be deposited in the air operating permit account.))~~ All new source fees collected by the delegated local air authorities from ~~((permit program))~~ sources shall be deposited in the dedicated accounts of their respective treasuries. All new source fees collected by the department from ~~((nonpermit program))~~ sources shall be deposited in the air pollution control account. ~~((All new source fees collected by local air authorities from nonpermit program sources shall be deposited in their respective treasuries.))~~

(3) Within thirty days of receipt of a notice of construction application, the department of ecology or board may require, as a condition precedent to the establishment of the new source or sources covered thereby, the submission of plans, specifications, and such other information as it deems necessary to determine whether the proposed new source will be in accord with applicable rules and regulations in force under this chapter. If on the basis of plans, specifications, or other information required under this section the department of ecology or board determines that the proposed new source will not be in accord with this chapter or the applicable ordinances, resolutions, rules, and regulations adopted under this chapter, it shall issue an order denying permission to establish the new source. If on the basis of plans, specifications, or other information required under this section, the department of ecology or board determines that the proposed new source will be in accord with this chapter, and the applicable rules and regulations adopted under this chapter, it shall issue an order of approval for the establishment of the new source or sources, which order may provide such conditions as are reasonably necessary to assure the maintenance of compliance with this chapter and the applicable rules and regulations adopted under this chapter. Every order of approval under this chapter must be reviewed prior to issuance by a professional engineer or staff under the supervision of a professional engineer in the employ of the department of ecology or board.

(4) The determination required under subsection (3) of this section shall include a determination of whether the operation of the new air contaminant source at the location proposed will cause any ambient air quality standard to be exceeded.

(5) New source review of a modification shall be limited to the emission unit or units proposed to be modified and the air contaminants whose emissions would increase as a result of the modification.

(6) Nothing in this section shall be construed to authorize the department of ecology or board to require the use of emission control equipment or other equipment, machinery, or devices of any particular type, from any particular supplier, or produced by any particular manufacturer.

(7) Any features, machines, and devices constituting parts of or called for by plans, specifications, or other information submitted pursuant to subsection (1) or (3) of this section shall be maintained and operate in good working order.

(8) The absence of an ordinance, resolution, rule, or regulation, or the failure to issue an order pursuant to this section shall not relieve any person from his or her obligation to comply with applicable emission control requirements or with any other provision of law.

(9) Within thirty days of receipt of a notice of construction application the department of ecology or board shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within sixty days of receipt of a complete application the department or board shall either (a) issue a final decision on the application, or (b) for those projects subject to public notice, initiate notice and comment on a proposed decision, followed as promptly as possible by a final decision. A person seeking approval to construct or modify a source that requires an operating permit may elect to integrate review of the operating permit application or amendment required by RCW 70.94.161 and the notice of construction application required by this section. A notice of construction application designated for integrated review shall be processed in accordance with operating permit program procedures and deadlines.

(10) Best available control technology (BACT) is required for new sources except where the federal clean air act requires compliance with the lowest achievable emission rate (LAER).

Sec. 2. RCW 70.94.154 and 1993 c 252 s 8 are each amended to read as follows:

(1) RACT as defined in RCW 70.94.030 is required for existing sources except as otherwise provided in RCW 70.94.331(9).

(2) RACT for each source category containing three or more sources shall be determined by rule except as provided in subsection (3) of this section.

(3) Source-specific RACT determinations may be performed under any of the following circumstances:

(a) As authorized by RCW 70.94.153;

(b) When required by the federal clean air act;

(c) For sources in source categories containing fewer than three sources;

(d) When an air quality problem, for which the source is a contributor, justifies a source-specific RACT determination prior to development of a categorical RACT rule; or

(e) When a source-specific RACT determination is needed to address either specific air quality problems for which the source is a significant contributor or source-specific economic concerns.

(4) By January 1, 1994, ecology shall develop a list of sources and source categories requiring RACT review and a schedule for conducting that review. Ecology shall review the list and schedule within six months of receiving the initial operating permit applications and at least once every five years thereafter.

In developing the list to determine the schedule of RACT review, ecology shall consider emission reductions achievable through the use of new available technologies and the impacts of those incremental reductions on air quality, the remaining useful life of previously installed control equipment, the impact of the source or source category on air quality, the number of years since the last BACT, RACT, or LAER determination for that source and other relevant factors. Prior to finalizing the list and schedule, ecology shall consult with local air authorities, the regulated community, environmental groups, and other interested individuals and organizations. The department and local authorities shall revise RACT requirements, as needed, based on the review conducted under this subsection.

(5) In determining RACT, ecology and local authorities shall utilize the factors set forth in RCW 70.94.030 and shall consider RACT determinations and guidance made by the federal environmental protection agency, other states and local authorities for similar sources, and other relevant factors. In establishing or revising RACT requirements, ecology and local authorities shall address, where practicable, all air contaminants deemed to be of concern for that source or source category.

(6) Emission standards and other requirements contained in rules or regulatory orders in effect at the time of operating permit issuance or renewal shall be considered RACT for purposes of permit issuance or renewal. RACT determinations under subsections (2) and (3) of this section shall be incorporated into operating permits as provided in RCW 70.94.161 and rules implementing that section.

(7) The department and local air authorities are authorized to assess and collect a fee to cover the costs of developing, establishing, or reviewing categorical or case-by-case RACT requirements. The fee shall apply to determinations of RACT requirements as defined under this section and RCW 70.94.331(9). The amount of the fee may not exceed the direct and indirect costs of establishing the requirement for the particular source or the pro rata portion of the direct and indirect costs of establishing the requirement for the relevant source category. The department shall, after opportunity for public review and comment, adopt rules that establish a workload-driven process for determination and review of the fee covering the direct and indirect costs of its RACT determinations and a methodology for tracking revenues and expenditures. ~~((All such RACT determination fees collected by the department from permit program sources shall be deposited in the air operating permit account.))~~ All such RACT determination fees collected by the delegated local air authorities from ~~((permit program))~~ sources shall be deposited in the dedicated accounts of their respective treasuries. All such RACT fees collected by the department from ~~((nonpermit program))~~ sources shall be deposited in the air pollution control account. ~~((All such RACT fees collected by local air authorities from nonpermit program sources shall be deposited in their respective treasuries.))~~

Passed the Senate February 7, 1996.
 Passed the House February 26, 1996.
 Approved by the Governor March 7, 1996.
 Filed in Office of Secretary of State March 7, 1996.

CHAPTER 30

[Substitute Senate Bill 6487]

COMMERCIAL DRIVER'S LICENSES—QUALIFICATIONS

AN ACT Relating to commercial driver's licenses; amending RCW 46.25.010, 46.25.080, 46.25.090, and 46.20.205; prescribing penalties; and providing an effective date.

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

Sec. 1. RCW 46.25.010 and 1989 c 178 s 3 are each amended to read as follows:

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

(1) "Alcohol" means any substance containing any form of alcohol, including but not limited to ethanol, methanol, propanol, and isopropanol.

(2) "Alcohol concentration" means:

(a) The number of grams of alcohol per one hundred milliliters of blood;
or

(b) The number of grams of alcohol per two hundred ten liters of breath.

(3) "Commercial driver's license" (CDL) means a license issued in accordance with the requirements of this chapter to an individual that authorizes the individual to drive a class of commercial motor vehicle.

(4) The "commercial driver's license information system" (CDLIS) is the information system established pursuant to the CMVSA to serve as a clearing-house for locating information related to the licensing and identification of commercial motor vehicle drivers.

(5) "Commercial driver's instruction permit" means a permit issued under RCW 46.25.060(4).

(6) "Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property:

(a) If the vehicle has a gross weight rating of 26,001 or more pounds;
(b) If the vehicle is designed to transport sixteen or more passengers, including the driver;

(c) If the vehicle is transporting hazardous materials and is required to be identified by a placard in accordance with 49 C.F.R. part 172, subpart F; or

(d) If the vehicle is a school bus as defined in RCW 46.04.521 regardless of weight or size.

(7) "Conviction" has the definition set forth in RCW 46.20.270.

(8) "Disqualification" means a prohibition against driving a commercial motor vehicle.

(9) "Drive" means to drive, operate, or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic.

For purposes of RCW 46.25.100, 46.25.110, and 46.25.120, "drive" includes operation or physical control of a motor vehicle anywhere in the state.

(10) "Drugs" are those substances as defined by RCW 69.04.009.

(11) "Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.

(12) "Gross vehicle weight rating" (GVWR) means the value specified by the manufacturer as the maximum loaded weight of a single or a combination or articulated vehicle, or the registered gross weight, ~~((whichever is greater))~~ where this value cannot be determined. The GVWR of a combination or articulated vehicle, commonly referred to as the "gross combined weight rating" or GCWR, is the GVWR of the power unit plus the GVWR of the towed unit or units.

(13) "Hazardous materials" has the same meaning found in Section 103 of the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et ~~((seq))~~ seq.).

(14) "Motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on highways, or any other vehicle required to be registered under the laws of this state, but does not include a vehicle, machine, tractor, trailer, or semitrailer operated exclusively on a rail.

(15) "Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle.

(16) "Serious traffic violation" means:

(a) Excessive speeding, defined as fifteen miles per hour or more in excess of the posted limit;

(b) Reckless driving, as defined under state or local law;

(c) A violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with an accident or collision resulting in death to any person; and

(d) Any other violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, that the department determines by rule to be serious.

(17) "State" means a state of the United States and the District of Columbia.

(18) "Tank vehicle" means a vehicle that is designed to transport a liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Tank vehicles include, but are not limited to cargo tanks and portable tanks. However, this definition does not include portable tanks having a rated capacity under one thousand gallons.

(19) "United States" means the fifty states and the District of Columbia.

Sec. 2. RCW 46.25.080 and 1989 c 178 s 10 are each amended to read as follows:

(1) The commercial driver's license must be marked "commercial driver's license" or "CDL," and must be, to the maximum extent practicable, tamperproof. It must include, but not be limited to, the following information:

- (a) The name and residence address of the person;
- (b) The person's color photograph;
- (c) A physical description of the person including sex, height, weight, and eye color;
- (d) Date of birth;
- (e) The person's Social Security number or any number or identifier deemed appropriate by the department;
- (f) The person's signature;
- (g) The class or type of commercial motor vehicle or vehicles that the person is authorized to drive, together with any endorsements or restrictions;
- (h) The name of the state; and
- (i) The dates between which the license is valid.

(2) Commercial driver's licenses may be issued with the classifications, endorsements, and restrictions set forth in this subsection. The holder of a valid commercial driver's license may drive all vehicles in the class for which that license is issued and all lesser classes of vehicles except motorcycles and vehicles that require an endorsement, unless the proper endorsement appears on the license.

(a) Licenses may be classified as follows:

(i) Class A is a combination of vehicles with a gross combined weight rating (GCWR) of 26,001 pounds or more, if the GVWR of the vehicle being towed is in excess of 10,000 pounds.

(ii) Class B is a single vehicle with a GVWR of 26,001 pounds or more, and any such vehicle towing a vehicle not in excess of 10,000 pounds.

(iii) Class C is a single vehicle with a GVWR of less than 26,001 pounds or any such vehicle towing a vehicle with a GVWR not in excess of 10,000 pounds consisting of:

(A) Vehicles designed to transport sixteen or more passengers, including the driver; or

(B) Vehicles used in the transportation of hazardous materials that requires the vehicle to be identified with a placard under 49 C.F.R., part 172, subpart F(~~;~~ and

~~(C) School buses designed to carry fewer than sixteen passengers)).~~

(b) The following endorsements and restrictions may be placed on a license:

(i) "H" authorizes the driver to drive a vehicle transporting hazardous materials.

(ii) "K" restricts the driver to vehicles not equipped with air brakes.

(iii) "T" authorizes driving double and triple trailers.

(iv) "P1" authorizes driving all vehicles carrying passengers.

(v) "P2" authorizes driving vehicles with a GVWR of less than 26,001 pounds carrying sixteen or more passengers, including the driver.

(vi) "N" authorizes driving tank vehicles.

~~((vi))~~ (vii) "X" represents a combination of hazardous materials and tank vehicle endorsements.

The license may be issued with additional endorsements and restrictions as established by rule of the director.

(3) All school bus drivers must have either a "P1" or "P2" endorsement depending on the GVWR of the school bus being driven.

(4) Before issuing a commercial driver's license, the department shall obtain driving record information through the commercial driver's license information system, the national driver register, and from the current state of record.

~~((4))~~ (5) Within ten days after issuing a commercial driver's license, the department must notify the commercial driver's license information system of that fact, and provide all information required to ensure identification of the person.

~~((5))~~ (6) A commercial driver's license shall expire in the same manner as provided in RCW 46.20.181.

~~((6))~~ (7) When applying for renewal of a commercial driver's license, the applicant shall complete the application form required by RCW 46.25.070(1), providing updated information and required certifications. If the applicant wishes to retain a hazardous materials endorsement, the applicant shall take and pass the written test for a hazardous materials endorsement.

Sec. 3. RCW 46.25.090 and 1989 c 178 s 11 are each amended to read as follows:

(1) A person is disqualified from driving a commercial motor vehicle for a period of not less than one year if a report has been received by the department pursuant to RCW 46.25.120, or if the person has been convicted of a first violation, within this or any other jurisdiction, of:

(a) Driving a commercial motor vehicle under the influence of alcohol or any drug;

(b) Driving a commercial motor vehicle while the alcohol concentration in the person's system is 0.04 or more as determined by any testing methods approved by law in this state or any other state or jurisdiction;

(c) Leaving the scene of an accident involving a commercial motor vehicle driven by the person;

(d) Using a commercial motor vehicle in the commission of a felony;

(e) Refusing to submit to a test to determine the driver's alcohol concentration while driving a motor vehicle.

If any of the violations set forth in this subsection occurred while transporting a hazardous material required to be identified by a placard, the person is disqualified for a period of not less than three years.

(2) A person is disqualified for life if it has been determined that the person has committed or has been convicted of two or more violations of any of the offenses specified in subsection (1) of this section, or any combination of those

offenses, arising from two or more separate incidents. Only offenses committed after October 1, 1989, may be considered in applying this subsection.

(3) The department may adopt rules, in accordance with federal regulations, establishing guidelines, including conditions, under which a disqualification for life under subsection (2) of this section may be reduced to a period of not less than ten years.

(4) A person is disqualified from driving a commercial motor vehicle for life who uses a commercial motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance, as defined by chapter 69.50 RCW, or possession with intent to manufacture, distribute, or dispense a controlled substance, as defined by chapter 69.50 RCW.

(5) A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if convicted of or found to have committed two serious traffic violations, or one hundred twenty days if convicted of or found to have committed three serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period.

(6) A person is disqualified from driving a commercial motor vehicle for a period of:

(a) Not less than ninety days nor more than one year if convicted of or found to have committed a first violation of an out-of-service order;

(b) Not less than one year nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed two violations of out-of-service orders in separate incidents;

(c) Not less than three years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed three or more violations of out-of-service orders in separate incidents;

(d) Not less than one hundred eighty days nor more than two years if the person is convicted of or is found to have committed a first violation of an out-of-service order while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act (46 U.S.C. Sec. 1801-1813), or while operating motor vehicles designed to transport sixteen or more passengers, including the driver. A person is disqualified for a period of not less than three years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act, or while operating motor vehicles designed to transport sixteen or more passengers, including the driver.

(7) Within ten days after suspending, revoking, or canceling a commercial driver's license, the department shall update its records to reflect that action. After suspending, revoking, or canceling a nonresident commercial driver's privileges, the department shall notify the licensing authority of the state that issued the commercial driver's license.

Sec. 4. RCW 46.20.205 and 1994 c 57 s 52 are each amended to read as follows:

Whenever any person after applying for or receiving a driver's license or identicard moves from the address named in the application or in the license or identicard issued to him or her or when the name of a licensee or holder of an identicard is changed by marriage or otherwise, the person shall within ten days thereafter notify the department in writing on a form provided by the department of his or her old and new addresses or of such former and new names and of the number of any license then held by him or her. The written notification, or other means as designated by rule of the department, is the exclusive means by which the address of record maintained by the department concerning the licensee or identicard holder may be changed. The form must contain a place for the person to indicate that the address change is not for voting purposes. The department of licensing shall notify the secretary of state by the means described in RCW 29.07.270(3) of all change of address information received by means of this form except information on persons indicating that the change is not for voting purposes. Any notice regarding the cancellation, suspension, revocation, disqualification, probation, or nonrenewal of the driver's license, commercial driver's license, driving privilege, or identicard mailed to the address of record of the licensee or identicard holder is effective notwithstanding the licensee's or identicard holder's failure to receive the notice.

NEW SECTION. Sec. 5. This act takes effect October 1, 1996.

Passed the Senate February 10, 1996.

Passed the House February 26, 1996.

Approved by the Governor March 7, 1996.

Filed in Office of Secretary of State March 7, 1996.

CHAPTER 31

[Senate Bill 6489]

LICENSE FEES AND MOTOR VEHICLE EXCISE TAXES— REFUNDS OF OVERPAYMENTS

AN ACT Relating to refunds of overpayments of license fees and motor vehicle excise taxes; amending RCW 46.68.010 and 88.02.055; reenacting and amending RCW 46.63.020; and prescribing penalties.

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

Sec. 1. RCW 46.68.010 and 1993 c 307 s 2 are each amended to read as follows:

Whenever any license fee, paid under the provisions of this title, has been erroneously paid, either wholly or in part, the payor is entitled to have refunded the amount so erroneously paid. A ~~((renewal))~~ license fee ~~((paid prior to the actual expiration date of the license being renewed shall be deemed to be erroneously paid if the vehicle for which the renewal license was purchased is destroyed or permanently removed from the state prior to))~~ is refundable in one

or more of the following circumstances: (1) If the vehicle for which the renewal license was purchased was destroyed before the beginning date of the registration period for which the renewal fee was paid; (2) if the vehicle for which the renewal license was purchased was permanently removed from the state before the beginning date of the registration period for which the renewal fee was paid; (3) if the vehicle license was purchased after the owner has sold the vehicle; or (4) if the vehicle is currently licensed in Washington and is subsequently licensed in another jurisdiction, in which case any full months of Washington fees between the date of license application in the other jurisdiction and the expiration of the Washington license are refundable. Upon such refund being certified to the state treasurer by the director as correct and being claimed in the time required by law the state treasurer shall mail or deliver the amount of each refund to the person entitled thereto. No claim for refund shall be allowed for such erroneous payments unless filed with the director within three years after such claimed erroneous payment was made.

If due to error a person has been required to pay a vehicle license fee under this title and an excise tax under Title 82 RCW that amounts to an overpayment of ten dollars or more, that person shall be entitled to a refund of the entire amount of the overpayment, regardless of whether a refund of the overpayment has been requested. If due to error the department or its agent has failed to collect the full amount of the license fee and excise tax due and the underpayment is in the amount of ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the tax and fees.

Any person who makes a false statement under which he or she obtains a refund to which he or she is not entitled under this section is guilty of a gross misdemeanor.

Sec. 2. RCW 88.02.055 and 1989 c 68 s 5 are each amended to read as follows:

Whenever any license fee paid under this chapter has been erroneously paid, in whole or in part, the person paying the fee, upon satisfactory proof to the director of licensing, is entitled to a refund of the amount erroneously paid. A ~~((renewal)) license fee ((paid before the actual expiration date of the license being renewed shall be deemed to be erroneously paid if the vessel for which the renewal license is being purchased is destroyed or permanently removed from the state))~~ is refundable in one or more of the following circumstances: (1) If the vessel for which the renewal license was purchased was destroyed before the beginning date of the registration period for which the renewal fee ((is being)) was paid; (2) if the vessel for which the renewal license was purchased was permanently removed from the state before the beginning date of the registration period for which the renewal fee was paid; (3) if the vessel license was purchased after the owner has sold the vessel; or (4) if the vessel is currently licensed in Washington and is subsequently licensed in another jurisdiction, in which case any full months of Washington fees between the date of license application in the other jurisdiction and the expiration of the

Washington license are refundable. Upon the refund being certified as correct to the state treasurer by the director and being claimed in the time required by law, the state treasurer shall mail or deliver the amount of each refund to the person entitled to the refund. A claim for refund shall not be allowed for erroneous payments unless the claim is filed with the director within (~~thirteen months~~) three years after such payment was made.

If due to error a person has been required to pay a license fee under this chapter and excise tax which amounts to an overpayment of ten dollars or more, such person shall be entitled to a refund of the entire amount of such overpayment, regardless of whether a refund of the overpayment has been requested. If due to error the department or its agents has failed to collect the full amount of the license fee and excise tax due, which underpayment is in the amount of ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the tax and fees.

Any person who makes a false statement under which he or she obtains a refund to which he or she is not entitled under this section is guilty of a gross misdemeanor.

Sec. 3. RCW 46.63.020 and 1995 1st sp.s. c 16 s 1, 1995 c 332 s 16, and 1995 c 256 s 25 are each reenacted and 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 (6) or (9) relating to unauthorized use or acquisition of a special placard or license plate for disabled persons' parking;
- (10) RCW 46.20.021 relating to driving without a valid driver's license;
- (11) RCW 46.20.336 relating to the unlawful possession and use of a driver's license;

(12) RCW 46.20.342 relating to driving with a suspended or revoked license or status;

(13) RCW 46.20.410 relating to the violation of restrictions of an occupational driver's license;

(14) RCW 46.20.420 relating to the operation of a motor vehicle with a suspended or revoked license;

(15) RCW 46.20.750 relating to assisting another person to start a vehicle equipped with an ignition interlock device;

(16) RCW 46.25.170 relating to commercial driver's licenses;

(17) Chapter 46.29 RCW relating to financial responsibility;

(18) RCW 46.30.040 relating to providing false evidence of financial responsibility;

(19) RCW 46.37.435 relating to wrongful installation of sunscreening material;

(20) RCW 46.44.180 relating to operation of mobile home pilot vehicles;

(21) RCW 46.48.175 relating to the transportation of dangerous articles;

(22) RCW 46.52.010 relating to duty on striking an unattended car or other property;

(23) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(24) RCW 46.52.090 relating to reports by repairmen, storagemen, and appraisers;

(25) RCW 46.52.100 relating to driving under the influence of liquor or drugs;

(26) 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;

(27) RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;

(28) RCW 46.55.035 relating to prohibited practices by tow truck operators;

(29) RCW 46.61.015 relating to obedience to police officers, flagmen, or fire fighters;

(30) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;

(31) RCW 46.61.022 relating to failure to stop and give identification to an officer;

(32) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;

(33) RCW 46.61.500 relating to reckless driving;

(34) RCW 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;

(35) RCW 46.61.— (section ((5)) 2, chapter 332 (Substitute Senate Bill No. 5141), Laws of 1995) relating to a person under age twenty-one driving a motor vehicle after consuming alcohol;

- (36) RCW 46.61.520 relating to vehicular homicide by motor vehicle;
- (37) RCW 46.61.522 relating to vehicular assault;
- (38) RCW 46.61.525 relating to negligent driving;
- (39) RCW 46.61.527(4) relating to reckless endangerment of roadway workers;
- (40) RCW 46.61.530 relating to racing of vehicles on highways;
- (41) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;
- (42) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;
- (43) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;
- (44) Chapter 46.65 RCW relating to habitual traffic offenders;
- (45) RCW 46.68.010 relating to false statements made to obtain a refund;
- ~~(46)~~ 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;
- ~~((46))~~ (47) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;
- ~~((47))~~ (48) Chapter 46.80 RCW relating to motor vehicle wreckers;
- ~~((48))~~ (49) Chapter 46.82 RCW relating to driver's training schools;
- ~~((49))~~ (50) 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;
- ~~((50))~~ (51) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW.

Passed the Senate February 10, 1996.

Passed the House February 26, 1996.

Approved by the Governor March 7, 1996.

Filed in Office of Secretary of State March 7, 1996.

CHAPTER 32

[Engrossed Substitute Senate Bill 6554]

TRANSMISSION FACILITIES—ATTACHMENTS

AN ACT Relating to attachments to transmission facilities; adding a new section to chapter 23.86 RCW; adding a new section to chapter 24.06 RCW; adding a new section to chapter 35.21 RCW; adding a new section to chapter 35A.21 RCW; and adding a new section to chapter 54.04 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 23.86 RCW to read as follows:

- (1) As used in this section:

(a) "Attachment" means the affixation or installation of any wire, cable or other physical material capable of carrying electronic impulses or light waves for the carrying of intelligence for telecommunications or television, including, but not limited to cable, and any related device, apparatus, or auxiliary equipment upon any pole owned or controlled in whole or in part by one or more locally regulated utilities where the installation has been made with the necessary consent.

(b) "Locally regulated utility" means an electric service cooperative organized under this chapter and not subject to rate or service regulation by the utilities and transportation commission.

(c) "Non-discriminatory" means that pole owners may not arbitrarily differentiate among or between similar classes of persons approved for attachments.

(2) All rates, terms, and conditions made, demanded or received by a locally regulated utility for attachments to its poles must be just, reasonable, non-discriminatory and sufficient. A locally regulated utility shall levy attachment space rental rates that are uniform for the same class of service within the locally regulated utility service area.

(3) Nothing in this section shall be construed or is intended to confer upon the utilities and transportation commission any authority to exercise jurisdiction over locally regulated utilities.

NEW SECTION. Sec. 2. A new section is added to chapter 24.06 RCW to read as follows:

(1) As used in this section:

(a) "Attachment" means the affixation or installation of any wire, cable or other physical material capable of carrying electronic impulses or light waves for the carrying of intelligence for telecommunications or television, including, but not limited to cable, and any related device, apparatus, or auxiliary equipment upon any pole owned or controlled in whole or in part by one or more locally regulated utilities where the installation has been made with the necessary consent.

(b) "Locally regulated utility" means an mutual corporation organized under this chapter for the purpose of providing utility service and not subject to rate or service regulation by the utilities and transportation commission.

(c) "Non-discriminatory" means that pole owners may not arbitrarily differentiate among or between similar classes of persons approved for attachments.

(2) All rates, terms, and conditions made, demanded or received by a locally regulated utility for attachments to its poles must be just, reasonable, non-discriminatory and sufficient. A locally regulated utility shall levy attachment space rental rates that are uniform for the same class of service within the locally regulated utility service area.

(3) Nothing in this section shall be construed or is intended to confer upon the utilities and transportation commission any authority to exercise jurisdiction over locally regulated utilities.

NEW SECTION. Sec. 3. A new section is added to chapter 35.21 RCW to read as follows:

(1) As used in this section:

(a) "Attachment" means the affixation or installation of any wire, cable or other physical material capable of carrying electronic impulses or light waves for the carrying of intelligence for telecommunications or television, including, but not limited to cable, and any related device, apparatus, or auxiliary equipment upon any pole owned or controlled in whole or in part by one or more locally regulated utilities where the installation has been made with the necessary consent.

(b) "Locally regulated utility" means a city owning and operating an electric utility not subject to rate or service regulation by the utilities and transportation commission.

(c) "Non-discriminatory" means that pole owners may not arbitrarily differentiate among or between similar classes of persons approved for attachments.

(2) All rates, terms, and conditions made, demanded or received by a locally regulated utility for attachments to its poles must be just, reasonable, non-discriminatory and sufficient. A locally regulated utility shall levy attachment space rental rates that are uniform for the same class of service within the locally regulated utility service area.

(3) Nothing in this section shall be construed or is intended to confer upon the utilities and transportation commission any authority to exercise jurisdiction over locally regulated utilities.

NEW SECTION. Sec. 4. A new section is added to chapter 35A.21 RCW to read as follows:

(1) As used in this section:

(a) "Attachment" means the affixation or installation of any wire, cable or other physical material capable of carrying electronic impulses or light waves for the carrying of intelligence for telecommunications or television, including, but not limited to cable, and any related device, apparatus, or auxiliary equipment upon any pole owned or controlled in whole or in part by one or more locally regulated utilities where the installation has been made with the necessary consent.

(b) "Locally regulated utility" means a code city owning and operating an electric utility not subject to rate or service regulation by the utilities and transportation commission.

(c) "Non-discriminatory" means that pole owners may not arbitrarily differentiate among or between similar classes of persons approved for attachments.

(2) All rates, terms, and conditions made, demanded or received by a locally regulated utility for attachments to its poles must be just, reasonable, non-discriminatory and sufficient. A locally regulated utility shall levy attachment space rental rates that are uniform for the same class of service within the locally regulated utility service area.

(3) Nothing in this section shall be construed or is intended to confer upon the utilities and transportation commission any authority to exercise jurisdiction over locally regulated utilities.

NEW SECTION. Sec. 5. A new section is added to chapter 54.04 RCW to read as follows:

(1) As used in this section:

(a) "Attachment" means the affixation or installation of any wire, cable or other physical material capable of carrying electronic impulses or light waves for the carrying of intelligence for telecommunications or television, including, but not limited to cable, and any related device, apparatus, or auxiliary equipment upon any pole owned or controlled in whole or in part by one or more locally regulated utilities where the installation has been made with the necessary consent.

(b) "Locally regulated utility" means a public utility district not subject to rate or service regulation by the utilities and transportation commission.

(c) "Non-discriminatory" means that pole owners may not arbitrarily differentiate among or between similar classes of persons approved for attachments.

(2) All rates, terms, and conditions made, demanded or received by a locally regulated utility for attachments to its poles must be just, reasonable, non-discriminatory and sufficient. A locally regulated utility shall levy attachment space rental rates that are uniform for the same class of service within the locally regulated utility service area.

(3) Nothing in this section shall be construed or is intended to confer upon the utilities and transportation commission any authority to exercise jurisdiction over locally regulated utilities.

Passed the Senate February 13, 1996.

Passed the House February 27, 1996.

Approved by the Governor March 7, 1996.

Filed in Office of Secretary of State March 7, 1996.

CHAPTER 33

[Engrossed Senate Bill 6631]

THERMAL ENERGY COMPANIES—EXEMPTION FROM UTILITIES AND TRANSPORTATION COMMISSION AUTHORITY

AN ACT Relating to exempting thermal energy companies from utilities and transportation commission authority; amending RCW 39.35C.080; adding a new section to chapter 80.04 RCW; creating a new section; and repealing RCW 80.62.010, 80.62.020, 80.62.030, 80.62.040, 80.62.050, 80.62.060, 80.62.070, 80.62.080, 80.62.900, and 80.62.910.

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

NEW SECTION. Sec. 1. (1) The legislature finds:

(a) The Washington utilities and transportation commission has the authority to regulate district heating suppliers on the basis of financial solvency, system design integrity, and reasonableness of contract rates and rate formulas under chapter 80.62 RCW;

(b) Consumers have competitive alternatives to thermal energy companies for space heating and cooling and ancillary services;

(c) Consumers have recourse against thermal energy companies for unfair business practices under the consumer protection act; and

(d) Technology and marketing opportunities have advanced since the enactment of chapter 80.62 RCW to make the provision of cooling services, as well as heating services, an economical option for consumers.

(2) The legislature declares that the public health, safety, and welfare does not require the regulation of thermal energy companies by the Washington utilities and transportation commission.

NEW SECTION. Sec. 2. A new section is added to chapter 80.04 RCW to read as follows:

(1) Nothing in this title shall authorize the commission to make or enforce any order affecting rates, tolls, rentals, contracts or charges for service rendered, or the adequacy or sufficiency of the facilities, equipment, instrumentalities, or buildings, or the reasonableness of rules or regulations made, furnished, used, supplied, or in force affecting any district thermal energy system owned and operated by any thermal energy company.

(2) For the purposes of this section:

(a) "Thermal energy company" means any private person, company, association, partnership, joint venture, or corporation engaged in or proposing to engage in developing, producing, transmitting, distributing, delivering, furnishing, or selling to or for the public thermal energy services for any beneficial use other than electricity generation;

(b) "District thermal energy system" means any system that provides thermal energy for space heating, space cooling, or process uses from a central plant, and that distributes the thermal energy to two or more buildings through a network of pipes;

(c) "Thermal energy" means heat or cold in the form of steam, heated or chilled water, or any other heated or chilled fluid or gaseous medium; and

(d) "Thermal energy services" means the provision of thermal energy from a district thermal energy system and includes such ancillary services as energy audits, metering, billing, maintenance, and repairs related to thermal energy.

NEW SECTION. Sec. 3. The following acts or parts of acts are each repealed:

(1) RCW 80.62.010 and 1987 c 522 s 1 & 1983 c 94 s 1;

(2) RCW 80.62.020 and 1987 c 522 s 2 & 1983 c 94 s 2;

- (3) RCW 80.62.030 and 1983 c 94 s 3;
- (4) RCW 80.62.040 and 1983 c 94 s 4;
- (5) RCW 80.62.050 and 1983 c 94 s 5;
- (6) RCW 80.62.060 and 1983 c 94 s 6;
- (7) RCW 80.62.070 and 1983 c 94 s 7;
- (8) RCW 80.62.080 and 1983 c 94 s 8;
- (9) RCW 80.62.900 and 1983 c 94 s 9; and
- (10) RCW 80.62.910 and 1983 c 94 s 10.

Sec. 4. RCW 39.35C.080 and 1991 c 201 s 9 are each amended to read as follows:

It is the intention of chapter 201, Laws of 1991 that the state and its agencies are compensated fairly for the energy provided to utilities from cogeneration at state facilities. Such compensation may include revenues from sales of electricity or thermal energy to utilities, lease of state properties, and value of thermal energy provided to the facility. It is also the intent of chapter 201, Laws of 1991 that the state and its agencies be accorded the opportunity to compete on a fair and reasonable basis to fulfill a utility's new resource acquisition needs when selling the energy produced from cogeneration projects at state facilities through energy purchase agreements.

(1)(a) The energy office and state agencies may participate in any utility request for resource proposal process, as either established under the rules and regulations of the utilities and transportation commission, or by the governing board of a public utility district, municipal utility, cooperative, or mutual.

(b) If a local utility does not have a request for resource proposal pending, the energy office or a state agency may negotiate an equitable and mutually beneficial energy purchase agreement with that utility.

(2) To ensure an equitable allocation of benefits to the state and its agencies, the following conditions shall apply to energy purchase agreements negotiated between utilities and state agencies:

(a) An energy purchase agreement shall be approved by both the energy office and the affected state agency.

(b) The energy office and the state agency shall work together throughout the planning and negotiation process for energy purchase agreements, unless the energy office determines that its participation will not further the purposes of this section.

(c) Before approving an energy purchase agreement, the energy office shall review the proposed agreement for its technical and economic feasibility, the degree of certainty of benefits, the degree of financial risk assumed by the state and/or the state agency, the benefits offered to the state and/or state agency, and other such factors as the energy office deems prudent. The energy office shall approve an energy purchase agreement unless it finds that such an agreement would not result in an equitable allocation of costs and benefits, in which case the transaction shall be disapproved.

(3)(a) The state or state agency shall comply with and shall be bound by applicable avoided cost schedules, electric power wheeling charges, interconnection requirements, utility tariffs, and regulatory provisions to the same extent it would be required to comply and would be bound if it were a private citizen. The state shall neither seek regulatory advantage, nor change regulations, regulatory policy, process, or decisions to its advantage as a seller of cogenerated energy. Nothing contained in chapter 201, Laws of 1991 shall be construed to mandate or require public or private utilities to wheel electric energy resources within or beyond their service territories. Nothing in chapter 201, Laws of 1991 authorizes any state agency or school district to make any sale of energy or waste heat (~~(as defined by RCW 80.62.020(9))~~) beyond the explicit provisions of chapter 201, Laws of 1991. Nothing contained in chapter 201, Laws of 1991 requires a utility to purchase energy from the state or a state agency or enter into any agreement in connection with a cogeneration facility.

(b) The state shall neither construct, nor be party to an agreement for developing a cogeneration project at a state facility for the purpose of supplying its own electrical needs, unless it can show that such an arrangement would be in the economic interest of the state taking into account the cost of (i) interconnection requirements, as specified by the local electric utility, (ii) standby charges, as may be required by the local electric utility, and (iii) the current price of electricity offered by the local electric utility. If the local electric utility can demonstrate that the cogeneration project may place an undue burden on the electric utility, the energy office or the state agency shall attempt to negotiate a mutually beneficial agreement that would minimize the burden upon the ratepayers of the local electric utility.

(4) Any party to an energy purchase agreement may, within thirty days of any decision made pursuant to subsection (2)(c) of this section to disapprove the agreement made pursuant to this section, request an independent reviewer who is mutually agreeable to all parties to review the decision. The parties shall within thirty days of selection submit to the independent reviewer documentation supporting their positions. The independent reviewer shall render advice regarding the validity of the disapproval within an additional thirty days.

(5) For the purposes of this section, "waste heat" means the thermal energy that otherwise would be released to the environment from an industrial process, electric generation, or other process.

Passed the Senate February 7, 1996.

Passed the House February 27, 1996.

Approved by the Governor March 7, 1996.

Filed in Office of Secretary of State March 7, 1996.

CHAPTER 34

[Substitute Senate Bill 6237]

VEHICLES USING WIRELESS COMMUNICATIONS SYSTEMS—APPROVAL

AN ACT Relating to vehicles using wireless communications and computer systems; and amending RCW 46.37.480.

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

Sec. 1. RCW 46.37.480 and 1991 c 95 s 1 are each amended to read as follows:

(1) No person shall drive any motor vehicle equipped with any television viewer, screen, or other means of visually receiving a television broadcast which is located in the motor vehicle at any point forward of the back of the driver's seat, or which is visible to the driver while operating the motor vehicle. This subsection does not apply to law enforcement vehicles communicating with mobile computer networks.

(2) No person shall operate any motor vehicle on a public highway while wearing any headset or earphones connected to any electronic device capable of receiving a radio broadcast or playing a sound recording for the purpose of transmitting a sound to the human auditory senses and which headset or earphones muffle or exclude other sounds. This subsection does not apply to students and instructors participating in a Washington state motorcycle safety program.

(3) This section does not apply to authorized emergency vehicles (~~or to~~), motorcyclists wearing a helmet with built-in headsets or earphones as approved by the Washington state patrol, or motorists using hands-free, wireless communications systems, as approved by the equipment section of the Washington state patrol.

Passed the Senate February 5, 1996.
Passed the House February 26, 1996.
Approved by the Governor March 7, 1996.
Filed in Office of Secretary of State March 7, 1996.

CHAPTER 35

[Senate Bill 6115]

MALICIOUS MISCHIEF—ELEMENTS REVISED

AN ACT Relating to malicious mischief; amending RCW 9A.48.090 and 4.24.190; and prescribing penalties.

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

Sec. 1. RCW 9A.48.090 and 1975 1st ex.s. c 260 s 9A.48.090 are each amended to read as follows:

(1) A person is guilty of malicious mischief in the third degree if he or she:
(a) Knowingly and maliciously causes physical damage to the property of another, under circumstances not amounting to malicious mischief in the first or second degree; or

(b) Writes, paints, or draws any inscription, figure, or mark of any type on any public or private building or other structure or any real or personal property owned by any other person unless the person has obtained the express permission of the owner or operator of the property, under circumstances not amounting to malicious mischief in the first or second degree.

(2)(a) Malicious mischief in the third degree under subsection (1)(a) of this section is a gross misdemeanor if the damage to the property is in an amount exceeding fifty dollars; otherwise, it is a misdemeanor.

(b) Malicious mischief in the third degree under subsection (1)(b) of this section is a gross misdemeanor.

Sec. 2. RCW 4.24.190 and 1992 c 205 s 116 are each amended to read as follows:

The parent or parents of any minor child under the age of eighteen years who is living with the parent or parents and who shall willfully or maliciously destroy or deface property, real or personal or mixed, or who shall willfully and maliciously inflict personal injury on another person, shall be liable to the owner of such property or to the person injured in a civil action at law for damages in an amount not to exceed five thousand dollars. This section shall in no way limit the amount of recovery against the parent or parents for their own common law negligence.

Passed the Senate February 7, 1996.

Passed the House February 27, 1996.

Approved by the Governor March 7, 1996.

Filed in Office of Secretary of State March 7, 1996.

CHAPTER 36

[Second Substitute House Bill 1289]

VESSELS—ACCIDENTS

AN ACT Relating to vessels; amending RCW 88.12.155; reenacting and amending RCW 9.94A.320; and prescribing penalties.

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

Sec. 1. RCW 88.12.155 and 1993 c 244 s 18 are each amended to read as follows:

(1) The operator of a vessel involved in a collision, accident, or other casualty, to the extent the operator can do so without serious danger to the operator's own vessel or persons aboard, shall render all practical and necessary assistance to persons affected by the collision, accident, or casualty to save them from danger caused by the incident. Under no circumstances may the rendering of assistance or other compliance with this section be evidence of the liability of such operator for the collision, accident, or casualty. The operator shall also give all pertinent accident information, as specified by rule by the commission, to the law enforcement agency having jurisdiction: PROVIDED, That this requirement shall not apply to operators of vessels when they are participating

in an organized competitive event authorized or otherwise permitted by the appropriate agency having jurisdiction and authority to authorize such events. These duties are in addition to any duties otherwise imposed by law. Except as provided for in RCW 88.12.015 and subsection (3) of this section, a violation of this subsection is a civil infraction punishable under RCW 7.84.100.

(2) Any person who complies with subsection (1) of this section or who gratuitously and in good faith renders assistance at the scene of a vessel collision, accident, or other casualty, without objection of the person assisted, shall not be held liable for any civil damages as a result of the rendering of assistance or for any act or omission in providing or arranging salvage, towage, medical treatment, or other assistance, where the assisting person acts as any reasonably prudent person would have acted under the same or similar circumstances.

(3) An operator of a vessel is guilty of a class C felony and is punishable pursuant to RCW 9A.20.021 if the operator: (a) Is involved in a collision that results in injury to a person; (b) knew or reasonably should have known that a person was injured in the collision; and (c) leaves the scene of the collision without rendering all practical and necessary assistance to the injured person as required pursuant to subsection (1) of this section, under circumstances in which the operator could have rendered assistance without serious danger to the operator's own vessel or persons aboard. This subsection (3) does not apply to vessels involved in commerce, including but not limited to tugs, barges, cargo vessels, commercial passenger vessels, fishing vessels, and processing vessels.

Sec. 2. RCW 9.94A.320 and 1995 c 385 s 2, 1995 c 285 s 28, and 1995 c 129 s 3 (Initiative Measure No. 159) are each reenacted and amended to read as follows:

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XV	Aggravated Murder 1 (RCW 10.95.020)
XIV	Murder 1 (RCW 9A.32.030) Homicide by abuse (RCW 9A.32.055)
XIII	Murder 2 (RCW 9A.32.050)
XII	Assault 1 (RCW 9A.36.011) Assault of a Child 1 (RCW 9A.36.120)
XI	Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073)
X	Kidnapping 1 (RCW 9A.40.020) Rape 2 (RCW 9A.44.050) Rape of a Child 2 (RCW 9A.44.076) Child Molestation 1 (RCW 9A.44.083)

- Damaging building, etc., by explosion with threat to human being (RCW 70.74.280(1))
- Over 18 and deliver heroin or narcotic from Schedule I or II to someone under 18 (RCW 69.50.406)
- Leading Organized Crime (RCW 9A.82.060(1)(a))
- IX Assault of a Child 2 (RCW 9A.36.130)
- Robbery 1 (RCW 9A.56.200)
- Manslaughter 1 (RCW 9A.32.060)
- Explosive devices prohibited (RCW 70.74.180)
- Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
- Endangering life and property by explosives with threat to human being (RCW 70.74.270)
- Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)
- Controlled Substance Homicide (RCW 69.50.415)
- Sexual Exploitation (RCW 9.68A.040)
- Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
- Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- VIII Arson 1 (RCW 9A.48.020)
- Promoting Prostitution 1 (RCW 9A.88.070)
- Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410)
- Manufacture, deliver, or possess with intent to deliver heroin or cocaine (RCW 69.50.401(a)(1)(i))
- Manufacture, deliver, or possess with intent to deliver methamphetamine (RCW 69.50.401(a)(1)(ii))
- Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- Introducing Contraband 1 (RCW 9A.76.140)
- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
- Child Molestation 2 (RCW 9A.44.086)
- Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
- Involving a minor in drug dealing (RCW 69.50.401(f))

- Reckless Endangerment 1 (RCW 9A.36.045)
- Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1)(a))
- VI Bribery (RCW 9A.68.010)
- Manslaughter 2 (RCW 9A.32.070)
- Rape of a Child 3 (RCW 9A.44.079)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Damaging building, etc., by explosion with no threat to human being (RCW 70.74.280(2))
- Endangering life and property by explosives with no threat to human being (RCW 70.74.270)
- Incest 1 (RCW 9A.64.020(1))
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II (except heroin or cocaine) (RCW 69.50.401(a)(1)(i))
- Intimidating a Judge (RCW 9A.72.160)
- Bail Jumping with Murder 1 (RCW 9A.76.170(2)(a))
- Theft of a Firearm (RCW 9A.56.300)
- V Persistent prison misbehavior (RCW 9.94.070)
- Criminal Mistreatment 1 (RCW 9A.42.020)
- Rape 3 (RCW 9A.44.060)
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Child Molestation 3 (RCW 9A.44.089)
- Kidnapping 2 (RCW 9A.40.030)
- Extortion 1 (RCW 9A.56.120)
- Incest 2 (RCW 9A.64.020(2))
- Perjury 1 (RCW 9A.72.020)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))
- Sexually Violating Human Remains (RCW 9A.44.105)
- Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))
- Possession of a Stolen Firearm (RCW 9A.56.310)
- IV Residential Burglary (RCW 9A.52.025)
- Theft of Livestock 1 (RCW 9A.56.080)
- Robbery 2 (RCW 9A.56.210)

- Assault 2 (RCW 9A.36.021)
 - Escape 1 (RCW 9A.76.110)
 - Arson 2 (RCW 9A.48.030)
 - Commercial Bribery (RCW 9A.68.060)
 - Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
 - Malicious Harassment (RCW 9A.36.080)
 - Threats to Bomb (RCW 9.61.160)
 - Willful Failure to Return from Furlough (RCW 72.66.060)
 - Hit and Run — Injury Accident (RCW 46.52.020(4))
 - Hit and Run with Vessel — Injury Accident (RCW 88.12.155(3))
 - Vehicular Assault (RCW 46.61.522)
 - Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana or methamphetamines) (RCW 69.50.401(a)(1)(ii) through (iv))
 - Influencing Outcome of Sporting Event (RCW 9A.82.070)
 - Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
 - Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))
- III
- Criminal Mistreatment 2 (RCW 9A.42.030)
 - Extortion 2 (RCW 9A.56.130)
 - Unlawful Imprisonment (RCW 9A.40.040)
 - Assault 3 (RCW 9A.36.031)
 - Assault of a Child 3 (RCW 9A.36.140)
 - Custodial Assault (RCW 9A.36.100)
 - Unlawful possession of firearm in the second degree (RCW 9.41.040(1)(b))
 - Harassment (RCW 9A.46.020)
 - Promoting Prostitution 2 (RCW 9A.88.080)
 - Willful Failure to Return from Work Release (RCW 72.65.070)
 - Burglary 2 (RCW 9A.52.030)
 - Introducing Contraband 2 (RCW 9A.76.150)
 - Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
 - Patronizing a Juvenile Prostitute (RCW 9.68A.100)
 - Escape 2 (RCW 9A.76.120)
 - Perjury 2 (RCW 9A.72.030)

- Bail Jumping with class B or C Felony (RCW 9A.76.170(2)(c))
- Intimidating a Public Servant (RCW 9A.76.180)
- Tampering with a Witness (RCW 9A.72.120)
- Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(ii))
- Delivery of a material in lieu of a controlled substance (RCW 69.50.401(c))
- Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1))
- Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
- Theft of livestock 2 (RCW 9A.56.080)
- Securities Act violation (RCW 21.20.400)
- II Unlawful Practice of Law (RCW 2.48.180)
- Malicious Mischief 1 (RCW 9A.48.070)
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Theft 1 (RCW 9A.56.030)
- Trafficking in Insurance Claims (RCW 48.30A.015)
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- Health Care False Claims (RCW 48.80.030)
- Possession of controlled substance that is either heroin or narcotics from Schedule I or II (RCW 69.50.401(d))
- Possession of phencyclidine (PCP) (RCW 69.50.401(d))
- Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))
- Computer Trespass 1 (RCW 9A.52.110)
- Escape from Community Custody (RCW 72.09.310)
- I Theft 2 (RCW 9A.56.040)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Forgery (RCW 9A.60.020)
- Taking Motor Vehicle Without Permission (RCW 9A.56.070)
- Vehicle Prowl 1 (RCW 9A.52.095)
- Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- Malicious Mischief 2 (RCW 9A.48.080)
- Reckless Burning 1 (RCW 9A.48.040)
- Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
- Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))

False Verification for Welfare (RCW 74.08.055)
 Forged Prescription (RCW 69.41.020)
 Forged Prescription for a Controlled Substance (RCW
 69.50.403)
 Possess Controlled Substance that is a Narcotic from
 Schedule III, IV, or V or Non-narcotic from
 Schedule I-V (except phencyclidine) (RCW
 69.50.401(d))

Passed the House March 2, 1996.
 Passed the Senate February 27, 1996.
 Approved by the Governor March 13, 1996.
 Filed in Office of Secretary of State March 13, 1996.

CHAPTER 37

[House Bill 2137]

DEPARTMENT OF ECOLOGY BIENNIAL PROGRESS REPORTS

AN ACT Relating to department of ecology biennial progress reports; and amending RCW 43.99F.040, 70.146.030, 90.48.465, and 90.50A.030.

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

Sec. 1. RCW 43.99F.040 and 1987 c 436 s 3 are each amended to read as follows:

The proceeds from the sale of the bonds deposited in the state and local improvements revolving account, Waste Disposal Facilities, 1980 of the general fund under the terms of this chapter shall be administered by the state department of ecology subject to legislative appropriation. The department may use or permit the use of any funds derived from the sale of bonds authorized under this chapter to accomplish the purpose for which the bonds are issued by direct expenditures and by grants or loans to public bodies, including grants to public bodies as cost-sharing funds in any case where federal, local, or other funds are made available on a cost-sharing basis for improvements within the purposes of this chapter. The department shall ensure that funds derived from the sale of bonds authorized under this chapter do not constitute more than seventy-five percent of the total cost of any waste disposal or management facility. Not more than two percent of the proceeds of the bond issue may be used by the department of ecology in relation to the administration of the expenditures, grants, and loans.

At least one hundred fifty million dollars of the proceeds of the bonds authorized by this chapter shall be used exclusively for waste management systems capable of producing renewable energy or energy savings as a result of the management of the wastes. "Renewable energy" means, but is not limited to, the production of steam, hot water for steam heat, electricity, cogeneration, gas, or fuel through the use of wastes by incineration, refuse-derived fuel

processes, pyrolysis, hydrolysis, or bioconversion, and energy savings through material recovery from waste source separation and/or recycling.

~~((The department of ecology shall present a progress report of actual projects committed by the department to the senate committee on ways and means and the house of representatives committee on appropriations no later than November 30th of each year.))~~ Beginning with the biennium ending June 30, 1997, the department shall present a biennial progress report on the use of moneys from the account to the chairs of the senate committee on ways and means and the house of representatives committee on appropriations. The first report is due June 30, 1996, and the report for each succeeding biennium is due December 31 of the odd-numbered year. The report shall consist of a list of each recipient, project description, and amount of the grant, loan, or both.

Integration of the management and operation of systems for solid waste disposal with systems of liquid waste disposal holds promise of improved waste disposal efficiency and greater environmental protection and restoration. To encourage the planning for and development of such integration, the department may provide for special grant incentives to public bodies which plan for or operate integrated waste disposal management systems.

Funds provided for waste disposal and management facilities under this chapter may be used for payments to a service provider under a service agreement pursuant to RCW 70.150.060. If funds are to be used for such payments, the department may make periodic disbursements to a public body or may make a single lump sum disbursement. Disbursements of funds with respect to a facility owned or operated by a service provider shall be equivalent in value to disbursements that would otherwise be made if that facility were owned or operated by a public body. Payments under this chapter for waste disposal and management facilities made to public bodies entering into service agreements pursuant to RCW 70.150.060 shall not exceed amounts paid to public bodies not entering into service agreements.

Sec. 2. RCW 70.146.030 and 1995 2nd sp.s. c 18 s 921 are each amended to read as follows:

(1) The water quality account is hereby created in the state treasury. Moneys in the account may be used only in a manner consistent with this chapter. Moneys deposited in the account shall be administered by the department of ecology and shall be subject to legislative appropriation. Moneys placed in the account shall include tax receipts as provided in RCW 82.24.027, 82.26.025, and 82.32.390, principal and interest from the repayment of any loans granted pursuant to this chapter, and any other moneys appropriated to the account by the legislature.

(2) The department may use or permit the use of any moneys in the account to make grants or loans to public bodies, including grants to public bodies as cost-sharing moneys in any case where federal, local, or other funds are made available on a cost-sharing basis, for water pollution control facilities and activities, or for purposes of assisting a public body to obtain an ownership

interest in water pollution control facilities and/or to defray a part of the payments made by a public body to a service provider under a service agreement entered into pursuant to RCW 70.150.060, within the purposes of this chapter and for related administrative expenses. No more than three percent of the moneys deposited in the account may be used by the department to pay for the administration of the grant and loan program authorized by this chapter.

(3) ~~(The department shall present a progress report each biennium on the use of moneys from the account to the chairs of the committees on ways and means of the senate and house of representatives, including one copy to the staff of each of the committees.)~~ Beginning with the biennium ending June 30, 1997, the department shall present a biennial progress report on the use of moneys from the account to the chairs of the senate committee on ways and means and the house of representatives committee on appropriations. The first report is due June 30, 1996, and the report for each succeeding biennium is due December 31 of the odd-numbered year. The report shall consist of a list of each recipient, project description, and amount of the grant, loan, or both.

(4) During the fiscal biennium ending June 30, 1997, moneys in the account may be transferred by the legislature to the water right permit processing account.

Sec. 3. RCW 90.48.465 and 1992 c 174 s 17 are each amended to read as follows:

(1) The department shall establish annual fees to collect expenses for issuing and administering each class of permits under RCW 90.48.160, 90.48.162, 90.48.260, and 70.95J.020 through 70.95J.090. An initial fee schedule shall be established by rule within one year of March 1, 1989, and thereafter the fee schedule shall be adjusted no more often than once every two years. This fee schedule shall apply to all permits, regardless of date of issuance, and fees shall be assessed prospectively. All fees charged shall be based on factors relating to the complexity of permit issuance and compliance and may be based on pollutant loading and toxicity and be designed to encourage recycling and the reduction of the quantity of pollutants. Fees shall be established in amounts to fully recover and not to exceed expenses incurred by the department in processing permit applications and modifications, monitoring and evaluating compliance with permits, conducting inspections, securing laboratory analysis of samples taken during inspections, reviewing plans and documents directly related to operations of permittees, overseeing performance of delegated pretreatment programs, and supporting the overhead expenses that are directly related to these activities.

(2) The annual fee paid by a municipality, as defined in 33 U.S.C. Sec. 1362, for all domestic wastewater facility permits issued under RCW 90.48.162, 90.48.260, and 70.95J.020 through 70.95J.090 shall not exceed the total of a maximum of fifteen cents per month per residence or residential equivalent contributing to the municipality's wastewater system. The department shall adopt by rule a schedule of credits for any municipality engaging in a

comprehensive monitoring program beyond the requirements imposed by the department, with the credits available for five years from March 1, 1989, and with the total amount of all credits not to exceed fifty thousand dollars in the five-year period.

(3) The department shall ensure that indirect dischargers do not pay twice for the administrative expense of a permit. Accordingly, administrative expenses for permits issued by a municipality under RCW 90.48.165 are not recoverable by the department.

(4) In establishing fees, the department shall consider the economic impact of fees on small dischargers and the economic impact of fees on public entities required to obtain permits for storm water runoff and shall provide appropriate adjustments.

(5) All fees collected under this section shall be deposited in the water quality permit account hereby created in the state treasury. Moneys in the account may be appropriated only for purposes of administering permits under RCW 90.48.160, 90.48.162, 90.48.260, and 70.95J.020 through 70.95J.090.

~~(6) ((The department shall submit an annual report to the legislature showing detailed information on fees collected, actual expenses incurred, and anticipated expenses for the current and following fiscal years.~~

~~(7) The legislative budget committee in 1993 shall review the fees established under this section and report its findings to the legislature in January 1994)) Beginning with the biennium ending June 30, 1997, the department shall present a biennial progress report on the use of moneys from the account to the legislature. The report will be due December 31 of the odd-numbered year. The report shall consist of information on fees collected, actual expenses incurred, and anticipated expenses for the current and following fiscal years.~~

Sec. 4. RCW 90.50A.030 and 1988 c 284 s 4 are each amended to read as follows:

The department of ecology shall use the moneys in the water pollution control revolving fund to provide financial assistance as provided in the water quality act of 1987:

(1) To make loans, on the condition that:

(a) Such loans are made at or below market interest rates, including interest free loans, at terms not to exceed twenty years;

(b) Annual principal and interest payments will commence not later than one year after completion of any project and all loans will be fully amortized not later than twenty years after project completion;

(c) The recipient of a loan will establish a dedicated source of revenue for repayment of loans; and

(d) The fund will be credited with all payments of principal and interest on all loans.

(2) Loans may be made for the following purposes:

(a) To public bodies for the construction or replacement of water pollution control facilities as defined in section 212 of the federal water quality act of 1987;

(b) For the implementation of a management program established under section 319 of the federal water quality act of 1987 relating to the management of nonpoint sources of pollution, subject to the requirements of that act; and

(c) For development and implementation of a conservation and management plan under section 320 of the federal water quality act of 1987 relating to the national estuary program, subject to the requirements of that act.

(3) The department may also use the moneys in the fund for the following purposes:

(a) To buy or refinance the water pollution control facilities' debt obligations of public bodies at or below market rates, if such debt was incurred after March 7, 1985;

(b) To guarantee, or purchase insurance for, public body obligations for water pollution control facility construction or replacement or activities if the guarantee or insurance would improve credit market access or reduce interest rates, or to provide loans to a public body for this purpose;

(c) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state if the proceeds of the sale of such bonds will be deposited in the fund;

(d) To earn interest on fund accounts; and

(e) To pay the expenses of the department in administering the water pollution control revolving fund according to administrative reserves authorized by federal and state law.

~~(4) ((The department shall present a progress report on the use of moneys from the fund to the chairs of the ways and means committees of the senate and the house of representatives no later than November 30 of each year. This report shall consist of a list of each loan recipient, a project description, total loan amount, financial arrangement and interest rate, repayment schedule, and source of repayment.))~~ Beginning with the biennium ending June 30, 1997, the department shall present a biennial progress report on the use of moneys from the account to the chairs of the senate committee on ways and means and the house of representatives committee on appropriations. The first report is due June 30, 1996, and the report for each succeeding biennium is due December 31 of the odd-numbered year. The report shall consist of a list of each recipient, project description, and amount of the grant, loan, or both.

(5) The department may not use the moneys in the water pollution control revolving fund for grants.

Passed the House February 6, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 38

[Substitute House Bill 2191]

**FIRE FIGHTERS FOR INSTITUTIONS OF HIGHER
EDUCATION—ADMISSION TO RETIREMENT SYSTEM**

AN ACT Relating to admitting fire fighters for institutions of higher education into the law enforcement officers' and fire fighters' retirement system; amending RCW 41.26.450; reenacting and amending RCW 41.26.030; creating a new section; and decodifying RCW 41.40.093.

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

NEW SECTION. Sec. 1. (1) An employee who was a member of the public employees' retirement system on or before January 1, 1996, and, on the effective date of this act, is employed by an institution of higher education as a fire fighter as defined in RCW 41.26.030, has the following options:

(a) Remain a member of the public employees' retirement system; or

(b) Make an irrevocable choice, filed in writing with the department of retirement systems no later than January 1, 1997, to transfer to the law enforcement officers' and fire fighters' retirement system plan II as defined in RCW 41.26.030. An employee transferring membership under this subsection (1)(b) shall be a dual member as provided in RCW 41.54.010 unless the employee exercises the option to transfer service credit under subsection (2) of this section.

(2)(a) An employee who transferred membership under subsection (1)(b) of this section may choose to transfer service credit as a fire fighter previously earned under the public employees' retirement system, to the law enforcement officers' and fire fighters' retirement system plan II, by making an irrevocable choice filed in writing with the department of retirement systems within one year of the department's announcement of the ability to make such a transfer.

(b) Any fire fighter choosing to transfer under this subsection shall have transferred from the retirement system to the law enforcement officers' and fire fighters' retirement system plan II: (i) All the employee's applicable accumulated contributions and employer contributions attributed to such employee; and (ii) all applicable months of service, as defined in RCW 41.26.030(14)(b), credited to the employee under chapter 41.40 RCW, as though such service was rendered as a member of the law enforcement officers' and fire fighters' retirement system.

(c) For the applicable period of service, the employee shall pay the difference between the contributions such employee paid to the retirement system, and the contributions which would have been paid by the employee had the employee been a member of the law enforcement officers' and fire fighters' retirement system, plus interest as determined by the director. This payment shall be made no later than December 31, 1998, or the date of retirement, whichever comes first. If the payment required by this subsection is not paid in full by the deadline, the transferred service credit shall not be used to determine eligibility for benefits nor to calculate benefits under the law

enforcement officers' and fire fighters' retirement system. In such case, the additional employee contributions transferred under this subsection, and any payments made under this subsection, shall be refunded to the employee and the employer shall be entitled to a credit for the payments made under (d) of this subsection.

(d) For the applicable period of service, the employer shall pay:

(i) The difference between the employer contributions paid to the public employees' retirement system, and the combined employer and state contributions which would have been payable to the law enforcement officers' and fire fighters' retirement system; and

(ii) An amount sufficient to ensure that the contribution level of current members of the law enforcement officers' and fire fighters' retirement system will not increase due to this transfer.

For the purpose of this subsection (2)(d), the state contribution shall not include the contribution related to the amortization of the costs of the law enforcement officers' and fire fighters' retirement system plan I as required by chapter 41.45 RCW.

(e) An individual who transfers service credit and contributions under this subsection shall be permanently excluded from the public employees' retirement system for all service as a fire fighter.

Sec. 2. RCW 41.26.030 and 1994 c 264 s 14 and 1994 c 197 s 5 are each reenacted and amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Retirement system" means the "Washington law enforcement officers' and fire fighters' retirement system" provided herein.

(2)(a) "Employer" for plan I members, means the legislative authority of any city, town, county, or district or the elected officials of any municipal corporation that employs any law enforcement officer and/or fire fighter, any authorized association of such municipalities, and, except for the purposes of RCW 41.26.150, any labor guild, association, or organization, which represents the fire fighters or law enforcement officers of at least seven cities of over 20,000 population and the membership of each local lodge or division of which is composed of at least sixty percent law enforcement officers or fire fighters as defined in this chapter.

(b) "Employer" for plan II members, means the following entities to the extent that the entity employs any law enforcement officer and/or fire fighter:

(i) The legislative authority of any city, town, county, or district;

(ii) The elected officials of any municipal corporation; ~~((or))~~

(iii) The governing body of any other general authority law enforcement agency; or

(iv) A four-year institution of higher education having a fully operational fire department as of January 1, 1996.

(3) "Law enforcement officer" beginning January 1, 1994, means any person who is commissioned and employed by an employer on a full time, fully compensated basis to enforce the criminal laws of the state of Washington generally, with the following qualifications:

(a) No person who is serving in a position that is basically clerical or secretarial in nature, and who is not commissioned shall be considered a law enforcement officer;

(b) Only those deputy sheriffs, including those serving under a different title pursuant to county charter, who have successfully completed a civil service examination for deputy sheriff or the equivalent position, where a different title is used, and those persons serving in unclassified positions authorized by RCW 41.14.070 except a private secretary will be considered law enforcement officers;

(c) Only such full time commissioned law enforcement personnel as have been appointed to offices, positions, or ranks in the police department which have been specifically created or otherwise expressly provided for and designated by city charter provision or by ordinance enacted by the legislative body of the city shall be considered city police officers;

(d) The term "law enforcement officer" also includes the executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26.030(2) as now or hereafter amended) if that individual has five years previous membership in the retirement system established in chapter 41.20 RCW. The provisions of this subsection (3)(d) shall not apply to plan II members; and

(e) The term "law enforcement officer" also includes a person employed on or after January 1, 1993, as a public safety officer or director of public safety, so long as the job duties substantially involve only either police or fire duties, or both, and no other duties in a city or town with a population of less than ten thousand. The provisions of this subsection (3)(e) shall not apply to any public safety officer or director of public safety who is receiving a retirement allowance under this chapter as of May 12, 1993.

(4) "Fire fighter" means:

(a) Any person who is serving on a full time, fully compensated basis as a member of a fire department of an employer and who is serving in a position which requires passing a civil service examination for fire fighter, and who is actively employed as such;

(b) Anyone who is actively employed as a full time fire fighter where the fire department does not have a civil service examination;

(c) Supervisory fire fighter personnel;

(d) Any full time executive secretary of an association of fire protection districts authorized under RCW 52.12.031. The provisions of this subsection (4)(d) shall not apply to plan II members;

(e) The executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26.030(2) as now or hereafter amended),

if such individual has five years previous membership in a retirement system established in chapter 41.16 or 41.18 RCW. The provisions of this subsection (4)(e) shall not apply to plan II members;

(f) Any person who is serving on a full time, fully compensated basis for an employer, as a fire dispatcher, in a department in which, on March 1, 1970, a dispatcher was required to have passed a civil service examination for fire fighter; and

(g) Any person who on March 1, 1970, was employed on a full time, fully compensated basis by an employer, and who on May 21, 1971, was making retirement contributions under the provisions of chapter 41.16 or 41.18 RCW.

(5) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(6) "Surviving spouse" means the surviving widow or widower of a member. "Surviving spouse" shall not include the divorced spouse of a member except as provided in RCW 41.26.162.

(7)(a) "Child" or "children" means an unmarried person who is under the age of eighteen or mentally or physically handicapped as determined by the department, except a handicapped person in the full time care of a state institution, who is:

(i) A natural born child;

(ii) A stepchild where that relationship was in existence prior to the date benefits are payable under this chapter;

(iii) A posthumous child;

(iv) A child legally adopted or made a legal ward of a member prior to the date benefits are payable under this chapter; or

(v) An illegitimate child legitimized prior to the date any benefits are payable under this chapter.

(b) A person shall also be deemed to be a child up to and including the age of twenty years and eleven months while attending any high school, college, or vocational or other educational institution accredited, licensed, or approved by the state, in which it is located, including the summer vacation months and all other normal and regular vacation periods at the particular educational institution after which the child returns to school.

(8) "Member" means any fire fighter, law enforcement officer, or other person as would apply under subsections (3) or (4) of this section whose membership is transferred to the Washington law enforcement officers' and fire fighters' retirement system on or after March 1, 1970, and every law enforcement officer and fire fighter who is employed in that capacity on or after such date.

(9) "Retirement fund" means the "Washington law enforcement officers' and fire fighters' retirement system fund" as provided for herein.

(10) "Employee" means any law enforcement officer or fire fighter as defined in subsections (3) and (4) of this section.

(11)(a) "Beneficiary" for plan I members, means any person in receipt of a retirement allowance, disability allowance, death benefit, or any other benefit described herein.

(b) "Beneficiary" for plan II 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.

(12)(a) "Final average salary" for plan I members, means (i) for a member holding the same position or rank for a minimum of twelve months preceding the date of retirement, the basic salary attached to such same position or rank at time of retirement; (ii) for any other member, including a civil service member who has not served a minimum of twelve months in the same position or rank preceding the date of retirement, the average of the greatest basic salaries payable to such member during any consecutive twenty-four month period within such member's last ten years of service for which service credit is allowed, computed by dividing the total basic salaries payable to such member during the selected twenty-four month period by twenty-four; (iii) in the case of disability of any member, the basic salary payable to such member at the time of disability retirement; (iv) in the case of a member who hereafter vests pursuant to RCW 41.26.090, the basic salary payable to such member at the time of vesting.

(b) "Final average salary" for plan II members, means the monthly average of the member's basic salary for the highest consecutive sixty service credit months of service prior to such member's retirement, termination, or death. Periods constituting authorized unpaid leaves of absence may not be used in the calculation of final average salary.

(13)(a) "Basic salary" for plan I members, means the basic monthly rate of salary or wages, including longevity pay but not including overtime earnings or special salary or wages, upon which pension or retirement benefits will be computed and upon which employer contributions and salary deductions will be based.

(b) "Basic salary" for plan II 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. In any year in which a member serves in the legislature the member shall have the option of having such member's basic salary be the greater of:

(i) The basic salary the member would have received had such member not served in the legislature; or

(ii) Such member's actual basic salary received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because basic salary under (b)(i) of this

subsection is greater than basic salary under (b)(ii) of this subsection shall be paid by the member for both member and employer contributions.

(14)(a) "Service" for plan I members, means all periods of employment for an employer as a fire fighter or law enforcement officer, for which compensation is paid, together with periods of suspension not exceeding thirty days in duration. For the purposes of this chapter service shall also include service in the armed forces of the United States as provided in RCW 41.26.190. Credit shall be allowed for all service credit months of service rendered by a member from and after the member's initial commencement of employment as a fire fighter or law enforcement officer, during which the member worked for seventy or more hours, or was on disability leave or disability retirement. Only service credit months of service shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter.

(i) For members retiring after May 21, 1971 who were employed under the coverage of a prior pension act before March 1, 1970, "service" shall also include (A) such military service not exceeding five years as was creditable to the member as of March 1, 1970, under the member's particular prior pension act, and (B) such other periods of service as were then creditable to a particular member under the provisions of RCW 41.18.165, 41.20.160 or 41.20.170. However, in no event shall credit be allowed for any service rendered prior to March 1, 1970, where the member at the time of rendition of such service was employed in a position covered by a prior pension act, unless such service, at the time credit is claimed therefor, is also creditable under the provisions of such prior act.

(ii) A member who is employed by two employers at the same time shall only be credited with service to one such employer for any month during which the member rendered such dual service.

(b) "Service" for plan II members, means periods of employment by a member for one or more employers for which basic salary is earned for ninety or more hours per calendar month which shall constitute a service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for at least seventy hours but less than ninety hours per calendar month shall constitute one-half service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for less than seventy hours shall constitute a one-quarter service credit month.

Members of the retirement system who are elected or appointed to a state elective position may elect to continue to be members of this retirement system.

Service credit years of service shall be determined by dividing the total number of service credit months of service by twelve. Any fraction of a service credit year of service as so determined shall be taken into account in the computation of such retirement allowance or benefits.

If a member receives basic salary from two or more employers during any calendar month, the individual shall receive one service credit month's service credit during any calendar month in which multiple service for ninety or more

hours is rendered; or one-half service credit month's service credit during any calendar month in which multiple service for at least seventy hours but less than ninety hours is rendered; or one-quarter service credit month during any calendar month in which multiple service for less than seventy hours is rendered.

(15) "Accumulated contributions" means the employee's contributions made by a member, including any amount paid under RCW 41.50.165(2), plus accrued interest credited thereon.

(16) "Actuarial reserve" means a method of financing a pension or retirement plan wherein reserves are accumulated as the liabilities for benefit payments are incurred in order that sufficient funds will be available on the date of retirement of each member to pay the member's future benefits during the period of retirement.

(17) "Actuarial valuation" means a mathematical determination of the financial condition of a retirement plan. It includes the computation of the present monetary value of benefits payable to present members, and the present monetary value of future employer and employee contributions, giving effect to mortality among active and retired members and also to the rates of disability, retirement, withdrawal from service, salary and interest earned on investments.

(18) "Disability board" for plan I members means either the county disability board or the city disability board established in RCW 41.26.110.

(19) "Disability leave" means the period of six months or any portion thereof during which a member is on leave at an allowance equal to the member's full salary prior to the commencement of disability retirement. The definition contained in this subsection shall apply only to plan I members.

(20) "Disability retirement" for plan I members, means the period following termination of a member's disability leave, during which the member is in receipt of a disability retirement allowance.

(21) "Position" means the employment held at any particular time, which may or may not be the same as civil service rank.

(22) "Medical services" for plan I members, shall include the following as minimum services to be provided. Reasonable charges for these services shall be paid in accordance with RCW 41.26.150.

(a) Hospital expenses: These are the charges made by a hospital, in its own behalf, for

(i) Board and room not to exceed semiprivate room rate unless private room is required by the attending physician due to the condition of the patient.

(ii) Necessary hospital services, other than board and room, furnished by the hospital.

(b) Other medical expenses: The following charges are considered "other medical expenses", provided that they have not been considered as "hospital expenses".

(i) The fees of the following:

(A) A physician or surgeon licensed under the provisions of chapter 18.71 RCW;

(B) An (~~osteopath [osteopathic physician and surgeon]~~) osteopathic physician and surgeon licensed under the provisions of chapter 18.57 RCW;

(C) A chiropractor licensed under the provisions of chapter 18.25 RCW.

(ii) The charges of a registered graduate nurse other than a nurse who ordinarily resides in the member's home, or is a member of the family of either the member or the member's spouse.

(iii) The charges for the following medical services and supplies:

(A) Drugs and medicines upon a physician's prescription;

(B) Diagnostic x-ray and laboratory examinations;

(C) X-ray, radium, and radioactive isotopes therapy;

(D) Anesthesia and oxygen;

(E) Rental of iron lung and other durable medical and surgical equipment;

(F) Artificial limbs and eyes, and casts, splints, and trusses;

(G) Professional ambulance service when used to transport the member to or from a hospital when injured by an accident or stricken by a disease;

(H) Dental charges incurred by a member who sustains an accidental injury to his or her teeth and who commences treatment by a legally licensed dentist within ninety days after the accident;

(I) Nursing home confinement or hospital extended care facility;

(J) Physical therapy by a registered physical therapist;

(K) Blood transfusions, including the cost of blood and blood plasma not replaced by voluntary donors;

(L) An optometrist licensed under the provisions of chapter 18.53 RCW.

(23) "Regular interest" means such rate as the director may determine.

(24) "Retiree" for persons who establish membership in the retirement system on or after October 1, 1977, means any member in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

(25) "Director" means the director of the department.

(26) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(27) "State elective position" means any position held by any person elected or appointed to state-wide office or elected or appointed as a member of the legislature.

(28) "Plan I" means the law enforcement officers' and fire fighters' retirement system, plan I providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(29) "Plan II" means the law enforcement officers' and fire fighters' retirement system, plan II providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

(30) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(31) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(32) "General authority law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, but not including the Washington state patrol. Such an agency, department, or division is distinguished from a limited authority law enforcement agency having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas, including but not limited to, the state departments of natural resources, fish and wildlife, and social and health services, the state gambling commission, the state lottery commission, the state parks and recreation commission, the state utilities and transportation commission, the state liquor control board, and the state department of corrections.

Sec. 3. RCW 41.26.450 and 1993 c 502 s 2 are each amended to read as follows:

(1) The required contribution rates to the plan II system for members, employers, and the state of Washington shall be established by the director from time to time as may be necessary upon the advice of the state actuary. The state actuary shall use the aggregate actuarial cost method to calculate contribution rates.

(2) Except as provided in subsection (3) of this section, the member, the employer and the state shall each contribute the following shares of the cost of the retirement system:

Member	50%
Employer	30%
State	20%

~~((However,))~~ (3) Port districts established under Title 53 RCW and institutions of higher education as defined in RCW 28B.10.016 shall contribute both the employer and state shares of the cost of the retirement system for any of their employees who are law enforcement officers. Institutions of higher education shall contribute both the employer and the state shares of the cost of the retirement system for any of their employees who are fire fighters.

(4) Effective January 1, 1987, however, no member or employer contributions are required for any calendar month in which the member is not granted service credit.

(5) Any adjustments in contribution rates required from time to time for future costs shall likewise be shared proportionally by the members, employers, and the state.

(6) Any increase in the contribution rate required as the result of a failure of the state or of an employer to make any contribution required by this section shall be borne in full by the state or by that employer not making the contribution.

(7) The director shall notify all employers of any pending adjustment in the required contribution rate and such increase shall be announced at least thirty days prior to the effective date of the change.

(8) Members' contributions required by this section shall be deducted from the members basic salary each payroll period. The members contribution and the employers contribution shall be remitted directly to the department within fifteen days following the end of the calendar month during which the payroll period ends. The state's contribution required by this section shall be transferred to the plan II fund from the total contributions transferred by the state treasurer under RCW 41.45.060 and 41.45.070.

NEW SECTION. Sec. 4. RCW 41.40.093 is decodified.

Passed the House February 8, 1996.

Passed the Senate February 29, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 39

[Substitute House Bill 2192]

WASHINGTON STATE TEACHERS' RETIREMENT SYSTEM—PLAN III REVISIONS

AN ACT Relating to the Washington state teachers' retirement system; amending RCW 41.32.817, 41.32.818, 41.32.840, 41.32.855, 41.32.875, 41.32.895, 41.32.831, 41.34.020, 41.34.040, 41.34.060, 41.50.075, 41.50.110, 41.50.670, 41.54.030, 2.14.080, 41.05.011, and 41.05.080; amending 1995 c 239 s 327 (uncodified); reenacting and amending RCW 41.32.010; adding new sections to chapter 41.32 RCW; adding a new section to chapter 41.34 RCW; repealing RCW 41.32.890, 41.32.885, and 41.54.035; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 41.32.010 and 1995 c 345 s 9 and 1995 c 239 s 102 are each reenacted and 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 I 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 II 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 I members, means any person in receipt of a retirement allowance or other benefit provided by this chapter.

(b) "Beneficiary" for plan II and plan III 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 I 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 I members.

(10)(a) "Earnable compensation" for plan I 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) "Earnable compensation" for plan I 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.

(iii) 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.

(iv) "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 II and plan III 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(b), 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 II and plan III 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 I 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 I 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 I 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 I members.

(23) "Regular interest" means such rate as the director may determine.

(24)(a) "Retirement allowance" for plan I 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 II and plan III 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 I 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 II and plan III 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 II and plan III "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 II and plan III 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 in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member. A person is in receipt of a retirement allowance as defined in subsection (24) of this section or other benefit as provided by this

chapter when the department mails, causes to be mailed, or otherwise transmits the retirement allowance warrant.

(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 state-wide 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 II 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 II and plan III 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 I" means the teachers' retirement system, plan I providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(39) "Plan II" means the teachers' retirement system, plan II 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 III" means the teachers' retirement system, plan III 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) ("Education association" means an association organized to carry out collective bargaining activities, the majority of whose members are employees covered by chapter 41.50 RCW or academic employees covered by chapter 28B.52 RCW.~~

—(~~42~~)) "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.

((~~43~~)) (42) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

((~~44~~)) (43) "Index B" means the index for the year prior to index A.

((~~45~~)) (44) "Index year" means the earliest calendar year in which the index is more than sixty percent of index A.

((~~46~~)) (45) "Adjustment ratio" means the value of index A divided by index B.

((~~47~~)) (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 III means the sum of the contributions and earnings on behalf of the member in the defined contribution portion of plan III.

Sec. 2. RCW 41.32.817 and 1995 c 239 s 303 are each amended to read as follows:

(1) Every plan II member employed by an employer in an eligible position may make an irrevocable option to transfer to plan III. ~~((For those who elect to transfer:~~

—(~~a~~)) (2) Any plan II member who is a substitute teacher may make an irrevocable option to transfer to plan III at the time the member purchases substitute service credit pursuant to RCW 41.32.013, pursuant to time lines and procedures established by the department.

(3) Any plan II member, other than a substitute teacher, who wishes to transfer to plan III after December 31, 1997, may transfer during the month of January in any following year, provided that the member earns service credit for that month.

(4) All service credit in plan II shall be transferred to the defined benefit portion of plan III.

((~~b~~)) (5) The accumulated contributions in plan II less fifty percent of any contributions made pursuant to RCW 41.50.165(2) shall be transferred to the member's account in the defined contribution portion established in chapter 41.34 RCW, pursuant to procedures developed by the department and subject to RCW 41.34.090. Contributions made pursuant to RCW 41.50.165(2) that are not transferred to the member's account shall be transferred to the fund created in RCW 41.50.075(2), except that interest earned on all such contributions shall be transferred to the member's account.

((~~e~~) ~~A member vested on July 1, 1996, under plan II shall be automatically vested in plan III upon transfer.~~

—(~~d~~) ~~Members employed by an employer in an eligible position on January 1, 1998, who request to transfer to plan III by January 1, 1998, shall have their~~

~~account in the defined contribution portion of plan III, other than those accumulated contributions attributable to restorations made under RCW 41.50.165(2), increased by twenty percent of their plan II accumulated contributions as of January 1, 1996. If the member who requests to transfer dies before January 1, 1998, the additional payment provided by this subsection shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department.~~

~~—(e)) (6) The legislature reserves the right to discontinue the right to transfer under this section.~~

~~((2) This subsection shall also apply to dual members as provided in RCW 41.54.035.~~

~~—(3) Any member who elects to transfer to plan III and has eligible unrestored withdrawn contributions in plan II, may subsequently restore such contributions under the provisions of RCW 41.32.825. The restored plan II service credit will be automatically transferred to plan III. Contributions restored will be transferred to the member's account in plan III.~~

~~—(4)) (7) Anyone previously retired from plan II is prohibited from transferring to plan III.~~

Sec. 3. RCW 41.32.818 and 1995 c 239 s 304 are each amended to read as follows:

Any ~~((person))~~ member of the public employees' retirement system plan II who is employed in an eligible position as an educational staff associate and who elected pursuant to RCW 41.32.032(2)(a) to remain a member of the public employees' retirement system under chapter 41.40 RCW may make an irrevocable option before January 1, 1998, to transfer to plan III pursuant to RCW 41.32.817, PROVIDED THAT:

(1) Only service credit for previous periods of employment in a position covered by RCW 41.32.010 is transferred to plan III;

(2) Equivalent accumulated employee and employer contributions attributable to service covered by subsection (1) of this section are transferred to plan III;

(3) Employer contributions transferred under this section shall be paid into the teachers' retirement system combined plan II and III fund.

~~((Any person, not employed as an educational staff associate on July 1, 1996, may choose, within one year of the person's return to employment as a teacher, to transfer to plan III under this section.))~~

Sec. 4. RCW 41.32.840 and 1995 c 239 s 106 are each amended to read as follows:

(1) A member of the retirement system shall receive a retirement allowance equal to one percent of such member's average final compensation for each service credit year.

(2) The retirement allowance payable under RCW 41.32.875 to a member who separates after having completed at least twenty service credit years shall be increased by twenty-five one-hundredths of one percent, compounded for each month from the date of separation to the date that the retirement allowance commences.

Sec. 5. RCW 41.32.855 and 1995 c 239 s 109 are each amended to read as follows:

Any member or beneficiary eligible to receive a retirement allowance under the provisions of RCW 41.32.875, 41.32.880, or 41.32.895 shall be eligible to commence receiving a retirement allowance after having filed written application with the department.

(1) Retirement allowances paid to members shall accrue from the first day of the calendar month immediately following such member's separation from employment.

(2) Retirement allowances ~~((paid))~~ payable to ~~((vested))~~ eligible members no longer in service, but qualifying for such an allowance pursuant to RCW ~~((41.32.870))~~ 41.32.875 shall accrue from the first day of the calendar month immediately following such qualification.

(3) Disability allowances paid to disabled members shall accrue from the first day of the calendar month immediately following such member's separation from employment for disability.

(4) Retirement allowances paid as death benefits shall accrue from the first day of the calendar month immediately following the member's death.

Sec. 6. RCW 41.32.875 and 1995 c 239 s 113 are each amended to read as follows:

(1) **NORMAL RETIREMENT.** Any member who ~~((has vested and attained))~~ is at least age sixty-five and who has:

(a) Completed ten service credit years; or

(b) Completed five service credit years, including twelve service credit months after attaining age fifty-four; or

(c) Completed five service credit years by July 1, 1996, under plan II and who transferred to plan III under RCW 41.32.817;

shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.840.

(2) **EARLY RETIREMENT.** Any member who has attained at least age fifty-five and has completed at least ten years of service shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.840, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

Sec. 7. RCW 41.32.895 and 1995 c 239 s 117 are each amended to read as follows:

If a member (~~who is vested~~) dies prior to retirement, the surviving spouse or eligible child or children shall receive a retirement allowance computed as provided in RCW 41.32.851 actuarially reduced to reflect a joint and one hundred percent survivor option and if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.32.875(2).

If the surviving spouse who is receiving the retirement allowance dies leaving a child or children under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority.

If there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance, share and share alike. The allowance shall be calculated with the assumption that the age of the spouse and member were equal at the time of the member's death.

NEW SECTION. Sec. 8. A new section is added to chapter 41.32 RCW under the subchapter heading "provisions applicable to plan III" to read as follows:

(1) Anyone who requests to transfer under RCW 41.32.817 before January 1, 1998, and establishes service credit for January 1998, shall have their member account increased by twenty percent of:

(a) Plan II accumulated contributions as of January 1, 1996, less fifty percent of any payments made pursuant to RCW 41.50.165(2); or

(b) All amounts withdrawn after January 1, 1996, which are completely restored before January 1, 1998.

(2) Substitute teachers shall receive the additional payment provided in subsection (1) of this section if they:

(a) Establish service credit for January 1998; and

(b) Establish any service credit from July 1996 through December 1997; and

(c) Elect to transfer on or before March 1, 1999.

(3) If a member who requests to transfer dies before January 1, 1998, the additional payment provided by this section shall be paid to the member's estate, or the person or persons, trust, or organization the member nominated by written designation duly executed and filed with the department.

(4) The legislature reserves the right to modify or discontinue the right to an incentive payment under this section for any plan II members who have not previously transferred to plan III.

NEW SECTION. Sec. 9. A new section is added to chapter 41.32 RCW under the subchapter heading "provisions applicable to plan III" to read as follows:

(1) Any member who elects to transfer to plan III and has eligible unrestored withdrawn contributions in plan II, may restore such contributions under the provisions of RCW 41.32.825(1) with interest as determined by the department. The restored plan II service credit will be automatically transferred to plan III. Restoration payments will be transferred to the member account in plan III. If the member fails to meet the time limitations of RCW 41.32.825(1), they may restore such contributions under the provisions of RCW 41.50.165(2). The restored plan II service credit will be automatically transferred to plan III. One-half of the restoration payments under RCW 41.50.165(2) plus interest shall be allocated to the member's account.

(2) Any member who elects to transfer to plan III may purchase plan II service credit under RCW 41.32.810(3). Purchased plan II service credit will be automatically transferred to plan III. Contributions on behalf of the employer paid by the employee shall be allocated to the defined benefit portion of plan III and shall not be refundable when paid to the fund described in RCW 41.50.075(2). Contributions on behalf of the employee shall be allocated to the member account. If the member fails to meet the time limitations of RCW 41.32.810(3), they may subsequently restore such contributions under the provisions of RCW 41.50.165(2). Purchased plan II service credit will be automatically transferred to plan III. One-half of the payments under RCW 41.50.165(2), plus interest, shall be allocated to the member's account.

Sec. 10. RCW 41.32.831 and 1995 c 239 s 104 are each amended to read as follows:

(1) RCW 41.32.831 through 41.32.895 shall apply only to plan III members.

(2) Plan III shall consist of two separate elements: (a) A defined benefit portion covered under this subchapter; and (b) a defined contribution portion covered under chapter 41.34 RCW. ~~((All contributions on behalf of the employer paid by an employee shall be made to the defined benefit portion of plan III and shall be nonrefundable when paid to the fund described in RCW 41.50.075(3).))~~

(3) Unless otherwise specified, all references to "plan III" in this subchapter refer to the defined benefit portion of plan III.

NEW SECTION. Sec. 11. A new section is added to chapter 41.32 RCW under the subchapter heading "provisions applicable to plan III" to read as follows:

(1) Contributions on behalf of the employer paid by the employee to purchase plan III service credit shall be allocated to the defined benefit portion of plan III and shall not be refundable when paid to the fund described in RCW 41.50.075(2). Contributions on behalf of the employee shall be allocated to the member account. If the member fails to meet the statutory time limitations to purchase plan III service credit, it may be purchased under the provisions of

RCW 41.50.165(2). One-half of the purchase payments under RCW 41.50.165(2), plus interest, shall be allocated to the member's account.

(2) No purchased plan III membership service will be credited until all payments required of the member are made, with interest. Upon receipt of all payments owed by the member, the department shall bill the employer for any contributions, plus interest, required to purchase membership service.

NEW SECTION. Sec. 12. A new section is added to chapter 41.34 RCW to read as follows:

A member who separates from service and then reestablishes membership may restore contributions to the member account.

Sec. 13. RCW 41.34.020 and 1995 c 239 s 202 are each amended to read as follows:

As used in this chapter, the following terms have the meanings indicated:

(1) "Actuary" means the state actuary or the office of the state actuary.

(2) "Board" means the employee retirement benefits board authorized in chapter 41.50 RCW.

(3) "Department" means the department of retirement systems.

(4) "Compensation" for purposes of this chapter is the same as "earnable compensation" for plan III in chapter 41.32 RCW, except that the compensation may be reported when paid, rather than when earned.

(5) "Employer" means the same as "employer" for plan III in chapter 41.32 RCW.

(6) "Member" means any employee included in the membership of a retirement system as provided for (~~plan III~~) in chapter 41.32 RCW of plan III.

~~((6))~~ (7) "Member account" or "member's account" means the sum of the contributions and earnings on behalf of the member.

~~((7))~~ (8) "Retiree" means any member in receipt of an allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

Sec. 14. RCW 41.34.040 and 1995 c 239 s 204 are each amended to read as follows:

(1) A member shall contribute from his or her compensation according to one of the following rate structures:

<u>Option A</u>	<u>Contribution Rate</u>
All Ages	5.0% fixed
<u>Option B</u>	
Up to Age 35	5.0%
Age 35 to 44	6.0%
Age 45 and above	7.5%
<u>Option C</u>	
Up to Age 35	6.0%
Age 35 to 44	7.5%
Age 45 and above	8.5%

(2) The board shall have the right to offer contribution rate options in addition to those listed in subsection (1) of this section, provided that no significant additional administrative costs are created. All options offered by the board shall conform to the requirements stated in subsections (3) and (4) of this section.

(3) Within ninety days of the date that an employee becomes a member of plan III or changes employers, he or she has an irrevocable option to choose one of the above contribution rate structures. If the member does not select an option within this ninety-day period, he or she shall be assigned option A. Such assignment shall be irrevocable.

(4) Contributions shall begin the first day of the ~~((month immediately following the earlier of the selection of an option or the end of the ninety-day period))~~ pay cycle in which the rate option is made, or the first day of the pay cycle in which the end of the ninety-day period occurs.

Sec. 15. RCW 41.34.060 and 1995 c 239 s 206 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the member's account shall be invested by the state investment board ((unless the member elects to self direct investments as authorized by the board)). All contributions under this subsection shall be invested in the same portfolio as that of the teachers' retirement system combined plan II and III fund under RCW 41.50.075(2).

(2) Members ((who make this election shall pay the expenses for self-directed investment)) may elect to self direct their investments as authorized by the board, other than as provided in subsection (1) of this section. Expenses caused by self-directed investment shall be paid by the member in accordance with rules established by the board under RCW 41.50.088.

Sec. 16. RCW 41.50.075 and 1995 c 239 s 312 are each amended to read as follows:

(1) Two funds are hereby created and established in the state treasury to be known as the Washington law enforcement officers' and fire fighters' system plan I retirement fund, and the Washington law enforcement officers' and fire fighters' system plan II retirement fund which shall consist of all moneys paid into them in accordance with the provisions of this chapter and chapter 41.26 RCW, whether such moneys take the form of cash, securities, or other assets. The plan I fund shall consist of all moneys paid to finance the benefits provided to members of the law enforcement officers' and fire fighters' retirement system plan I, and the plan II fund shall consist of all moneys paid to finance the benefits provided to members of the law enforcement officers' and fire fighters' retirement system plan II.

(2) All of the assets of the Washington state teachers' retirement system shall be credited according to the purposes for which they are held, to two funds to be maintained in the state treasury, namely, the teachers' retirement system

plan I fund and the teachers' retirement system combined plan II and III fund. The plan I fund shall consist of all moneys paid to finance the benefits provided to members of the Washington state teachers' retirement system plan I, and the combined plan II and III fund shall consist of all moneys paid to finance the benefits provided to members of the Washington state teachers' retirement system plan II and III.

(3) There is hereby established in the state treasury two separate funds, namely the public employes' retirement system plan I fund and the public employees' retirement system plan II fund. The plan I fund shall consist of all moneys paid to finance the benefits provided to members of the public employes' retirement system plan I, and the plan II fund shall consist of all moneys paid to finance the benefits provided to members of the public employees' retirement system plan II.

~~((4) There is hereby established in the state treasury the plan III defined contribution fund which shall consist of all contributions and earnings paid on behalf of members, except as otherwise provided.))~~

Sec. 17. RCW 41.50.110 and 1995 c 239 s 313 are each amended to read as follows:

(1) ~~((Notwithstanding any provision of law to the contrary, the retirement system expense fund is hereby redesignated as the department of retirement systems expense fund from which shall be paid the))~~ Except as provided by RCW 41.50.255 and subsection (6) of this section, all expenses of the administration of the department and the expenses of administration of the retirement systems created in chapters 2.10, 2.12, 41.26, 41.32, 41.40, 41.34, and 43.43 RCW shall be paid from the department of retirement systems expense fund.

(2) In order to reimburse the department of retirement systems expense fund on an equitable basis the department shall ascertain and report to each employer, as defined in RCW 41.26.030, 41.32.010, or 41.40.010, the sum necessary to defray its proportional share of the entire expense of the administration of the retirement system that the employer participates in during the ensuing biennium or fiscal year whichever may be required. Such sum is to be computed in an amount directly proportional to the estimated entire expense of the administration as the ratio of monthly salaries of the employer's members bears to the total salaries of all members in the entire system. It shall then be the duty of all such employers to include in their budgets or otherwise provide the amounts so required.

(3) The department shall compute and bill each employer, as defined in RCW 41.26.030, 41.32.010, or 41.40.010, at the end of each month for the amount due for that month to the department of retirement systems expense fund and the same shall be paid as are its other obligations. Such computation as to each employer shall be made on a percentage rate of salary established by the department. However, the department may at its discretion establish a system

of billing based upon calendar year quarters in which event the said billing shall be at the end of each such quarter.

(4) The director may adjust the expense fund contribution rate for each system at any time when necessary to reflect unanticipated costs or savings in administering the department.

(5) An employer who fails to submit timely and accurate reports to the department may be assessed an additional fee related to the increased costs incurred by the department in processing the deficient reports. Fees paid under this subsection shall be deposited in the retirement system expense fund.

(a) Every six months the department shall determine the amount of an employer's fee by reviewing the timeliness and accuracy of the reports submitted by the employer in the preceding six months. If those reports were not both timely and accurate the department may prospectively assess an additional fee under this subsection.

(b) An additional fee assessed by the department under this subsection shall not exceed fifty percent of the standard fee.

(c) The department shall adopt rules implementing this section.

(6) Expenses ~~((incurred pursuant to RCW 41.34.060 shall be deducted from the defined contribution fund in accordance with rules established by the board under RCW 41.50.088))~~ other than those under RCW 41.34.060(2) shall be paid pursuant to subsection (1) of this section.

Sec. 18. RCW 41.50.670 and 1991 c 365 s 13 are each amended to read as follows:

(1) Nothing in this chapter regarding mandatory assignment of benefits to enforce a spousal maintenance obligation shall abridge the right of an obligee to direct payments of retirement benefits to satisfy a property division obligation ordered pursuant to a court decree of dissolution or legal separation or any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation as provided in RCW 2.10.180, 2.12.090, 41.04.310, 41.04.320, 41.04.330, ~~((41.26.180))~~ 41.26.053, 41.32.052, 41.34.070(3), 41.40.052, 43.43.310, or 26.09.138, as those statutes existed before July 1, 1987, and as those statutes exist on and after July 28, 1991. The department shall pay benefits under this chapter in a lump sum or as a portion of periodic retirement payments as expressly provided by the dissolution order. A dissolution order may not order the department to pay a periodic retirement payment or lump sum unless that payment is specifically authorized under the provisions of chapter 2.10, 2.12, 41.26, 41.32, 41.34, 41.40, or 43.43 RCW, as applicable.

(2) The department shall pay directly to an obligee the amount of periodic retirement payments or lump sum payment, as appropriate, specified in the dissolution order if the dissolution order filed with the department pursuant to subsection (1) of this section includes a provision that states in the following form:

If (the obligor) receives periodic retirement payments as defined in RCW 41.50.500, the department of retirement systems shall pay to (the obligee) dollars from such payments or . . . percent of such payments. If the obligor's debt is expressed as a percentage of his or her periodic retirement payment and the obligee does not have a survivorship interest in the obligor's benefit, the amount received by the obligee shall be the percentage of the periodic retirement payment that the obligor would have received had he or she selected a standard allowance.

If (the obligor) requests or has requested a withdrawal of accumulated contributions as defined in RCW 41.50.500, or becomes eligible for a lump sum death benefit, the department of retirement systems shall pay to (the obligee) dollars plus interest at the rate paid by the department of retirement systems on member contributions. Such interest to accrue from the date of this order's entry with the court of record.

(3) This section does not require a member to select a standard allowance upon retirement nor does it require the department to recalculate the amount of a retiree's periodic retirement payment based on a change in survivor option.

(4) A court order under this section may not order the department to pay more than seventy-five percent of an obligor's periodic retirement payment to an obligee.

(5) Persons whose court decrees were entered between July 1, 1987, and July 28, 1991, shall also be entitled to receive direct payments of retirement benefits to satisfy court-ordered property divisions if the dissolution orders comply or are modified to comply with this section and RCW 41.50.680 through 41.50.720 and, as applicable, RCW 2.10.180, 2.12.090, ~~((41.26.180))~~ 41.26.053, 41.32.052, 41.34.070, 41.40.052, 43.43.310, and 26.09.138.

(6) The obligee must file a copy of the dissolution order with the department within ninety days of that order's entry with the court of record.

(7) A division of benefits pursuant to a dissolution order under this section shall be based upon the obligor's gross benefit prior to any deductions. If the department is required to withhold a portion of the member's benefit pursuant to 26 U.S.C. Sec. 3402 and the sum of that amount plus the amount owed to the obligee exceeds the total benefit, the department shall satisfy the withholding requirements under 26 U.S.C. Sec. 3402 and then pay the remainder to the obligee. The provisions of this subsection do not apply to amounts withheld pursuant to 26 U.S.C. Sec. 3402(i).

Sec. 19. RCW 41.54.030 and 1995 c 239 s 319 are each amended to read as follows:

(1) A dual member may combine service in all systems for the purpose of:

(a) Determining the member's eligibility to receive a service retirement allowance; and

(b) Qualifying for a benefit under RCW ~~((41.32.885(3)))~~ 41.32.840(2).

(2) A dual member who is eligible to retire under any system may elect to retire from all the member's systems and to receive service retirement

allowances calculated as provided in this section. Each system shall calculate the allowance using its own criteria except that the member shall be allowed to substitute the member's base salary from any system as the compensation used in calculating the allowance.

(3) The service retirement allowances from a system which, but for this section, would not be allowed to be paid at this date based on the dual member's age shall be either actuarially adjusted from the earliest age upon which the combined service would have made such dual member eligible in that system, or the dual member may choose to defer the benefit until fully eligible.

Sec. 20. RCW 2.14.080 and 1991 sp.s. c 13 s 103 are each amended to read as follows:

(1) The administrator for the courts shall:

(a) Deposit or invest the contributions under RCW 2.14.090 in a credit union, savings and loan association, bank, or mutual savings bank;

(b) Purchase life insurance, shares of an investment company, or fixed and/or variable annuity contracts from any insurance company or investment company licensed to contract business in this state; or

(c) Invest in any of the class of investments described in RCW 43.84.150.

(2) The state investment board or the ~~((committee for deferred compensation))~~ department of retirement systems, at the request of the administrator for the courts, may invest moneys in the principal account. Moneys invested by the investment board shall be invested in accordance with RCW 43.84.150. Moneys invested by the ~~((committee for deferred compensation))~~ department of retirement systems shall be invested in accordance with ~~((RCW 41.04.250))~~ applicable law. Except as provided in RCW 43.33A.160 or as necessary to pay a pro rata share of expenses incurred by the ~~((committee for deferred compensation))~~ department of retirement systems, one hundred percent of all earnings from these investments, exclusive of investment income pursuant to RCW 43.84.080, shall accrue directly to the principal account.

Sec. 21. RCW 41.05.011 and 1995 1st sp.s. c 6 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 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 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 RCW 41.32.010(11) on or after July 1, 1996, and who are at least age fifty-five and have at least ten years of service under the teachers' retirement system plan III as defined in RCW 41.32.010(40).

Sec. 22. RCW 41.05.080 and 1994 c 153 s 7 are each amended to read as follows:

(1) Under the qualifications, terms, conditions, and benefits set by the board:

(a) Retired or disabled state employees, retired or disabled school employees, or employees of county, municipal, or other political subdivisions covered by this chapter who are retired may continue their participation in insurance plans and contracts after retirement or disablement(~~(, under the qualifications, terms, conditions, and benefits set by the board: PROVIDED, That the)~~);

(b) Separated employees may continue their participation in insurance plans and contracts if participation is selected immediately upon separation from employment.

(2) Rates charged retired or disabled employees, separated employees, spouses, or dependent children who are not eligible for parts A and B of medicare shall be based on the experience of the community rated risk pool established under RCW 41.05.022(~~(+ PROVIDED FURTHER, That)~~).

(3) Rates charged to retired or disabled employees, separated employees, spouses, or children who are eligible for parts A and B of medicare shall be calculated from a separate experience risk pool comprised only of individuals eligible for parts A and B of medicare; however, the premiums charged to medicare-eligible retirees and disabled employees shall be reduced by the amount of the subsidy provided under RCW 41.05.085(~~(+ PROVIDED FURTHER, That)~~).

(4) Retired or disabled and separated employees shall be responsible for payment of premium rates developed by the authority which shall include the cost to the authority of providing insurance coverage including any amounts necessary for reserves and administration in accordance with this chapter(~~(+ PROVIDED FURTHER, That such)~~). These self pay rates will be established based on a separate rate for the employee, the spouse, and the children.

(5) The term "retired state employees" for the purpose of this section shall include but not be limited to members of the legislature whether voluntarily or involuntarily leaving state office.

Sec. 23. 1995 c 239 s 327 (uncodified) is amended to read as follows:

This act shall take effect July 1, 1996, except that sections 301 and 302 of this act shall take effect immediately.

NEW SECTION. Sec. 24. The following acts or parts of acts are each repealed:

- (1) RCW 41.32.890 and 1995 c 239 s 116;
- (2) RCW 41.32.885 and 1995 c 239 s 115; and
- (3) RCW 41.54.035 and 1995 c 239 s 320.

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 shall take effect July 1, 1996, with the exception of section 23 of this act, which shall take effect immediately.

Passed the House March 2, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 40

[House Bill 2259]

JURIES—IMPANELLING

AN ACT Relating to impanelling juries; and amending RCW 4.44.120.

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

Sec. 1. RCW 4.44.120 and 1972 ex.s. c 57 s 3 are each amended to read as follows:

When the action is called for trial, ~~((the clerk shall prepare separate ballots, containing the names of the jurors summoned, who have appeared and not been excused, and deposit them in a box. He shall draw the required number of names for purposes of voir dire examination. Any necessary additions to the panel shall be drawn from the clerk's list of qualified jurors. The clerk shall thereupon prepare separate ballots and deposit them in the trial jury box, and draw such ballots separately therefrom, as in the case of the regular panel))~~ the jurors shall be selected at random from the jurors summoned who have appeared and have not been excused. A voir dire examination of the panel shall be conducted for the purpose of discovering any basis for challenge for cause and to permit the intelligent exercise of peremptory challenges. Any necessary additions to the panel shall be selected at random from the list of qualified jurors. The jury shall consist of six persons, unless the parties in their written demand for jury demand that the jury be twelve in number or consent to a less number. The parties may consent to a jury less than six in number but not less than three, and such consent shall be entered by the clerk on the minutes of the trial.

Passed the House February 7, 1996.
 Passed the Senate February 28, 1996.
 Approved by the Governor March 13, 1996.
 Filed in Office of Secretary of State March 13, 1996.

CHAPTER 41

[Second Substitute House Bill 2292]

**INCENTIVE GRANTS FOR INNOVATION AND QUALITY IN
 HIGHER EDUCATION—REVISED**

AN ACT Relating to incentive grants for innovation and quality; and amending RCW 28B.120.010, 28B.120.020, and 28B.120.040.

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

Sec. 1. RCW 28B.120.010 and 1991 c 98 s 2 are each amended to read as follows:

The Washington fund for ~~((excellence))~~ innovation and quality in higher education program is established. The higher education coordinating board shall administer the program. Through this program the board may award on a competitive basis incentive grants to state public institutions of higher education or consortia of institutions to encourage cooperative programs designed to address specific system problems. Grants shall not exceed a two-year period. Each institution or consortia of institutions receiving the award shall contribute some financial support, either by covering part of the costs for the program during its implementation, or by assuming continuing support at the end of the grant period. Strong priority will be given to proposals that involve more than one sector of education, and to proposals that show substantive institutional commitment. Institutions are encouraged to solicit nonstate funds to support these cooperative programs.

Sec. 2. RCW 28B.120.020 and 1991 c 98 s 3 are each amended to read as follows:

The higher education coordinating board shall have the following powers and duties in administering the program:

- (1) To adopt rules necessary to carry out the program;
- (2) To establish one or more review committees to assist in the evaluation of proposals for funding. The review committee shall include individuals with significant experience in higher education in areas relevant to one or more of the funding period priorities;
- (3) To establish each biennium specific guidelines for submitting grant proposals consistent with the overall goals of the program. During the ~~((1991-93))~~ 1995-97 biennium the guidelines shall be consistent with the following ~~((priorities))~~ desired outcomes of increasing access, improving time to degree, improving student learning, and increasing efficiency and collaboration between institutions of higher education and the private sector through projects that may emphasize:

(a) Minority and diversity initiatives that encourage the participation of minorities in higher education, including students with disabilities, at a rate consistent with their proportion of the population;

(b) K-12 teacher preparation models that encourage collaboration between higher education and K-12 to improve the preparedness of teachers, including provisions for higher education faculty involved with teacher preparation to spend time teaching in K-12 schools;

(c) Multi-institutional or multifaculty development and evaluation of:

(i) Collaborative instructional programs involving K-12, community and technical colleges, and four-year institutions of higher education to develop a three-year degree program, or reduce the time to degree;

(ii) Instructional technology and multimedia curricular projects; and

(iii) A degree offered entirely on the internet;

(d) Individual institutional or faculty pilot projects to:

(i) Improve efficiency by five percent per year in cost or graduation rate;

(ii) Improve student retention;

(iii) Develop competencies and outcomes for general education or university requirements and degree programs;

(iv) Contract with public or private institutions or businesses to provide services or the development of collaborative programs; (and

~~—(e))~~ (e) Articulation and transfer activities to smooth the transfer of students from K-12 to higher education, or from the community colleges and technical colleges to four-year institutions; and

(f) Other innovative proposals.

After June 30, ~~((1993))~~ 1996, and each biennium thereafter, the board shall determine funding priorities for collaborative proposals for the biennium in consultation with the governor, the legislature, the office of the superintendent of public instruction, the state board for community and technical colleges ~~((education))~~, the ~~((state board for vocational education))~~ work force training and education coordinating board, higher education institutions, educational associations, and business and community groups consistent with state-wide needs;

(4) To solicit grant proposals and provide information to the institutions of higher education about the program; and

(5) To establish reporting, evaluation, accountability, monitoring, and dissemination requirements for the recipients of the grants.

Sec. 3. RCW 28B.120.040 and 1991 c 98 s 5 are each amended to read as follows:

The fund for ~~((excellence))~~ innovation and quality is hereby established in the custody of the state treasurer. The higher education coordinating board shall deposit in the fund all moneys received under RCW 28B.120.030. Moneys in the fund may be spent only for the purposes of RCW 28B.120.010 and 28B.120.020. Disbursements from the fund shall be on the authorization of the higher education coordinating board. The fund is subject to the allotment

procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements.

Passed the House February 9, 1996.
Passed the Senate February 29, 1996.
Approved by the Governor March 13, 1996.
Filed in Office of Secretary of State March 13, 1996.

CHAPTER 42

[House Bill 2333]

JUDICIAL RETIREMENT—PAYMENT OF CONTRIBUTIONS UPON MEMBER'S DEATH

AN ACT Relating to judicial retirement; and amending RCW 2.14.110.

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

Sec. 1. RCW 2.14.110 and 1988 c 109 s 22 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 ((having an insurable interest in the member's life)), trust, or organization as the member has nominated by written designation duly executed and filed with the 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.

Passed the House February 6, 1996.
Passed the Senate February 28, 1996.
Approved by the Governor March 13, 1996.
Filed in Office of Secretary of State March 13, 1996.

CHAPTER 43

[Substitute House Bill 2388]

SATISFACTION OF UNRECORDED UTILITY LIENS AT THE TIME OF SALE OF REAL PROPERTY

AN ACT Relating to the satisfaction of unrecorded utility liens at the time of sale of real property; adding a new chapter to Title 60 RCW; and providing an effective date.

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

NEW SECTION. Sec. 1. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

- (1) Except as otherwise provided in this subsection (1), "charges" include:
 - (a) All lawful charges assessed by a utility operated under chapter 35.21, 35.67, 36.36, 36.89, 36.94, 56.16, 57.08, or 87.03 RCW, but not evidenced by a recorded lien, recorded covenant, recorded agreement, or special assessment roll

filed with the city or county treasurer or assessor, and not billed and collected with property taxes; and (b) penalties and interest, and reasonable attorneys' fees and other costs of foreclosure if foreclosure proceedings have been commenced.

(2) "Closing agent" means an escrow agent as defined in RCW 18.44.010(4) or a person exempt from licensing and registration requirements under RCW 18.44.020, handling the escrow on the sale of the real property.

(3) "Real estate agent" means a real estate broker, real estate salesperson, associate real estate broker, or person as defined in RCW 18.85.010 (1) through (4).

(4) "Business day" means a day the offices of the county or counties in which the utility in question provides service are open for business.

NEW SECTION. Sec. 2. (1) Unless otherwise stated and acknowledged in writing by the purchaser, the seller of a fee interest in real property is responsible for satisfying, upon closing, any lien provided for by RCW 35.21.290, 35.67.200, 36.36.045, 36.89.090, 36.94.150, 56.16.100, 57.08.080, or 87.03.445.

(2) No closing agent may refuse a written request by the seller or purchaser of a fee interest in real property to administer the disbursement of closing funds necessary to satisfy unpaid charges as charges are defined in section 1 of this act. Except as otherwise provided in this subsection (2), a closing agent who refuses such a written request is liable to the purchaser for unpaid charges for utility services covered by the request. A closing agent is not liable if the closing agent's refusal is based on the seller's inaccurate or incomplete identification of utilities providing service to the property, or if a utility fails to provide an estimated or actual final billing, or written extension of the per diem rate, as required by section 3 of this act, or if disbursement of closing funds necessary to satisfy the unpaid charges would violate RCW 18.44.070.

(3) A closing agent may charge a fee for performing the services required of the closing agent by this chapter, which fee may be in addition to other fees or settlement charges collected in the course of ordinary settlement practices.

NEW SECTION. Sec. 3. (1) Unless the seller and purchaser waive, in writing, the services of a closing agent in administering the disbursement of closing funds necessary to satisfy unpaid charges as charges are defined in section 1 of this act, the seller shall, as a provision in a written agreement for the purchase and sale of real estate, inform the closing agent for the sale of the names and addresses of all utilities, including special districts, providing service to the property under chapter 35.21, 35.67, 36.36, 36.89, 36.94, 56.16, 57.08, or 87.03 RCW. The provision of the information in a written agreement for the purchase and sale of real estate constitutes a written request to the closing agent to administer disbursement of closing funds necessary to satisfy unpaid charges.

Unless the seller and purchaser have waived the services of a closing agent as provided in this subsection, the closing agent shall submit a written request for a final billing to each utility identified by the seller as providing service to

the property under chapter 35.21, 35.67, 36.36, 36.89, 36.94, 56.16, 57.08, or 87.03 RCW. Either the seller or purchaser may submit a written request for a final billing to each utility identified by the seller as providing service to the property under chapter 35.21, 35.67, 36.36, 36.89, 36.94, 56.16, 57.08, or 87.03 RCW.

The written request must identify the property by both legal description and address. The closing agent, seller, or purchaser may submit a written request to a utility by facsimile. In requesting final billings for utility services, the closing agent may rely upon information provided by the seller, and a closing agent or a real estate agent who is not the seller is not liable for inaccurate or incomplete information.

(2) After receiving a written request for a final billing for utility services to real property to be sold, a utility operated under chapter 35.21, 35.67, 36.36, 36.89, 36.94, 56.16, 57.08, or 87.03 RCW shall provide the requesting party with a written estimated or actual final billing as provided in this section. If the utility is unable to provide a written estimated or actual final billing or written extension of the per diem rate, due to insufficient information to identify the account, the utility shall notify the requesting party in writing that the information is insufficient to identify the account.

The utility shall provide the written estimated or actual final billing, or statement that the information in the request is insufficient to identify the account, to the requesting party within seven business days of receipt of the written request if the request was mailed to the utility, or within three business days if the request was sent to the utility by facsimile or delivered to the utility by messenger. A utility may provide a written estimated or actual final billing to the requesting party by facsimile.

(a) The final billing must include all outstanding charges and, in addition to the estimated or actual final amount owing as of the stated closing date, must state the average per diem rate for the utility or utilities involved, including taxes and other charges, which shall apply for up to thirty days beyond the stated closing date if the closing date is delayed.

(b) If closing is delayed beyond thirty days, a new estimated or actual final billing must be requested in writing. In lieu of furnishing a written revised final billing, the utility may extend, in writing, the number of days for which the per diem charge applies. The utility shall respond within seven business days of receipt of the written request for a new estimated or actual final billing if the request was mailed to the utility, or within three business days if the request was sent to the utility by facsimile or delivered to the utility by messenger.

(c) If a utility fails to provide a written estimated or actual final billing, written extension of the per diem rate, or statement that the information in the request is insufficient to identify the account, within seven business days of receipt of a written request if the request was mailed to the utility, or within three business days if the request was sent to the utility by facsimile or delivered to the utility by messenger, an unrecorded lien provided for by RCW 35.21.290,

35.67.200, 36.36.045, 36.89.090, 36.94.150, 56.16.100, 57.08.080, or 87.03.445 for charges incurred prior to the closing date is extinguished, and the utility may not recover the charges from the purchaser of the property.

(d) A closing agent shall inform the seller and purchaser of all applicable estimated and actual final billings furnished by utilities.

In performing his or her duties under this chapter, a closing agent may rely upon information provided by utilities and is not liable if information provided by utilities is inaccurate or incomplete.

(3) If closing occurs no later than the last date for which per diem charges may be applied, full payment of the estimated or actual final billing plus per diem charges extinguishes a lien of the utility provided for by RCW 35.21.290, 35.67.200, 36.36.045, 36.89.090, 36.94.150, 56.16.100, 57.08.080, or 87.03.445 for charges incurred prior to the closing date.

(4)(a) Except as otherwise provided in this subsection (4)(a), this section does not limit the right of a utility to recover from the purchaser of the property unpaid utility charges incurred prior to closing, if the utility did not receive a written request for a final billing or if the utility complied with subsection (2) of this section.

A utility may not recover from a purchaser unpaid utility charges incurred prior to closing in excess of an estimated final billing.

(b) This section does not limit the right of a utility to recover unpaid utility charges incurred prior to closing, including unpaid utility charges in excess of an estimated final billing, from the seller of the property, or from the person or persons who incurred the charges.

(c) If an estimated final billing is in excess of the actual final billing, unless otherwise directed in writing by the seller and purchaser, a utility shall refund any overcharge to the seller of the property by sending the refund in the seller's name to the last address provided by the seller. A utility shall refund the overcharge within fourteen business days of the date the utility receives payment for the final billing, unless a county treasurer acts in an ex officio capacity as the treasurer of a utility, in which case the utility shall refund the overcharge within thirty business days of the date the utility receives payment for the final billing.

NEW SECTION. Sec. 4. This act shall take effect January 1, 1997.

NEW SECTION. Sec. 5. Sections 1 through 3 of this act shall constitute a new chapter in Title 60 RCW.

Passed the House February 6, 1996.

Passed the Senate February 29, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 44

[House Bill 2389]

CLASSIFYING UNCLASSIFIED FELONIES

AN ACT Relating to classification of felonies; amending RCW 9.92.010; adding a new section to chapter 9.94A 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 9.94A RCW to read as follows:

For a felony defined by a statute of this state that is not in Title 9A RCW, unless otherwise provided:

(1) If the maximum sentence of imprisonment authorized by law upon a first conviction of such felony is twenty years or more, such felony shall be treated as a class A felony for purposes of this chapter;

(2) If the maximum sentence of imprisonment authorized by law upon a first conviction of such felony is eight years or more, but less than twenty years, such felony shall be treated as a class B felony for purposes of this chapter;

(3) If the maximum sentence of imprisonment authorized by law upon a first conviction of such felony is less than eight years, such felony shall be treated as a class C felony for purposes of this chapter.

Sec. 2. RCW 9.92.010 and 1982 1st ex.s. c 47 s 5 are each amended to read as follows:

Every person convicted of a felony for which no maximum punishment is specially prescribed by any statutory provision in force at the time of conviction and sentence, shall be punished by confinement or fine which shall not exceed confinement in a state correctional institution for a term of ten years, or by a fine in an amount fixed by the court of not more than twenty thousand dollars, or by both such confinement and fine and the offense shall be classified as a class B felony.

Passed the House February 6, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 45

[House Bill 2589]

UNCLAIMED PROPERTY—PROCEDURES

AN ACT Relating to unclaimed property; amending RCW 63.29.100, 63.29.170, 63.29.220, and 63.29.340; and providing an effective date.

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

Sec. 1. RCW 63.29.100 and 1983 c 179 s 10 are each amended to read as follows:

(1) Except as provided in subsections (2) and (5) of this section, stock or other intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, is presumed abandoned and, with respect to the interest, the association is the holder, if a dividend, distribution, or other sum payable as a result of the interest has remained unclaimed by the owner for ~~((seven))~~ five years and the owner within ~~((seven))~~ five years has not:

(a) Communicated in writing with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest; or

(b) Otherwise communicated with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with the association prepared by an employee of the association.

(2) At the expiration of a ~~((seven-year))~~ five-year period following the failure of the owner to claim a dividend, distribution, or other sum payable to the owner as a result of the interest, the interest is not presumed abandoned unless there have been at least ~~((seven))~~ five dividends, distributions, or other sums paid during the period, none of which has been claimed by the owner. If ~~((seven))~~ five dividends, distributions, or other sums are paid during the ~~((seven-year))~~ five-year period, the period leading to a presumption of abandonment commences on the date payment of the first such unclaimed dividend, distribution, or other sum became due and payable. If ~~((seven))~~ five dividends, distributions, or other sums are not paid during the presumptive period, the period continues to run until there have been ~~((seven))~~ five dividends, distributions, or other sums that have not been claimed by the owner.

(3) The running of the ~~((seven-year))~~ five-year period of abandonment ceases immediately upon the occurrence of a communication referred to in subsection (1) of this section. If any future dividend, distribution, or other sum payable to the owner as a result of the interest is subsequently not claimed by the owner, a new period of abandonment commences and relates back to the time a subsequent dividend, distribution, or other sum became due and payable.

(4) At the time any interest is presumed abandoned under this section, any dividend, distribution, or other sum then held for or owing to the owner as a result of the interest, and not previously presumed abandoned, is presumed abandoned.

(5) This chapter shall not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest unless:

(a) The records available to the administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within ~~((seven))~~ five years communicated in any manner described in subsection (1) of this section; or

(b) Five years have elapsed since the location of the owner became unknown to the association, as evidenced by the return of official shareholder

notifications or communications by the postal service as undeliverable, and the owner has not within those five years communicated in any manner described in subsection (1) of this section. The five-year period from the return of official shareholder notifications or communications shall commence from the earlier of the return of the second such mailing or the date the holder discontinues mailings to the shareholder.

Sec. 2. RCW 63.29.170 and 1993 c 498 s 7 are each amended to read as follows:

(1) A person holding property presumed abandoned and subject to custody as unclaimed property under this chapter shall report to the department concerning the property as provided in this section.

(2) The report must be verified and must include:

(a) Except with respect to travelers checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of property of the value of twenty-five dollars or more presumed abandoned under this chapter;

(b) In the case of unclaimed funds of twenty-five dollars or more held or owing under any life or endowment insurance policy or annuity contract, the full name and last known address of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the funds;

(c) In the case of the contents of a safe deposit box or other safekeeping repository or in the case of other tangible property, a description of the property and the place where it is held and where it may be inspected by the department, and any amounts owing to the holder;

(d) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, but items of value under twenty-five dollars each may be reported in the aggregate;

(e) The date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property; and

(f) Other information the department prescribes by rule as necessary for the administration of this chapter.

(3) If the person holding property presumed abandoned and subject to custody as unclaimed property is a successor to other persons who previously held the property for the apparent owner or the holder has changed his name while holding the property, he shall file with his report all known names and addresses of each previous holder of the property.

(4) The report must be filed before November 1 of each year and shall include all property presumed abandoned and subject to custody as unclaimed property under this chapter that is in the holder's possession as of the preceding June 30th. On written request by any person required to file a report, the department may postpone the reporting date.

(5) ~~(Not more than one hundred twenty days before filing the report)~~ After May 1, but before August 1, of each year in which a report is required by this

section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under this chapter shall send written notice to the apparent owner at his last known address informing him that the holder is in possession of property subject to this chapter if:

- (i) The holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate,
- (ii) The claim of the apparent owner is not barred by the statute of limitations, and
- (iii) The property has a value of seventy-five dollars or more.

Sec. 3. RCW 63.29.220 and 1993 c 498 s 10 are each amended to read as follows:

(1) Except as provided in subsections (2) ~~((and))~~, (3), and (6) of this section the department, within five years after the receipt of abandoned property, shall sell it to the highest bidder at public sale in whatever city in the state affords in the judgment of the department the most favorable market for the property involved. The department may decline the highest bid and reoffer the property for sale if in the judgment of the department the bid is insufficient. If in the judgment of the department the probable cost of sale exceeds the value of the property, it need not be offered for sale. Any sale held under this section must be preceded by a single publication of notice, at least three weeks in advance of sale, in a newspaper of general circulation in the county in which the property is to be sold.

(2) Securities listed on an established stock exchange must be sold at prices prevailing at the time of sale on the exchange. Other securities may be sold over the counter at prices prevailing at the time of sale or by any other method the department considers advisable. All securities may be sold over the counter at prices prevailing at the time of the sale, or by any other method the department deems advisable.

(3) Unless the department considers it to be in the best interest of the state to do otherwise, all securities, other than those presumed abandoned under RCW 63.29.100, delivered to the department must be held for at least one year before being sold.

(4) Unless the department considers it to be in the best interest of the state to do otherwise, all securities presumed abandoned under RCW 63.29.100 and delivered to the department must be held for at least three years before being sold. If the department sells any securities delivered pursuant to RCW 63.29.100 before the expiration of the three-year period, any person making a claim pursuant to this chapter before the end of the three-year period is entitled to either the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever amount is greater, less any deduction for fees pursuant to RCW 63.29.230(2). A person making a claim under this chapter after the expiration of this period is entitled to receive either the securities delivered to the department by the holder, if they still remain in the hands of the department, or the proceeds received from sale, less any

amounts deducted pursuant to RCW 63.29.230(2), but no person has any claim under this chapter against the state, the holder, any transfer agent, registrar, or other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the department.

(5) The purchaser of property at any sale conducted by the department pursuant to this chapter takes the property free of all claims of the owner or previous holder thereof and of all persons claiming through or under them. The department shall execute all documents necessary to complete the transfer of ownership.

(6) The department shall not sell any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest.

Sec. 4. RCW 63.29.340 and 1983 c 179 s 34 are each amended to read as follows:

(1) A person who fails to pay or deliver property within the time prescribed by this chapter shall be required to pay to the department interest at the maximum rate permitted under RCW 19.52.020 from the date the property should have been paid or delivered, unless the department finds that the failure to pay or deliver the property within the time prescribed by this chapter was the result of circumstances beyond the person's control sufficient for waiver or cancellation of interest under RCW 82.32.105.

(2) A person who willfully fails to render any report, to pay or deliver property, or to perform other duties required under this chapter shall pay a civil penalty of one hundred dollars for each day the report is withheld or the duty is not performed, but not more than five thousand dollars, plus one hundred percent of the value of the property which should have been reported, paid or delivered.

(3) A person who willfully refuses after written demand by the department to pay or deliver property to the department as required under this chapter or who enters into a contract to avoid the duties of this chapter is guilty of a gross misdemeanor and upon conviction may be punished by a fine of not more than one thousand dollars or imprisonment for not more than one year, or both.

NEW SECTION. Sec. 5. This act shall take effect July 1, 1996.

Passed the House February 8, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 46

[Substitute House Bill 2605]

MACROCYSTIS SEAWEEED—IMPORTATION

AN ACT Relating to importation of Macrocyctis seaweed; and amending RCW 79.01.805.

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

Sec. 1. RCW 79.01.805 and 1994 c 286 s 1 are each amended to read as follows:

(1) The maximum daily wet weight harvest or possession of seaweed for personal use from all aquatic lands as defined under RCW 79.90.010 and all privately owned tidelands is ten pounds per person. The department of natural resources 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 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) ~~((Seaweed species of the genus *Macrocystis* may not be imported after July 1, 1995, for use in the herring spawn-on-kelp fishery-))~~ 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.

Passed the House February 6, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 47

[House Bill 2628]

INDUSTRIAL INSURANCE BENEFITS—ELIMINATES RESTRICTION OF PAYMENT TO NONRESIDENT BENEFICIARIES

AN ACT Relating to payment of industrial insurance benefits to beneficiaries; and amending RCW 51.32.040.

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

Sec. 1. RCW 51.32.040 and 1995 c 160 s 3 are each amended to read as follows:

(1) Except as provided in RCW 43.20B.720 and 74.20A.260, no money paid or payable under this title shall, before the issuance and delivery of the

check or warrant, be assigned, charged, or taken in execution, attached, garnished, or pass or be paid to any other person by operation of law, any form of voluntary assignment, or power of attorney. Any such assignment or charge is void unless the transfer is to a financial institution at the request of a worker or other beneficiary and made in accordance with RCW 51.32.045.

(2)(a) If any worker suffers (i) a permanent partial injury and dies from some other cause than the accident which produced the injury before he or she receives payment of the award for the permanent partial injury or (ii) any other injury before he or she receives payment of any monthly installment covering any period of time before his or her death, the amount of the permanent partial disability award or the monthly payment, or both, shall be paid to the surviving spouse or the child or children if there is no surviving spouse.

(b) If any worker suffers an injury and dies from it before he or she receives payment of any monthly installment covering time loss for any period of time before his or her death, the amount of the monthly payment shall be paid to the surviving spouse or the child or children if there is no surviving spouse.

(c) Any application for compensation under this subsection (2) shall be filed with the department or self-insuring employer within one year of the date of death. ~~((However, if the injured worker resided in the United States as long as three years before the date of injury, payment under this subsection (2) shall not be made to any surviving spouse or child who was at the time of the injury a nonresident of the United States.))~~

(3)(a) Any worker or beneficiary receiving benefits under this title who is subsequently confined in, or who subsequently becomes eligible for benefits under this title while confined in, any institution under conviction and sentence shall have all payments of the compensation canceled during the period of confinement. After discharge from the institution, payment of benefits due afterward shall be paid if the worker or beneficiary would, except for the provisions of this subsection (3), otherwise be entitled to them.

(b) If any prisoner is injured in the course of his or her employment while participating in a work or training release program authorized by chapter 72.65 RCW and is subject to the provisions of this title, he or she is entitled to payments under this title, subject to the requirements of chapter 72.65 RCW, unless his or her participation in the program has been canceled, or unless he or she is returned to a state correctional institution, as defined in RCW 72.65.010(3), as a result of revocation of parole or new sentence.

(c) If the confined worker has any beneficiaries during the confinement period during which benefits are canceled under (a) or (b) of this subsection, they shall be paid directly the monthly benefits which would have been paid to the worker for himself or herself and the worker's beneficiaries had the worker not been confined.

(4) Any lump sum benefits to which a worker would otherwise be entitled but for the provisions of this section shall be paid on a monthly basis to his or her beneficiaries.

Passed the House February 6, 1996.
 Passed the Senate February 29, 1996.
 Approved by the Governor March 13, 1996.
 Filed in Office of Secretary of State March 13, 1996.

CHAPTER 48

[House Bill 2726]

SCHOOL BOND ELECTION RESOLUTIONS—RECODIFICATION

AN ACT Relating to school bond election resolutions; and amending RCW 28A.530.020 and 28A.535.020.

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

Sec. 1. RCW 28A.530.020 and 1990 c 33 s 478 are each amended to read as follows:

(1) The question whether the bonds shall be issued, as provided in RCW 28A.530.010, shall be determined at an election to be held pursuant to RCW 39.36.050. If a majority of the votes cast at such election favor the issuance of such bonds, the board of directors must issue such bonds: PROVIDED, That if the amount of bonds to be issued, together with any outstanding indebtedness of the district that only needs a simple majority voter approval, exceeds three-eighths of one percent of the value of the taxable property in said district, as the term "value of the taxable property" is defined in RCW 39.36.015, then three-fifths of the votes cast at such election must be in favor of the issuance of such bonds, before the board of directors is authorized to issue said bonds.

(2) The resolution adopted by the board of directors calling the election in subsection (1) of this section shall specify the purposes of the debt financing measure, including the specific buildings to be constructed or remodeled and any additional specific purposes as authorized by RCW 28A.530.010. If the debt financing measure anticipates the receipt of state financing assistance under chapter 28A.525 RCW, the board resolution also shall describe the specific anticipated purpose of the state assistance. If the school board subsequently determines that state or local circumstances should cause any alteration to the specific expenditures from the debt financing or of the state assistance, the board shall first conduct a public hearing to consider those circumstances and to receive public testimony. If the board then determines that any such alterations are in the best interests of the district, it may adopt a new resolution or amend the original resolution at a public meeting held subsequent to the meeting at which public testimony was received.

Sec. 2. RCW 28A.535.020 and 1995 c 111 s 1 are each amended to read as follows:

Whenever the board of directors of any school district shall deem it advisable to validate and ratify the indebtedness mentioned in RCW 28A.535.010, they shall provide therefor by resolution, which shall be entered on the records of such school district, which resolution shall provide for the

holding of an election for the purpose of submitting the question of validating and ratifying the indebtedness so incurred to the voters of such school district for approval or disapproval, and if at such election three-fifths of the voters in such school district voting at such election shall vote in favor of the validation and ratification of such indebtedness, then such indebtedness so validated and ratified and every part thereof existing at the time of the adoption of said resolution shall thereby become and is hereby declared to be validated and ratified and a binding obligation upon such school district. ~~((The resolution adopted by the board of directors shall specify the purposes of the debt financing measure, including the specific buildings to be constructed or remodelled and any additional specific purposes as authorized by RCW 28A.530.010. If the debt financing measure anticipates the receipt of state financing assistance under chapter 28A.525 RCW, the board resolution also shall describe the specific anticipated purpose of the state assistance. If the school board subsequently determines that state or local circumstances should cause any alteration to the specific expenditures from the debt financing or of the state assistance, the board shall first conduct a public hearing to consider those circumstances and to receive public testimony. If the board then determines that any such alterations are in the best interests of the district, it may adopt a new resolution or amend the original resolution at a public meeting held subsequent to the meeting at which public testimony was received.))~~

Passed the House February 8, 1996.

Passed the Senate March 1, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 49

[House Bill 2729]

TRANSPORTATION IMPROVEMENT BOARD—STATUTE HOUSEKEEPING

AN ACT Relating to transportation improvement board statute housekeeping changes; and amending RCW 47.26.121, 47.26.140, and 47.66.030.

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

Sec. 1. RCW 47.26.121 and 1995 c 269 s 2603 are each amended to read as follows:

(1) There is hereby created a transportation improvement board of twenty-one members, six of whom shall be county members and six of whom shall be city members. The remaining members shall be: (a) One representative appointed by the governor who shall be a state employee with responsibility for transportation policy, planning, or funding; (b) two representatives from the department of transportation; (c) two representatives of public transit systems; (d) a private sector representative; (e) a member representing the ports; (f) a member representing nonmotorized transportation; and (g) a member representing special needs transportation.

(2) Of the county members of the board, one shall be a county engineer or public works director; one shall be the executive director of the county road administration board; one shall be a county planning director or planning manager; one shall be a county executive, councilmember, or commissioner from a county with a population of one hundred twenty-five thousand or more; one shall be a county executive, councilmember, or commissioner of a county who serves on the board of a public transit system; and one shall be a county executive, councilmember, or commissioner from a county with a population of less than one hundred twenty-five thousand. All county members of the board, except the executive director of the county road administration board, shall be appointed. Not more than one county member of the board shall be from any one county. No more than two of the three county-elected officials may represent counties located in either the eastern or western part of the state as divided north and south by the summit of the Cascade mountains.

(3) Of the city members of the board one shall be a chief city engineer, public works director, or other city employee with responsibility for public works activities, of a city with a population of twenty thousand or more; one shall be a chief city engineer, public works director, or other city employee with responsibility for public works activities, of a city of less than twenty thousand population; one shall be a city planning director or planning manager; one shall be a mayor, commissioner, or city councilmember of a city with a population of twenty thousand or more; one shall be a mayor, commissioner, or city councilmember of a city who serves on the board of a public transit system; and one shall be a mayor, commissioner, or councilmember of a city of less than twenty thousand population. All of the city members shall be appointed. Not more than one city member of the board shall be from any one city. No more than two of the three city-elected officials may represent cities located in either the eastern or western part of the state as divided north and south by the summit of the Cascade mountains.

(4) Of the transit members, at least one shall be a general manager, executive director, or transit director of a public transit system in an urban area with a population over two hundred thousand and at least one representative from a rural or small urban transit system in an area with a population less than two hundred thousand.

(5) The private sector member shall be a citizen with business, management, and transportation related experience and shall be active in a business community-based transportation organization.

~~(6) ((The public member shall have professional experience in transportation or land use planning, a demonstrated interest in transportation issues, and involvement with community groups or grass roots organizations.~~

~~—(7))~~ The port member shall be a commissioner or senior staff person of a public port.

~~((8))~~ (7) The nonmotorized transportation member shall be a citizen with a demonstrated interest and involvement with a nonmotorized transportation group.

~~((9))~~ (8) The specialized transportation member shall be a citizen with a demonstrated interest and involvement with a state-wide specialized needs transportation group.

~~((10))~~ (9) Appointments of county, city, Washington department of transportation, transit, port, nonmotorized transportation, special needs transportation, and private sector (~~(and public)~~) representatives shall be made by the secretary of the department of transportation. Appointees shall be chosen from a list of two persons for each position nominated by the Washington state association of counties for county members, the association of Washington cities for city members, the Washington state transit association for the transit members, and the Washington public ports association for the port member. The private sector, (~~public,~~) nonmotorized transportation, and special needs members shall be sought through classified advertisements in selected newspapers collectively serving all urban areas of the state, and other appropriate means. Persons applying for the private sector, nonmotorized transportation, or special needs transportation (~~(or the public)~~) member position must provide a letter of interest and a resume to the secretary of the department of transportation. In the case of a vacancy, the appointment shall be only for the remainder of the unexpired term in which the vacancy has occurred. A vacancy shall be deemed to have occurred on the board when any member elected to public office completes that term of office or is removed therefrom for any reason or when any member employed by a political subdivision terminates such employment for whatsoever reason or when a private sector, nonmotorized transportation, or special needs transportation (~~(or public)~~) member resigns or is unable or unwilling to serve.

~~((11))~~ (10) Appointments shall be for terms of four years. Terms of all appointed members shall expire on June 30th of even-numbered years. The initial term of appointed members may be for less than four years. No appointed member may serve more than two consecutive four-year terms.

~~((12))~~ (11) The board shall elect a chair from among its members for a two-year term.

~~((13))~~ (12) Expenses of the board shall be paid in accordance with RCW 47.26.140.

~~((14))~~ (13) For purposes of this section, "public transit system" means a city-owned transit system, county transportation authority, metropolitan municipal corporation, public transportation benefit area, or regional transit authority.

Sec. 2. RCW 47.26.140 and 1995 c 269 s 2605 are each amended to read as follows:

The transportation improvement board shall appoint an executive director, who shall serve at its pleasure and whose salary shall be set by the board, and

may employ additional staff as it deems appropriate. All costs associated with staff, together with travel expenses in accordance with RCW 43.03.050 and 43.03.060, shall be paid from the urban arterial trust account, small city account, city hardship assistance account, ~~((transportation fund))~~ central Puget Sound public transportation account, public transportation systems account, and the transportation improvement account in the motor vehicle fund as determined by the biennial appropriation.

Sec. 3. RCW 47.66.030 and 1995 c 269 s 2604 are each amended to read as follows:

(1)(a) The transportation improvement board is authorized and responsible for the final selection of programs and projects funded from the central Puget Sound public transportation account; public transportation systems account; ~~((high capacity transportation account;))~~ and the intermodal surface transportation and efficiency act of 1991, surface transportation program, state-wide competitive.

(b) The board may establish subcommittees as well as technical advisory committees to carry out the mandates of this chapter.

(2) Expenses of the board, including administrative expenses for managing the program, shall be paid in accordance with RCW 47.26.140.

Passed the House February 6, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 50

[Engrossed House Bill 2735]

NURSING FACILITY RENOVATION—EXEMPTION FROM CERTIFICATE OF NEED

AN ACT Relating to an exemption from certificate of need for the renovation of a nursing facility operated by an existing licensee who has operated the beds for at least one year; and amending RCW 70.38.105.

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

Sec. 1. RCW 70.38.105 and 1992 c 27 s 1 are each amended to read as follows:

(1) The department is authorized and directed to implement the certificate of need program in this state pursuant to the provisions of this chapter.

(2) There shall be a state certificate of need program which is administered consistent with the requirements of federal law as necessary to the receipt of federal funds by the state.

(3) No person shall engage in any undertaking which is subject to certificate of need review under subsection (4) of this section without first having received from the department either a certificate of need or an exception granted in accordance with this chapter.

(4) The following shall be subject to certificate of need review under this chapter:

(a) The construction, development, or other establishment of a new health care facility;

(b) The sale, purchase, or lease of part or all of any existing hospital as defined in RCW 70.38.025;

(c) Any capital expenditure for the construction, renovation, or alteration of a nursing home which substantially changes the services of the facility after January 1, 1981, provided that the substantial changes in services are specified by the department in rule;

(d) Any capital expenditure for the construction, renovation, or alteration of a nursing home which exceeds the expenditure minimum as defined by RCW 70.38.025. However, a capital expenditure which is not subject to certificate of need review under (a), (b), (c), or (e) of this subsection and which is solely for any one or more of the following is not subject to certificate of need review (~~except to the extent required by the federal government as a condition to receipt of federal assistance and does not substantially affect patient charges~~):

(i) Communications and parking facilities;

(ii) Mechanical, electrical, ventilation, heating, and air conditioning systems;

(iii) Energy conservation systems;

(iv) Repairs to, or the correction of, deficiencies in existing physical plant facilities which are necessary to maintain state licensure, however, other additional repairs, remodeling, or replacement projects that are not related to one or more deficiency citations and are not necessary to maintain state licensure are not exempt from certificate of need review except as otherwise permitted by (d)(vi) of this subsection or RCW 70.38.115(13);

(v) Acquisition of equipment, including data processing equipment, which is not or will not be used in the direct provision of health services;

(vi) Construction or renovation at an existing nursing home which involves physical plant facilities, including administrative, dining areas, kitchen, laundry, therapy areas, and support facilities, (~~which are not or will not be used for the provision of health services~~) by an existing licensee who has operated the beds for at least one year;

(vii) Acquisition of land; and

(viii) Refinancing of existing debt;

(e) A change in bed capacity of a health care facility which increases the total number of licensed beds or redistributes beds among acute care, nursing home care, and boarding home care if the bed redistribution is to be effective for a period in excess of six months, or a change in bed capacity of a rural health care facility licensed under RCW 70.175.100 that increases the total number of nursing home beds or redistributes beds from acute care or boarding home care to nursing home care if the bed redistribution is to be effective for a period in excess of six months;

(f) Any new tertiary health services which are offered in or through a health care facility or rural health care facility licensed under RCW 70.175.100, and which were not offered on a regular basis by, in, or through such health care facility or rural health care facility within the twelve-month period prior to the time such services would be offered;

(g) Any expenditure for the construction, renovation, or alteration of a nursing home or change in nursing home services in excess of the expenditure minimum made in preparation for any undertaking under subsection (4) of this section and any arrangement or commitment made for financing such undertaking. Expenditures of preparation shall include expenditures for architectural designs, plans, working drawings, and specifications. The department may issue certificates of need permitting predevelopment expenditures, only, without authorizing any subsequent undertaking with respect to which such predevelopment expenditures are made; and

(h) Any increase in the number of dialysis stations in a kidney disease center.

(5) The department is authorized to charge fees for the review of certificate of need applications and requests for exemptions from certificate of need review. The fees shall be sufficient to cover the full cost of review and exemption, which may include the development of standards, criteria, and policies.

(6) No person may divide a project in order to avoid review requirements under any of the thresholds specified in this section.

Passed the House February 8, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 51

[Substitute House Bill 2755]

ECONOMIC DEVELOPMENT PROMOTION— COMMUNITY ECONOMIC REVITALIZATION BOARD

AN ACT Relating to economic development; amending RCW 43.160.010, 43.160.020, 43.160.030, 43.160.050, 43.160.060, 43.160.070, 43.160.076, 43.160.090, 43.160.200, and 43.160.210; and providing effective dates.

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

Sec. 1. RCW 43.160.010 and 1991 c 314 s 21 are each amended to read as follows:

(1) The legislature finds that it is the public policy of the state of Washington to direct financial resources toward the fostering of economic development through the stimulation of investment and job opportunities and the retention of sustainable existing employment for the general welfare of the inhabitants of the state. Reducing unemployment and reducing the time citizens remain jobless is important for the economic welfare of the state. A valuable means of fostering

economic development is the construction of public facilities which contribute to the stability and growth of the state's economic base. Strengthening the economic base through issuance of industrial development bonds, whether single or umbrella, further serves to reduce unemployment. Consolidating issues of industrial development bonds when feasible to reduce costs additionally advances the state's purpose to improve economic vitality. Expenditures made for these purposes as authorized in this chapter are declared to be in the public interest, and constitute a proper use of public funds. A community economic revitalization board is needed which shall aid the development of economic opportunities. The general objectives of the board should include:

(a) Strengthening the economies of areas of the state which have experienced or are expected to experience chronically high unemployment rates or below average growth in their economies;

(b) Encouraging the diversification of the economies of the state and regions within the state in order to provide greater seasonal and cyclical stability of income and employment;

(c) Encouraging wider access to financial resources for both large and small industrial development projects;

(d) Encouraging new economic development or expansions to maximize employment;

(e) Encouraging the retention of viable existing firms and employment; and

(f) Providing incentives for expansion of employment opportunities for groups of state residents that have been less successful relative to other groups in efforts to gain permanent employment.

(2) The legislature also finds that the state's economic development efforts can be enhanced by, in certain instances, providing funds to improve state highways in the vicinity of new industries considering locating in this state or existing industries that are considering significant expansion.

(a) The legislature finds it desirable to provide a process whereby the need for diverse public works improvements necessitated by planned economic development can be addressed in a timely fashion and with coordination among all responsible governmental entities.

(b) It is the intent of the legislature to create an economic development account within the motor vehicle fund from which expenditures can be made by the department of transportation for state highway improvements necessitated by planned economic development. All such improvements must first be approved by the state transportation commission and the community economic revitalization board in accordance with the procedures established by RCW 43.160.074 and 47.01.280. It is further the intent of the legislature that such improvements not jeopardize any other planned highway construction projects. The improvements are intended to be of limited size and cost, and to include such items as additional turn lanes, signalization, illumination, and safety improvements.

(3) The legislature also finds that the state's economic development efforts can be enhanced by providing funds to improve markets for those recyclable

materials representing a large fraction of the waste stream. The legislature finds that public facilities which result in private construction of processing or remanufacturing facilities for recyclable materials are eligible for consideration from the board.

(4) The legislature finds that sharing economic growth state-wide is important to the welfare of the state. ~~((Timber))~~ Rural natural resource impact areas do not share in the economic vitality of the Puget Sound region. Infrastructure is one of several ingredients that are critical for economic development. ~~((Timber))~~ Rural natural resource impact areas generally lack the infrastructure necessary to diversify and revitalize their economies. It is, therefore, the intent of the legislature to increase the availability of funds to help provide infrastructure to ~~((timber))~~ rural natural resource impact areas.

Sec. 2. RCW 43.160.020 and 1995 c 226 s 14 are each amended to read as follows:

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

- (1) "Board" means the community economic revitalization board.
- (2) "Bond" means any bond, note, debenture, interim certificate, or other evidence of financial indebtedness issued by the board pursuant to this chapter.
- (3) "Department" means the department of community, trade, and economic development.
- (4) "Financial institution" means any bank, savings and loan association, credit union, development credit corporation, insurance company, investment company, trust company, savings institution, or other financial institution approved by the board and maintaining an office in the state.
- (5) "Industrial development facilities" means "industrial development facilities" as defined in RCW 39.84.020.
- (6) "Industrial development revenue bonds" means tax-exempt revenue bonds used to fund industrial development facilities.
- (7) "Local government" or "political subdivision" means any port district, county, city, town, ~~((or))~~ special ~~((utility))~~ purpose district, and any other municipal corporations or quasi-municipal corporations in the state providing for public facilities under this chapter.
- (8) "Sponsor" means any of the following entities which customarily provide service or otherwise aid in industrial or other financing and are approved as a sponsor by the board: A bank, trust company, savings bank, investment bank, national banking association, savings and loan association, building and loan association, credit union, insurance company, or any other financial institution, governmental agency, or holding company of any entity specified in this subsection.
- (9) "Umbrella bonds" means industrial development revenue bonds from which the proceeds are loaned, transferred, or otherwise made available to two or more users under this chapter.

(10) "User" means one or more persons acting as lessee, purchaser, mortgagor, or borrower under a financing document and receiving or applying to receive revenues from bonds issued under this chapter.

(11) "Public facilities" means bridges, roads, domestic and industrial water, sanitary sewer, storm sewer, railroad, electricity, natural gas, buildings or structures, and port facilities.

(12) "Rural natural resources impact area" means:

(a) A nonmetropolitan county, as defined by the 1990 decennial census, that meets two of the five criteria set forth in subsection (~~((12))~~) (13) of this section; or

(b) A nonurbanized area, as defined by the 1990 decennial census, that is located in a metropolitan county that meets two of the five criteria set forth in subsection (~~((12))~~) (13) of this section.

(~~((12))~~) (13) 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 that is located wholly or partially in an urbanized area or within two miles of an urbanized area is considered urbanized. 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.

Sec. 3. RCW 43.160.030 and 1995 c 399 s 86 are each amended to read as follows:

(1) The community economic revitalization board is hereby created to exercise the powers granted under this chapter.

(2) The board shall consist of the chairman of and one minority member appointed by the speaker of the house of representatives from the committee of the house of representatives that deals with issues of economic development, the chairman of and one minority member appointed by the president of the senate from the committee of the senate that deals with issues of economic development, and the following members appointed by the governor: A recognized private or public sector economist; one port district official; one county official;

one city official; one representative of the public; one representative of small businesses each from: (a) The area west of Puget Sound, (b) the area east of Puget Sound and west of the Cascade range, (c) the area east of the Cascade range and west of the Columbia river, and (d) the area east of the Columbia river; one executive from large businesses each from the area west of the Cascades and the area east of the Cascades. The appointive members shall initially be appointed to terms as follows: Three members for one-year terms, three members for two-year terms, and three members for three-year terms which shall include the chair. Thereafter each succeeding term shall be for three years. The chair of the board shall be selected by the governor. The members of the board shall elect one of their members to serve as vice-chair. The director of community, trade, and economic development, the director of revenue, the commissioner of employment security, and the secretary of transportation shall serve as nonvoting advisory members of the board.

(3) ~~((Staff support))~~ Management services, including fiscal and contract services, shall be provided by the department ~~((of community, trade, and economic development))~~ to assist the board in implementing this chapter and the allocation of private activity bonds.

(4) ~~((All appointive))~~ Members of the board ~~((shall be compensated in accordance with RCW 43.03.240 and))~~ shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) If a vacancy occurs by death, resignation, or otherwise of appointive members of the board, the governor shall fill the same for the unexpired term. ~~((Any))~~ Members of the board ~~((, appointive or otherwise,))~~ may be removed for malfeasance or misfeasance in office, upon specific written charges by the governor, under chapter 34.05 RCW.

(6) A member appointed by the governor may not be absent from more than fifty percent of the regularly scheduled meetings in any one calendar year. Any member who exceeds this absence limitation is deemed to have withdrawn from the office and may be replaced by the governor.

Sec. 4. RCW 43.160.050 and 1987 c 422 s 4 are each amended to read as follows:

The board may:

(1) Adopt bylaws for the regulation of its affairs and the conduct of its business.

(2) Adopt an official seal and alter the seal at its pleasure.

(3) ~~((Contract with any consultants as may be necessary or desirable for its purposes and to fix the compensation of the consultants.~~

~~—(4))~~ Utilize the services of other governmental agencies.

~~((5))~~ (4) Accept from any federal agency loans or grants for the planning or financing of any project and enter into an agreement with the agency respecting the loans or grants.

~~((6))~~ (5) Conduct examinations and investigations and take testimony at public ~~(or private)~~ hearings of any matter material for its information that will assist in determinations related to the exercise of the board's lawful powers.

~~((7))~~ (6) Accept any gifts, grants, or loans of funds, property, or financial or other aid in any form from any other source on any terms and conditions which are not in conflict with this chapter.

~~((8))~~ (7) Exercise all the powers of a public corporation under chapter 39.84 RCW.

~~((9))~~ (8) Invest any funds received in connection with industrial development revenue bond financing not required for immediate use, as the board considers appropriate, subject to any agreements with owners of bonds.

~~((10))~~ (9) Arrange for lines of credit for industrial development revenue bonds from and enter into participation agreements with any financial institution.

~~((11))~~ (10) Issue industrial development revenue bonds in one or more series for the purpose of defraying the cost of acquiring or improving any industrial development facility or facilities and securing the payment of the bonds as provided in this chapter.

~~((12))~~ (11) Enter into agreements or other transactions with and accept grants and the cooperation of any governmental agency in furtherance of this chapter.

~~((13))~~ (12) Sell, purchase, or insure loans to finance the costs of industrial development facilities.

~~((14))~~ (13) Service, contract, and pay for the servicing of loans for industrial development facilities.

~~((15))~~ (14) Provide financial analysis and technical assistance for industrial development facilities when the board reasonably considers it appropriate.

~~((16))~~ (15) Collect, with respect to industrial development revenue bonds, reasonable interest, fees, and charges for making and servicing its lease agreements, loan agreements, mortgage loans, notes, bonds, commitments, and other evidences of indebtedness. Interest, fees, and charges are limited to the amounts required to pay the costs of the board, including operating and administrative expenses and reasonable allowances for losses that may be incurred.

~~((17))~~ (16) Procure insurance or guarantees from any party as allowable under law, including a governmental agency, against any loss in connection with its lease agreements, loan agreements, mortgage loans, and other assets or property.

~~((18))~~ (17) Adopt rules under chapter 34.05 RCW as necessary to carry out the purposes of this chapter.

~~((19))~~ (18) Do all acts and things necessary or convenient to carry out the powers expressly granted or implied under this chapter.

Sec. 5. RCW 43.160.060 and 1993 c 320 s 4 are each amended to read as follows:

The board is authorized to make direct loans to political subdivisions of the state for the purposes of assisting the political subdivisions in financing the cost of public facilities, including development of land and improvements for public facilities, as well as the construction, rehabilitation, alteration, expansion, or improvement of the facilities. A grant may also be authorized for purposes designated in this chapter, but only when, and to the extent that, a loan is not reasonably possible, given the limited resources of the political subdivision and the finding by the board that unique circumstances exist. The board shall not obligate more than twenty percent of its biennial appropriation as grants.

Application for funds shall be made in the form and manner as the board may prescribe. In making grants or loans the board shall conform to the following requirements:

- (1) The board shall not ~~((make a grant or loan))~~ provide financial assistance:
 - (a) For a project the primary purpose of which is to facilitate or promote a retail shopping development or expansion.
 - (b) For any project that evidence exists would result in a development or expansion that would displace existing jobs in any other community in the state.
 - (c) For the acquisition of real property, including buildings and other fixtures which are a part of real property.
- (2) The board shall only ~~((make grants or loans))~~ provide financial assistance:
 - (a) For those projects which would result in specific private developments or expansions (i) in manufacturing, production, food processing, assembly, warehousing, and industrial distribution; (ii) for processing recyclable materials or for facilities that support recycling, including processes not currently provided in the state, including but not limited to, de-inking facilities, mixed waste paper, plastics, yard waste, and problem-waste processing; (iii) for manufacturing facilities that rely significantly on recyclable materials, including but not limited to waste tires and mixed waste paper; (iv) which support the relocation of businesses from nondistressed urban areas to distressed rural areas; or (v) which substantially support the trading of goods or services outside of the state's borders.
 - (b) For projects which it finds will improve the opportunities for the successful maintenance, establishment, or expansion of industrial or commercial plants or will otherwise assist in the creation or retention of long-term economic opportunities.
 - (c) When the application includes convincing evidence that a specific private development or expansion is ready to occur and will occur only if the ~~((grant or loan))~~ public facility improvement is made.
- (3) The board shall prioritize each proposed project according to the relative benefits provided to the community by the jobs the project would create, not just the total number of jobs it would create after the project is completed and according to the unemployment rate in the area in which the jobs would be located. As long as there is more demand for ~~((loans or grants))~~ financial

assistance than there are funds available (~~for loans or grants~~), the board is instructed to fund projects in order of their priority.

(4) A responsible official of the political subdivision shall be present during board deliberations and provide information that the board requests.

Before any (~~loan or grant~~) financial assistance application is approved, the political subdivision seeking the (~~loan or grant~~) assistance must demonstrate to the community economic revitalization board that no other timely source of funding is available to it at costs reasonably similar to financing available from the community economic revitalization board.

Sec. 6. RCW 43.160.070 and 1990 1st ex.s. c 16 s 802 are each amended to read as follows:

~~((1))~~ Public facilities (~~loans and grants~~) financial assistance, when authorized by the board, (~~are~~) is subject to the following conditions:

~~((a))~~ (1) The moneys in the public facilities construction loan revolving fund shall be used solely to fulfill commitments arising from (~~loans or grants~~) financial assistance authorized in this chapter or, during the 1989-91 fiscal biennium, for economic development purposes as appropriated by the legislature. The total outstanding amount which the board shall dispense at any time pursuant to this section shall not exceed the moneys available from the fund. The total amount of outstanding (~~loans and grants~~) financial assistance in Pierce, King, and Snohomish counties shall never exceed sixty percent of the total amount of outstanding (~~loans and grants~~) financial assistance disbursed by the board.

~~((b))~~ ~~Financial assistance through the loans or grants may be used directly or indirectly for any facility for public purposes, including, but not limited to, sewer or other waste disposal facilities, arterials, bridges, access roads, port facilities, or water distribution and purification facilities.~~

~~((c))~~ (2) On contracts made for public facilities loans the board shall determine the interest rate which loans shall bear. The interest rate shall not exceed ten percent per annum. The board may provide reasonable terms and conditions for repayment for loans as the board determines. The loans shall not exceed twenty years in duration.

~~((d))~~ (3) Repayments of loans made under the contracts for public facilities construction loans shall be paid into the public facilities construction loan revolving fund.

~~((2))~~ (4) When every feasible effort has been made to provide loans and loans are not possible, the board may provide grants upon finding that unique circumstances exist.

Sec. 7. RCW 43.160.076 and 1995 c 226 s 15 are each amended to read as follows:

(1) Except as authorized to the contrary under subsection (2) of this section, from all funds available to the board for (~~loans and grants~~) financial assistance in a biennium, the board shall spend at least fifty percent for (~~grants and loans~~)

financial assistance for projects in distressed counties or rural natural resources impact areas. For purposes of this section, the term "distressed counties" includes any county, in which the average level of unemployment for the three years before the year in which an application for ~~((a loan or grant))~~ financial assistance is filed, exceeds the average state employment for those years by twenty percent.

(2) If at any time during the last six months of a biennium the board finds that the actual and anticipated applications for qualified projects in distressed counties or rural natural resources impact areas are clearly insufficient to use up the fifty percent allocation, then the board shall estimate the amount of the insufficiency and during the remainder of the biennium may use that amount of the allocation for ~~((loans and grants for))~~ financial assistance to projects not located in distressed counties or rural natural resources impact areas.

Sec. 8. RCW 43.160.090 and 1987 c 505 s 42 are each amended to read as follows:

The board and the department shall keep proper records of accounts and shall be subject to audit by the state auditor.

Sec. 9. RCW 43.160.200 and 1995 c 226 s 16 are each amended to read as follows:

(1) The economic development account is created within the public facilities construction loan revolving fund under RCW 43.160.080. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes of RCW 43.160.010~~((4))~~(3) and this section. The account is subject to allotment procedures under chapter 43.88 RCW.

(2) Applications under this section for assistance from the economic development account are subject to all of the applicable criteria set forth under this chapter, as well as procedures and criteria established by the board, except as otherwise provided.

(3) Eligible applicants under this section are limited to political subdivisions of the state in rural natural resources impact areas that demonstrate, to the satisfaction of the board, the local economy's dependence on the forest products and salmon fishing industries.

(4) Applicants must demonstrate that their request is part of an economic development plan consistent with applicable state planning requirements. Applicants must demonstrate that tourism projects have been approved by the local government. Industrial projects must be approved by the local government and the associate development organization.

(5) Publicly owned projects may be financed under this section upon proof by the applicant that the public project is a necessary component of, or constitutes in whole, a tourism project.

(6) Applications must demonstrate local match and participation. Such match may include: Land donation, other public or private funds or both, or other means of local commitment to the project.

(7) Board financing for feasibility studies shall not exceed twenty-five thousand dollars per study. Board funds for feasibility studies may be provided as a grant and require a dollar for dollar match with up to one-half in-kind match allowed.

(8) Board financing for tourism projects shall not exceed two hundred fifty thousand dollars. Other public facility projects under this section shall not exceed five hundred thousand dollars. Loans with flexible terms and conditions to meet the needs of the applicants shall be provided. Grants may also be authorized, but only when, and to the extent that, a loan is not reasonably possible, given the limited resources of the political subdivision.

(9) The board shall develop guidelines for allowable local match and feasibility studies.

(10) Applications under this section need not demonstrate evidence that specific private development or expansion is ready to occur or will occur if funds are provided.

(11) The board shall establish guidelines for ~~((making grants and loans))~~ providing financial assistance under this section to ensure that the requirements of this chapter are complied with. The guidelines shall include:

(a) A process to equitably compare and evaluate applications from competing communities.

(b) Criteria to ensure that approved projects will have a high probability of success and are likely to provide long-term economic benefits to the community. The criteria shall include: (i) A minimum amount of local participation, determined by the board per application, to verify community support for the project; (ii) an analysis that establishes the project is feasible using standard economic principles; and (iii) an explanation from the applicant regarding how the project is consistent with the communities' economic strategy and goals.

(c) A method of evaluating the impact of the ~~((loans or grants))~~ financial assistance on the economy of the community and whether the ~~((loans or grants))~~ financial assistance achieved ~~((their))~~ its purpose.

~~((12) Cities and counties otherwise eligible under and in compliance with this section are authorized to use the loans or grants for buildings and structures.))~~

Sec. 10. RCW 43.160.210 and 1991 c 314 s 25 are each amended to read as follows:

(1) Except as authorized to the contrary under subsection (2) of this section, from all funds available to the board for ~~((loans and grants))~~ financial assistance, the board shall ~~((spend))~~ designate at least twenty percent for ~~((grants and loans))~~ financial assistance for projects in distressed counties. For purposes of this section, the term "distressed counties" includes any county, in which the average level of unemployment for the three years before the year in which an

application for ~~((a loan or grant))~~ financial assistance is filed, exceeds the average state employment for those years by twenty percent.

(2) If at any time during the last six months of a biennium the board finds that the actual and anticipated applications for qualified projects in distressed counties are clearly insufficient to use up the twenty percent allocation, then the board shall estimate the amount of the insufficiency and during the remainder of the biennium may use that amount of the allocation for ~~((loans and grants))~~ financial assistance for projects not located in distressed counties.

NEW SECTION. Sec. 11. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 12. (1) Sections 1 through 9 and 11 of this act shall take effect July 1, 1996.

(2) Section 10 of this act shall take effect June 30, 1997.

Passed the House February 8, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 52

[House Bill 2836]

SPEED LIMITS—AUTHORITY REVISED

AN ACT Relating to authority for setting speed limits; and amending RCW 46.61.410.

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

Sec. 1. RCW 46.61.410 and 1987 c 397 s 4 are each amended to read as follows:

(1)(a) Subject to subsection (2) of this section the secretary may increase the maximum speed limit on any highway or portion thereof to not more than seventy miles per hour in accordance with the design speed thereof (taking into account all safety elements included therein), or whenever the secretary determines upon the basis of an engineering and traffic investigation that such greater speed is reasonable and safe under the circumstances existing on such part of the highway.

(b) ~~((If the federal government increases the national maximum speed limit to at least sixty five miles per hour on any part of the highway system, the secretary of transportation shall forthwith increase to that same speed the maximum speed limit on any such highway or portion thereof then posted at fifty five miles per hour to a maximum of sixty five miles per hour, subject to subsection (2) of this section, if such limit had been established for that highway or portion thereof in order to comply with the former national maximum speed limit. However, if an engineering and traffic investigation conducted by the department clearly indicates that a speed limit above fifty five miles an hour~~

~~would be unsafe for that highway or a portion thereof, the secretary of transportation shall not increase the speed limit for that highway or portion thereof above the safe speed indicated by the investigation. The speed limit on interstate route number 5 between Everett and Olympia may not be increased above fifty five miles per hour under this subsection (b).~~

~~—(e))~~ The greater maximum limit established under (a) ~~((or (b)))~~ of this subsection shall be effective when appropriate signs giving notice thereof are erected, or if a maximum limit is established for auto stages which is lower than the limit for automobiles, the auto stage speed limit shall become effective thirty days after written notice thereof is mailed in the manner provided in subsection (4) of this section.

~~((d))~~ (c) Such maximum speed limit may be declared to be effective at all times or at such times as are indicated upon said signs or in the case of auto stages, as indicated in said written notice; and differing limits may be established for different times of day, different types of vehicles, varying weather conditions, and other factors bearing on safe speeds, which shall be effective when posted upon appropriate fixed or variable signs or if a maximum limit is established for auto stages which is lower than the limit for automobiles, the auto stage speed limit shall become effective thirty days after written notice thereof is mailed in the manner provided in subsection (4) of this section.

(2) The maximum speed limit for vehicles over ten thousand pounds gross weight and vehicles in combination except auto stages shall not exceed sixty miles per hour and may be established at a lower limit by the secretary as provided in RCW 46.61.405.

(3) The word "trucks" used by the department on signs giving notice of maximum speed limits means vehicles over ten thousand pounds gross weight and all vehicles in combination except auto stages.

(4) Whenever the secretary establishes maximum speed limits for auto stages lower than the maximum limits for automobiles, the secretary shall cause to be mailed notice thereof to each auto transportation company holding a certificate of public convenience and necessity issued by the Washington utilities and transportation commission. The notice shall be mailed to the chief place of business within the state of Washington of each auto transportation company or if none then its chief place of business without the state of Washington.

Passed the House February 6, 1996.

Passed the Senate March 1, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 53

[House Bill 2913]

FUTURE TEACHERS CONDITIONAL SCHOLARSHIP PROGRAM—REVISION

AN ACT Relating to the future teachers conditional scholarship; amending RCW 28B.102.020 and 28B.102.060; and providing an effective date.

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

Sec. 1. RCW 28B.102.020 and 1993 sp.s. c 18 s 36 are each amended to read as follows:

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

(1) "Conditional scholarship" means a loan that is forgiven in whole or in part if the recipient renders service as a teacher in ~~((the public schools of))~~ an approved education program in this state.

(2) "Institution of higher education" or "institution" means a college or university in the state of Washington which is accredited by an accrediting association recognized as such by rule of the higher education coordinating board.

(3) "Board" means the higher education coordinating board.

(4) "Eligible student" means a student who is registered for at least ten credit hours or the equivalent, demonstrates achievement of at least a 3.30 grade point average for students entering an institution of higher education directly from high school or maintains at least a 3.00 grade point average or the equivalent for each academic year in an institution of higher education, is a resident student as defined by RCW 28B.15.012 and 28B.15.013, and has a declared intention to complete an approved preparation program leading to initial teacher certification or required for earning an additional endorsement, or a college or university graduate who meets the same credit hour requirements and is seeking an additional teaching endorsement or initial teacher certification. Resident students defined in RCW 28B.15.012(2)(e) are not eligible students under this chapter.

(5) "Public school" means an elementary school, a middle school, junior high school, or high school within the public school system referred to in Article IX of the state Constitution.

(6) "Forgiven" or "to forgive" or "forgiveness" means to render service as a teacher ~~((at a public school))~~ in an approved education program in the state of Washington in lieu of monetary repayment.

(7) "Satisfied" means paid-in-full.

(8) "Participant" means an eligible student who has received a conditional scholarship under this chapter.

(9) "Targeted ethnic minority" means a group of Americans with a common ethnic or racial heritage selected by the board for program consideration due to societal concerns such as high dropout rates or low rates of college participation by members of the group.

(10) "Approved education program" means an education program in the state of Washington for knowledge and skills generally learned in preschool through twelfth grade. Approved education programs may include but are not limited to:

(a) K-12 schools under Title 28A RCW;

(b) Early childhood education and assistance programs under RCW 28A.215.100 through 28A.215.200 or the federal head start program;

(c) An approved school under chapter 28A.195 RCW;

(d) Education centers under chapter 28A.205 RCW;

(e) English as a second language programs and programs leading to high school graduation or the equivalency operated by community or technical colleges; and

(f) Tribal schools in Washington approved by the federal bureau of Indian affairs.

Sec. 2. RCW 28B.102.060 and 1993 c 423 s 1 are each amended to read as follows:

(1) Participants in the conditional scholarship program incur an obligation to repay the conditional scholarship, with interest, unless they teach for ~~((ten))~~ two years in ~~((the public schools of the state of Washington))~~ an approved education program for each year of scholarship received, under rules adopted by the board.

(2) The interest rate shall be eight percent for the first four years of repayment and ten percent beginning with the fifth year of repayment.

(3) The period for repayment shall be ten years, with payments of principal and interest accruing quarterly commencing nine months from the date the participant completes or discontinues the course of study. Provisions for deferral of payment shall be determined by the board.

(4) The entire principal and interest of each payment shall be forgiven for each payment period in which the participant teaches in ~~((a public school))~~ an approved education program until the entire repayment obligation is satisfied ~~((or the borrower ceases to teach at a public school in this state))~~. Should the participant cease to teach ~~((at a public school))~~ in an approved education program in this state before the participant's repayment obligation is completed, payments on the unsatisfied portion of the principal and interest shall begin the next payment period and continue until the remainder of the participant's repayment obligation is satisfied.

(5) The board is responsible for collection of repayments made under this section and shall exercise due diligence in such collection, maintaining all necessary records to insure that maximum repayments are made. Collection and servicing of repayments under this section shall be pursued using the full extent of the law, including wage garnishment if necessary ~~((and shall be performed by entities approved for such servicing by the Washington student loan guaranty association or its successor agency))~~. The board is responsible to forgive all or parts of such repayments under the criteria established in this section and shall maintain all necessary records of forgiven payments.

(6) Receipts from the payment of principal or interest or any other subsidies to which the board as administrator is entitled, which are paid by or on behalf of participants under this section, shall be deposited with the higher education coordinating board and shall be used to cover the costs of granting the

conditional scholarships, maintaining necessary records, and making collections under subsection (5) of this section. The board shall maintain accurate records of these costs, and all receipts beyond those necessary to pay such costs shall be used to grant conditional scholarships to eligible students.

(7) The board shall temporarily or, in special circumstances, permanently defer the requirements of this section for eligible students as defined in RCW 28B.10.017.

(8) The board may cancel a recipient's repayment obligation due to the recipient's total and permanent disability or death, subject to documentation as required by the board.

(9) This section applies to recipients of conditional scholarships awarded before or after July 1, 1996.

NEW SECTION. Sec. 3. This act shall take effect July 1, 1996.

Passed the House February 7, 1996.

Passed the Senate February 29, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 54

[Engrossed Second Substitute Senate Bill 6146]

PROPERTY DAMAGE BY WILDLIFE—REVISING PROCEDURES FOR MINIMIZATION

AN ACT Relating to property damage by wildlife; adding a new chapter to Title 77 RCW; creating new sections; repealing RCW 77.12.265, 77.12.270, 77.12.280, 77.12.290, and 77.12.300; 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:

(1) As the number of people in the state grows and wildlife habitat is altered, people will encounter wildlife more frequently. As a result, conflicts between humans and wildlife will also increase. Wildlife is a public resource of significant value to the people of the state and the responsibility to minimize and resolve these conflicts is shared by all citizens of the state.

(2) In particular, the state recognizes the importance of commercial agricultural and horticultural crop production and the value of healthy deer and elk populations, which can damage such crops. The legislature further finds that damage prevention is key to maintaining healthy deer and elk populations, wildlife-related recreational opportunities, and commercially productive agricultural and horticultural crops, and that the state, participants in wildlife recreation, and private landowners and tenants share the responsibility for damage prevention. Toward this end, the legislature encourages landowners and tenants to contribute through their land management practices to healthy wildlife populations and to provide access for related recreation. It is in the best interests of the state for the department of fish and wildlife to respond quickly to wildlife damage complaints and to work with these landowners and tenants

to minimize and/or prevent damages and conflicts while maintaining deer and elk populations for enjoyment by all citizens of the state.

(3) A timely and simplified process for resolving claims for damages caused by deer and elk for commercial agricultural or horticultural products is beneficial to the claimant and the state.

NEW SECTION. Sec. 2. Unless otherwise specified, the following definitions apply throughout this chapter:

(1) "Crop" means a commercially raised horticultural and/or agricultural product and includes growing or harvested product but does not include livestock. For the purposes of this chapter all parts of horticultural trees shall be considered a crop and shall be eligible for claims.

(2) "Emergency" means an unforeseen circumstance beyond the control of the landowner or tenant that presents a real and immediate threat to crops, domestic animals, or fowl.

(3) "Immediate family member" means spouse, brother, sister, grandparent, parent, child, or grandchild.

NEW SECTION. Sec. 3. The department shall work closely with landowners and tenants suffering game damage problems to control damage without killing the animals when practical, to increase the harvest of damage-causing animals in hunting seasons, and to kill the animals when no other practical means of damage control is feasible.

If the department receives recurring complaints regarding property being damaged as described in this section or section 4 of this act from the owner or tenant of real property, or receives such complaints from several such owners or tenants in a locale, the commission shall consider conducting a special hunt or special hunts to reduce the potential for such damage.

NEW SECTION. Sec. 4. (1) Subject to the following limitations and conditions, the owner, the owner's immediate family member, the owner's documented employee, or a tenant of real property may trap or kill on that property, without the licenses required under RCW 77.32.010 or authorization from the director under RCW 77.12.240, wild animals or wild birds that are damaging crops, domestic animals, or fowl:

(a) Threatened or endangered species shall not be hunted, trapped, or killed;

(b) Except in an emergency situation, deer, elk, and protected wildlife shall not be killed without a permit issued and conditioned by the director or the director's designee. In an emergency, the department may give verbal permission followed by written permission to trap or kill any deer, elk, or protected wildlife that is damaging crops, domestic animals, or fowl; and

(c) On privately owned cattle ranching lands, the land owner or lessee may declare an emergency only when the department has not responded within forty-eight hours after having been contacted by the land owner or lessee regarding damage caused by wild animals or wild birds. In such an emergency, the owner or lessee may trap or kill any deer, elk, or other protected wildlife that is

causing the damage but deer and elk may only be killed if such lands were open to public hunting during the previous hunting season, or the closure to public hunting was coordinated with the department to protect property and livestock.

(2) Except for coyotes and Columbian ground squirrels, wildlife trapped or killed under this section remain the property of the state, and the person trapping or killing the wildlife shall notify the department immediately. The department shall dispose of wildlife so taken within three days of receiving such a notification and in a manner determined by the director to be in the best interest of the state.

NEW SECTION. Sec. 5. (1) Pursuant to this section, the director or the director's designee may distribute money appropriated to pay claims for damages to crops caused by wild deer or elk in an amount of up to ten thousand dollars per claim. Damages payable under this section are limited to the value of such commercially raised horticultural or agricultural crops, whether growing or harvested, and shall be paid only to the owner of the crop at the time of damage, without assignment. Damages shall not include damage to other real or personal property including other vegetation or animals, damages caused by animals other than wild deer or elk, lost profits, consequential damages, or any other damages whatsoever. These damages shall comprise the exclusive remedy for claims against the state for damages caused by wildlife.

(2) The director may adopt rules for the form of affidavits or proof to be provided in claims under this section. The director may adopt rules to specify the time and method of assessing damage. The burden of proving damages shall be on the claimant. Payment of claims shall remain subject to the other conditions and limits of this chapter.

(3) If funds are limited, payments of claims shall be prioritized in the order that the claims are received. No claim may be processed if:

(a) The claimant did not notify the department within ten days of discovery of the damage. If the claimant intends to take steps that prevent determination of damages, such as harvest of damaged crops, then the claimant shall notify the department as soon as reasonably possible after discovery so that the department has an opportunity to document the damage and take steps to prevent additional damage; or

(b) The claimant did not present a complete, written claim within sixty days after the damage, or the last day of damaging if the damage was of a continuing nature.

(4) The director or the director's designee may examine and assess the damage upon notice. The department and claimant may agree to an assessment of damages by a neutral person or persons knowledgeable in horticultural or agricultural practices. The department and claimant shall share equally in the costs of such third party examination and assessment of damage.

(5) There shall be no payment for damages if:

(a) The crops are on lands leased from any public agency;

(b) The landowner or claimant failed to use or maintain applicable damage prevention materials or methods furnished by the department, or failed to comply with a wildlife damage prevention agreement under RCW 77.12.260;

(c) The director has expended all funds appropriated for payment of such claims for the current fiscal year; or

(d) The damages are covered by insurance. The claimant shall notify the department at the time of claim of insurance coverage in the manner required by the director. Insurance coverage shall cover all damages prior to any payment under this chapter.

(6) When there is a determination of claim by the director or the director's designee pursuant to this section, the claimant has sixty days to accept the claim or it is deemed rejected.

NEW SECTION. Sec. 6. If the claimant does not accept the director's decision under section 5 of this act, or if the claim exceeds ten thousand dollars, then the claim may be filed with the office of risk management under RCW 4.92.040(5). The office of risk management shall recommend to the legislature whether the claim should be paid. If the legislature approves the claim, the director shall pay it from moneys appropriated for that purpose. No funds shall be expended for damages under this chapter except as appropriated by the legislature.

NEW SECTION. Sec. 7. The director may refuse to consider and pay claims of persons who have posted the property against hunting or who have not allowed public hunting during the season prior to the occurrence of the damages.

NEW SECTION. Sec. 8. The department may pay no more than one hundred twenty thousand dollars per fiscal year from the wildlife fund for claims under section 5 of this act and for assessment costs and compromise of claims. Such money shall be used to pay animal damage claims only if the claim meets the conditions of section 5 of this act and the damage occurred in a place where the opportunity to hunt was not restricted or prohibited by a county, municipality, or other public entity during the season prior to the occurrence of the damage.

NEW SECTION. Sec. 9. (1) The department may pay no more than thirty thousand dollars per fiscal year from the general fund for claims under section 5 of this act and for assessment costs and compromise of claims unless the legislature declares an emergency. Such money shall be used to pay animal damage claims only if the claim meets the conditions of section 5 of this act and the damage occurred in a place where the opportunity to hunt was restricted or prohibited by a county, municipality, or other public entity during the season prior to the occurrence of the damage.

(2) The legislature may declare an emergency, defined for the purposes of this section as any happening arising from weather, other natural conditions, or fire that causes unusually great damage to commercially raised agricultural or horticultural crops by deer or elk. In an emergency, the department may pay

as much as may be subsequently appropriated, in addition to the funds authorized under subsection (1) of this section, for claims under section 5 of this act and for assessment and compromise of claims. Such money shall be used to pay animal damage claims only if the claim meets the conditions of section 5 of this act and the department has expended all funds authorized under section 8 of this act or subsection (1) of this section.

NEW SECTION. Sec. 10. This act applies prospectively only and not retroactively. It applies only to claims that arise on or after the effective date of this act.

NEW SECTION. Sec. 11. Sections 1 through 9 of this act shall constitute a new chapter in Title 77 RCW.

NEW SECTION. Sec. 12. The following acts or parts of acts are each repealed:

(1) RCW 77.12.265 and 1995 c 210 s 1, 1987 c 506 s 35, 1985 c 355 s 1, 1980 c 78 s 91, & 1955 c 36 s 77.16.230;

(2) RCW 77.12.270 and 1987 c 506 s 36, 1986 c 126 s 11, 1980 c 78 s 45, 1963 c 177 s 8, & 1955 c 36 s 77.12.270;

(3) RCW 77.12.280 and 1987 c 506 s 37, 1986 c 126 s 12, 1980 c 78 s 46, 1979 c 151 s 176, 1977 ex.s. c 144 s 8, 1957 c 177 s 1, & 1955 c 36 s 77.12.280;

(4) RCW 77.12.290 and 1987 c 506 s 38, 1980 c 78 s 47, 1963 c 177 s 9, 1957 c 177 s 2, & 1955 c 36 s 77.12.290; and

(5) RCW 77.12.300 and 1987 c 506 s 39, 1980 c 78 s 48, 1957 c 177 s 3, & 1955 c 36 s 77.12.300.

NEW SECTION. Sec. 13. Sections 1 through 12 of this act shall take effect July 1, 1996.

NEW SECTION. Sec. 14. (1) Notwithstanding any repeal, until July 1, 1996, claims exceeding two thousand dollars that have been filed under RCW 77.12.280(1) and that have been submitted to the legislature under RCW 4.92.040(5) by the risk management office may be paid by the department from moneys appropriated for payment of such claims.

(2) This section shall expire June 30, 1996.

Passed the Senate February 8, 1996.

Passed the House February 29, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 55

[Senate Bill 6157]

PORTABLE BENEFITS FOR DUAL MEMBERS OF RETIREMENT SYSTEMS

AN ACT Relating to portable benefits for dual members; amending RCW 41.54.030, 41.54.030, and 41.54.070; reenacting and amending RCW 41.54.040; and adding new sections to chapter 41.54 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 41.54 RCW to read as follows:

(1) If a dual member becomes disabled, the member's service in all systems may be combined for the sole purpose of determining the member's eligibility to receive a disability retirement allowance from the member's current system.

(2) The member's current system shall use its own criteria to:

(a) Determine the member's eligibility for a disability retirement allowance; and

(b) Calculate the disability retirement allowance based on service actually established in the current system. The member shall be allowed to substitute the member's base salary from any system as the compensation used in calculating the allowance.

(3) Subsections (1) and (2) of this section shall not apply to the member's prior system.

(4) A dual member who is eligible to receive a disability retirement under the current system may elect to receive a service retirement from all prior systems and to receive service retirement allowances calculated as provided in this section. Each system shall calculate the service retirement allowance using its own criteria except that the member shall be allowed to substitute the member's base salary from any system as the compensation used in calculating the service retirement allowance.

(5) The service retirement allowances from a system which, but for this section, would not be allowed to be paid at this date based on the dual member's age, may be received immediately or deferred to a later date. The allowances shall be actuarially adjusted from the earliest age upon which the combined service would have made such dual member eligible in that system.

(6) This section shall not apply to any disability benefit under:

(a) RCW 41.40.220; or

(b) The Washington state patrol retirement system established under chapter 43.43 RCW.

NEW SECTION. Sec. 2. A new section is added to chapter 41.54 RCW to read as follows:

(1) If a dual member dies in service in any system, the member's service in all systems may be combined for the sole purpose of determining the surviving spouse's eligibility to receive a death benefit from each of the member's current and prior systems.

(2) Each system shall use its own criteria to:

- (a) Determine the surviving spouse's eligibility for a death benefit; and
- (b) Calculate the death benefit based on service actually established in that system.

(3) The surviving spouse shall receive the same benefit from each system that would have been received if the member were active in the system at the time of death. The spouse shall be allowed to substitute the member's base salary from any system as the compensation used in calculating the allowance.

(4) This section shall not apply to the Washington state patrol retirement system established under chapter 43.43 RCW.

Sec. 3. RCW 41.54.030 and 1990 c 192 s 2 are each amended to read as follows:

(1) A dual member's service in all systems may be combined for the sole purpose of determining the member's eligibility to receive a service retirement allowance.

(2) A dual member who is eligible to retire under any system may elect to retire from all the member's systems and to receive service retirement allowances calculated as provided in this section. Each system shall calculate the allowance using its own criteria except that the member shall be allowed to substitute the member's base salary from any system as the compensation used in calculating the allowance.

(3) The service retirement allowances from a system which, but for this section, would not be allowed to be paid at this date based on the dual member's age ~~((shall))~~ may be ((either)) received immediately or deferred to a later date. The allowances shall be actuarially adjusted from the earliest age upon which the combined service would have made such dual member eligible in that system ~~((or the dual member may choose to defer the benefit until fully eligible))~~.

(4) The service retirement eligibility requirements of RCW 41.40.180 shall apply to any dual member whose prior system is plan I of the public employee's retirement system established under chapter 41.40 RCW.

Sec. 4. RCW 41.54.030 and 1995 c 239 s 319 are each amended to read as follows:

(1) A dual member may combine service in all systems for the purpose of:

- (a) Determining the member's eligibility to receive a service retirement allowance; and

- (b) Qualifying for a benefit under RCW 41.32.885(3).

(2) A dual member who is eligible to retire under any system may elect to retire from all the member's systems and to receive service retirement allowances calculated as provided in this section. Each system shall calculate the allowance using its own criteria except that the member shall be allowed to substitute the member's base salary from any system as the compensation used in calculating the allowance.

(3) The service retirement allowances from a system which, but for this section, would not be allowed to be paid at this date based on the dual member's age ~~((shall))~~ may be ((either)) received immediately or deferred to a later date. The allowances shall be actuarially adjusted from the earliest age upon which the combined service would have made such dual member eligible in that system((or the dual member may choose to defer the benefit until fully eligible)).

(4) The service retirement eligibility requirements of RCW 41.40.180 shall apply to any dual member whose prior system is plan I of the public employee's retirement system established under chapter 41.40 RCW.

Sec. 5. RCW 41.54.040 and 1993 c 519 s 16 and 1993 c 517 c 9 are each reenacted and amended to read as follows:

(1) The ~~((retirement))~~ allowances calculated under RCW 41.54.030 and sections 1 and 2 of this act shall be paid separately by each respective current and prior system. Any deductions from such separate payments shall be according to the provisions of the respective systems.

(2) Postretirement adjustments, if any, shall be applied by the respective systems based on the payments made under subsection (1) of this section.

~~(3) ((If a dual member dies in service in any system, the surviving spouse shall receive the same benefit from each system that would have been received if the member were active in the system at the time of death based on service actually established in that system. However, this subsection does not make a surviving spouse eligible for the survivor benefits provided in RCW 43.43.270.~~

~~—(4))~~ The department shall adopt rules under chapter 34.05 RCW to ensure that where a dual member has service in a system established under chapter 41.32, 41.40, 41.44, or 43.43 RCW; service in plan II of the system established under chapter 41.26 RCW; and service under the city employee retirement system for Scattle, Tacoma, or Spokane, the additional cost incurred as a result of the dual member receiving a benefit under this chapter shall be borne by the retirement system incurring the additional cost.

Sec. 6. RCW 41.54.070 and 1988 c 195 s 4 are each amended to read as follows:

The benefit granted by this chapter shall not result in a total benefit less than would have been received absent such benefit. The total sum of the retirement allowances received under this chapter shall not exceed the ~~((smallest))~~ largest amount the dual member would receive if all the service had been rendered in any one system. When calculating the maximum benefit a dual member would receive: (1) Military service granted under RCW 41.40.170(3) or 43.43.260 shall be based only on service accrued under chapter 41.40 or 43.43 RCW, respectively; and (2) the calculation shall be made assuming that the dual member did not defer any allowances pursuant to RCW 41.54.030(3). When a dual member's combined retirement allowances would exceed the limitation imposed by this section, the allowances shall be reduced by the systems on a proportional basis, according to service.

Passed the Senate February 7, 1996.

Passed the House February 28, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 56

[Substitute Senate Bill 6198]

STATE RETIREMENT SYSTEM OVERPAYMENTS—COLLECTION

AN ACT Relating to collection of state retirement system overpayments; amending RCW 36.18.016; and adding new sections to chapter 41.50 RCW.

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

NEW SECTION. Sec. 1. (1) If the department finds that any member, beneficiary, or other person or entity has been paid an amount of retirement benefits to which that person or entity is not entitled, and the person is not entitled to a continuing benefit from any of the retirement systems listed in RCW 41.50.030, the department may issue an order and notice of assessment specifying the amount due, including interest, to be remitted to the department. The order and notice of assessment shall be served upon any person or entity who may have received benefits to which the person or entity is not entitled. The order and notice of assessment shall be served by the department in the manner prescribed for the service of a summons in a civil action, or by certified mail to the last known address of the obligor as shown by the records of the department.

(2) Any notice of assessment under subsection (1) of this section shall constitute a determination of liability from which the member, beneficiary, or other person or entity served may appeal by filing a petition for adjudicative proceedings with the director personally or by mail within sixty days from the date the assessment was served. If a petition for adjudicative proceedings is not filed within sixty days of the delivery of the notice of assessment, the determination that was the basis for establishing the overpayment debt and the assessment is conclusive and final.

(3) This section creates an administrative process for the collection of overpayments from persons who are not entitled to a continuing benefit from one of the retirement systems listed in RCW 41.50.030. The collection of overpayments from persons entitled to a continuing benefit from one of the retirement systems listed in RCW 41.50.030 is governed by RCW 41.50.130.

NEW SECTION. Sec. 2. Whenever a notice of determination of liability becomes conclusive and final under section 1 of this act, the director, upon giving at least twenty days notice by certified mail return receipt requested to the individual's last known address of the intended action, may file with the superior court clerk of any county within the state a warrant in the amount of the notice of determination of liability plus a filing fee of five dollars payable under RCW 36.18.016. The clerk of the county where the warrant is filed shall

immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the person mentioned in the warrant, the amount of the notice of determination of liability, and the date when the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to, and any interest in, all real and personal property of the person against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. A copy of the warrant shall be mailed to the person mentioned in the warrant by certified mail to the person's last known address within five days of its filing with the clerk.

NEW SECTION. Sec. 3. The department may issue subpoenas to compel the statement of witnesses and the production of any books, records, or documents necessary or relevant to the department's administration of duties under this chapter. It is unlawful for any person or entity, without just cause, to fail to comply with any subpoena issued under this section.

NEW SECTION. Sec. 4. (1) The director may waive repayment of all or part of a retirement allowance overpayment, under RCW 41.50.130 only, if:

(a) The overpayment was not the result of the retiree's or the beneficiary's nondisclosure, fraud, misrepresentation, or other fault; and

(b) The director finds in his or her sole discretion that recovery of the overpayment would be a manifest injustice.

(2) The director may not waive an overpayment if the member, retiree, or beneficiary:

(a) Provided incorrect information to the department or the employer which caused the overpayment;

(b) Failed to provide information to the department or the employer which was necessary to correctly calculate the retirement allowance;

(c) Caused the employer to provide incorrect information or fail to provide necessary information; or

(d) Knew or reasonably should have known that he or she was in receipt of an overpayment.

(3) If the director waives an overpayment and the overpayment occurred because the member's or retiree's employer:

(a) Provided incorrect information to the department which caused the overpayment;

(b) Failed to provide information to the department which was necessary to correctly calculate the retirement allowance;

(c) Caused another party to provide incorrect information or fail to provide necessary information; or

(d) Knew or reasonably should have known that the information provided would cause the retiree or beneficiary to be overpaid;

then the department shall bill the member's or retiree's employer for the amount of the overpayment that would have been recoverable under RCW 41.50.130 had the overpayment not been waived pursuant to this section.

(4) Nothing in this section authorizes the director to waive the prospective correction of an overstated retirement allowance.

(5) If the director waives an overpayment he or she must state in writing:

(a) The nature of and reason for the overpayment;

(b) The reason for the waiver; and

(c) The amount of the overpayment that is waived.

The department will maintain a file containing documentation of all overpayments waived. The department will provide the file to any person upon request.

(6) This section applies to overpayments identified on or after September 1, 1994.

Sec. 5. RCW 36.18.016 and 1995 c 292 s 14 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) The party making a demand for ~~((a))~~ a jury of six in a civil action shall pay, at the time, a fee of fifty dollars; if the demand is for a jury of twelve, a fee of one hundred 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 fifty-dollar fee will be required of the party demanding the increased number of jurors. Upon conviction in criminal cases a jury demand charge 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 special services such as processing ex parte orders by mail, 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) For filing a warrant for overpayment of state retirement systems benefits under chapter 41.50 RCW, a fee of five dollars shall be charged pursuant to section 2 of this act.

(19) 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))~~ (20) For preparation of clerk's papers under RAP 9.7, a fee of fifty cents per page must be charged.

~~((20))~~ (21) 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))~~ (22) Investment service charge and earnings under RCW 36.48.090 must be charged.

~~((22))~~ (23) Costs for nonstatutory services rendered by clerk by authority of local ordinance or policy must be charged.

NEW SECTION. Sec. 6. Sections 1 through 4 of this act are each added to chapter 41.50 RCW.

Passed the Senate February 7, 1996.

Passed the House February 28, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 57

[Senate Bill 6220]

VOLUNTEER FIRE FIGHTERS—INCREASED BENEFITS

AN ACT Relating to increased benefits for volunteer fire fighters; amending RCW 41.24.150 and 41.24.160; and providing an effective date.

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

Sec. 1. RCW 41.24.150 and 1989 c 91 s 2 are each amended to read as follows:

Whenever a fire fighter serving in any capacity as a member of the fire fighter's own fire department subject to the provisions of this chapter becomes physically or mentally disabled, or sick, in consequence or as the result of the performance of his or her duties, so as to be wholly prevented from engaging in each and every duty of his or her regular occupation, business, or profession, he or she shall be paid from the fund monthly, ~~((the sum of one))~~ an amount equal to his or her monthly wage as certified by the local board or two thousand ~~((six))~~ five hundred fifty dollars, whichever is less, for a period ~~((of))~~ not to exceed six months, or ~~((fifty-five))~~ an amount equal to his or her daily wage as certified by the local board or eighty-five dollars, whichever is less, per day for such period as is part of a month, after which period, if the member is incapacitated to such an extent that he or she is thereby prevented from engaging in any occupation or performing any work for compensation or profit or if the member sustained an injury after October 1, 1978, which resulted in the loss or paralysis of both legs or arms, or one leg and one arm, or total loss of eyesight, but such injury has not prevented the member from engaging in an occupation or performing work for compensation or profit, he or she is entitled to draw from the fund monthly, the sum of ~~((eight))~~ one thousand two hundred ~~((twenty-five))~~ seventy-five dollars so long as the disability continues, except as hereinafter provided: PROVIDED, That if the member has a wife or husband and/or a child or children unemancipated or under eighteen years of age, he or she is entitled to draw from the fund monthly the additional sums of ~~((one))~~ two hundred ~~((sixty-five))~~ fifty-five dollars because of the fact of his wife or her husband, and ~~((seventy))~~ one hundred ten dollars because of the fact of each child unemancipated or under eighteen years of age, all to a total maximum amount of ~~((one))~~ two thousand ~~((six))~~ five hundred fifty dollars. The board may at any time reopen the grant of such disability pension if the pensioner is gainfully employed, and may reduce it in the proportion that the annual income from such gainful employment bears to the annual income received by the pensioner at the time of his disability: PROVIDED, That where a fire fighter sustains a permanent partial disability the state board may provide that such injured fire fighter shall receive a lump sum compensation therefor to the same extent as is provided for permanent partial disability under the workers' compensation act under Title 51 RCW in lieu of such monthly disability payments.

Sec. 2. RCW 41.24.160 and 1989 c 91 s 3 are each amended to read as follows:

(1) Whenever a fire fighter dies as the result of injuries received, or sickness contracted in consequence or as the result of the performance of his or her duties, the board of trustees shall order and direct the payment of the sum of two thousand dollars to his widow or her widower, or if there is no widow or widower, then to his or her dependent child or children, or if there is no dependent child or children, then to his or her parents or either of them, and the sum of ~~((eight))~~ one thousand two hundred ~~((twenty-five))~~ seventy-five dollars per month to his widow or her widower during his or her life together with the additional monthly sum of ~~((seventy))~~ one hundred ten dollars for each child of the member, unemancipated or under eighteen years of age, dependent upon the member for support at the time of his or her death, to a maximum total of ~~((one))~~ two thousand ~~((six))~~ five hundred fifty dollars per month.

(2) If the widow or widower does not have legal custody of one or more dependent children of the deceased fire fighter or if, after the death of the fire fighter, legal custody of such child or children passes from the widow or widower to another person, any payment on account of such child or children not in the legal custody of the widow or widower shall be made to the person or persons having legal custody of such child or children. Such payments on account of such child or children shall be subtracted from the amount to which such widow or widower would have been entitled had such widow or widower had legal custody of all the children and the widow or widower shall receive the remainder after such payments on account of such child or children have been subtracted. If there is no widow or widower, or the widow or widower dies while there are children, unemancipated or under eighteen years of age, then the amount of eight hundred twenty-five dollars per month shall be paid for the youngest or only child together with an additional seventy dollars per month for each additional of such children to a maximum of one thousand six hundred fifty dollars per month until they become emancipated or reach the age of eighteen years; and if there are no widow or widower, child, or children entitled thereto, then to his or her parents or either of them the sum of eight hundred twenty-five dollars per month for life, if it is proved to the satisfaction of the board that the parents, or either of them, were dependent on the deceased for their support at the time of his or her death. In any instance in subsections (1) and (2) of this section, if the widow or widower, child or children, or the parents, or either of them, marries while receiving such pension the person so marrying shall thereafter receive no further pension from the fund.

(3) In the case provided for in this section, the monthly payment provided may be converted in whole or in part into a lump sum payment, not in any case to exceed twelve thousand dollars, equal or proportionate, as the case may be, to the actuarial equivalent of the monthly payment in which event the monthly payments shall cease in whole or in part accordingly or proportionately. Such conversion may be made either upon written application to the state board and

shall rest in the discretion of the state board; or the state board is authorized to make, and authority is hereby given it to make, on its own motion, lump sum payments, equal or proportionate, as the case may be, to the value of the annuity then remaining in full satisfaction of claims due to dependents. Within the rule aforesaid the amount and value of the lump sum payment may be agreed upon between the applicant and the state board. Any person receiving a monthly payment under this section on June 29, 1961, may elect, within two years, to convert such payments into a lump sum payment as provided in this section.

NEW SECTION. Sec. 3. This act shall take effect July 1, 1996.

Passed the Senate February 7, 1996.

Passed the House February 28, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 58

[Senate Bill 6222]

SELF-INSURANCE ADMINISTRATIVE PROCEDURES

AN ACT Relating to self-insurance administrative procedures; and amending RCW 51.14.090 and 51.32.190.

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

Sec. 1. RCW 51.14.090 and 1983 c 21 s 1 are each amended to read as follows:

(1) Upon the petition of any employee or union or association having a substantial number of employees in the employ of the self-insurer the director ~~((shall))~~ or the director's designee may, in the director or designee's sole discretion, hold a hearing to determine whether or not there are grounds for the withdrawal of certification of a self-insurer or for corrective action by the department.

(2) The director shall serve upon the self-insurer and upon any employee or union or association having a substantial number of employees in the employ of said self-insurer, personally or by certified mail, a notice of intention to withdraw, or not to withdraw, certification of the self-insurer, which notice shall describe the nature and location or locations of the plants or operations involved; and the specific nature of the reasons for the decision. Similar notice shall be provided for decisions regarding corrective actions. The corrective action notice shall also include a directive to the self-insurer specifying the program deficiencies to be eliminated.

(3) If the decision is to withdraw certification, it shall include: The period of time within which the ground or grounds therefor existed or arose; ~~((a directive to the self-insurer specifying the manner in which the grounds may be eliminated;))~~ and the date, not less than ~~((thirty))~~ ninety days after the self-insurer's receipt of the notice, when the certification will be withdrawn ~~((in the~~

~~absence of a satisfactory elimination of the grounds for withdrawal of the certificate)).~~

(4) An appeal of any action taken by the director under this section may be taken by the self-insurer, or by any employee or union or association having a substantial number of employees in the employ of the self-insurer. Proceedings on the appeal shall be as prescribed in this title. Appeal by a self-insurer of notice of intention to withdraw certification or to take corrective action shall not act as a stay of the withdrawal or corrective action, unless the board or court, for good cause shown, orders otherwise.

(5) The director may adopt rules to carry out the purposes of this section.

Sec. 2. RCW 51.32.190 and 1982 1st ex.s. c 20 s 3 are each amended to read as follows:

(1) If the self-insurer denies a claim for compensation, written notice of such denial, clearly informing the claimant of the reasons therefor and that the director will rule on the matter shall be mailed or given to the claimant and the director within thirty days after the self-insurer has notice of the claim.

(2) Until such time as the department has entered an order in a disputed case acceptance of compensation by the claimant shall not be considered a binding determination of his or her rights under this title. Likewise the payment of compensation shall not be considered a binding determination of the obligations of the self-insurer as to future compensation payments.

(3) Upon making the first payment of income benefits, ~~((and upon stopping or changing of such benefits except where a determination of the permanent disability has been made as elsewhere provided in this title,))~~ the self-insurer shall immediately notify the director in accordance with a form to be prescribed by the director ~~((that the payment of income benefits has begun or has been stopped or changed)).~~ Upon request of the department on a form prescribed by the department, the self-insurer shall submit a record of the payment of income benefits including initial, termination or terminations, and change or changes to the benefits. Where temporary disability compensation is payable, the first payment thereof shall be made within fourteen days after notice of claim and shall continue at regular semimonthly or biweekly intervals.

(4) If, after the payment of compensation without an award, the self-insurer elects to controvert the right to compensation, the payment of compensation shall not be considered a binding determination of the obligations of the self-insurer as to future compensation payments. The acceptance of compensation by the worker or his or her beneficiaries shall not be considered a binding determination of their rights under this title.

(5) The director: (a) May, upon his or her own initiative at any time in a case in which payments are being made without an award~~((?))~~; and (b) shall, upon receipt of information from any person claiming to be entitled to compensation, from the self-insurer, or otherwise that the right to compensation is controverted, or that payment of compensation has been opposed, stopped or changed, whether or not claim has been filed, promptly make such inquiry as

circumstances require, cause such medical examinations to be made, hold such hearings, require the submission of further information, make such orders, decisions or awards, and take such further action as he or she considers will properly determine the matter and protect the rights of all parties.

(6) The director, upon his or her own initiative, may make such inquiry as circumstances require or is necessary to protect the rights of all the parties and he or she may enact rules and regulations providing for procedures to ensure fair and prompt handling by self-insurers of the claims of workers and beneficiaries.

Passed the Senate February 2, 1996.

Passed the House March 1, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 59

[Senate Bill 6224]

VOCATIONAL REHABILITATION BENEFITS WITHIN THE LONG-TERM DISABILITY PILOT PROJECTS—FLEXIBILITY PROVISION

AN ACT Relating to providing flexibility for vocational rehabilitation benefits within the long-term disability pilot projects; amending RCW 51.32.095; and adding a new section to chapter 51.60 RCW.

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

Sec. 1. RCW 51.32.095 and 1988 c 161 s 9 are each amended to read as follows:

(1) One of the primary purposes of this title is to enable the injured worker to become employable at gainful employment. To this end, the department or self-insurers shall utilize the services of individuals and organizations, public or private, whose experience, training, and interests in vocational rehabilitation and retraining qualify them to lend expert assistance to the supervisor of industrial insurance in such programs of vocational rehabilitation as may be reasonable to make the worker employable consistent with his or her physical and mental status. Where, after evaluation and recommendation by such individuals or organizations and prior to final evaluation of the worker's permanent disability and in the sole opinion of the supervisor or supervisor's designee, whether or not medical treatment has been concluded, vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment, the supervisor or supervisor's designee may, in his or her sole discretion, pay or, if the employer is a self-insurer, direct the self-insurer to pay the cost as provided in subsection (3) of this section.

(2) When in the sole discretion of the supervisor or the supervisor's designee vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, then the following order of priorities shall be used:

(a) Return to the previous job with the same employer;

(b) Modification of the previous job with the same employer including transitional return to work;

(c) A new job with the same employer in keeping with any limitations or restrictions;

(d) Modification of a new job with the same employer including transitional return to work;

(e) Modification of the previous job with a new employer;

(f) A new job with a new employer or self-employment based upon transferable skills;

(g) Modification of a new job with a new employer;

(h) A new job with a new employer or self-employment involving on-the-job training;

(i) Short-term retraining and job placement.

(3) Costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, transportation, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed three thousand dollars in any fifty-two week period except as authorized by section 2 of this act, and the cost of continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation. Such expenses may include training fees for on-the-job training and the cost of furnishing tools and other equipment necessary for self-employment or reemployment: PROVIDED, That such compensation or payment of retraining with job placement expenses may not be authorized for a period of more than fifty-two weeks: PROVIDED FURTHER, That such period may, in the sole discretion of the supervisor after his or her review, be extended for an additional fifty-two weeks or portion thereof by written order of the supervisor.

In cases where the worker is required to reside away from his or her customary residence, the reasonable cost of board and lodging shall also be paid. Said costs shall be chargeable to the employer's cost experience or shall be paid by the self-insurer as the case may be.

(4) The department shall establish criteria to monitor the quality and effectiveness of rehabilitation services provided by the individuals and organizations used under subsection (1) of this section. The state fund shall make referrals for vocational rehabilitation services based on these performance criteria.

(5) The department shall engage in, where feasible and cost-effective, a cooperative program with the state employment security department to provide job placement services under this section.

(6) The benefits in this section shall be provided for the injured workers of self-insured employers. Self-insurers shall report both benefits provided and benefits denied under this section in the manner prescribed by the department by rule adopted under chapter 34.05 RCW. The director may, in his or her sole

discretion and upon his or her own initiative or at any time that a dispute arises under this section, promptly make such inquiries as circumstances require and take such other action as he or she considers will properly determine the matter and protect the rights of the parties.

(7) The benefits provided for in this section are available to any otherwise eligible worker regardless of the date of industrial injury. However, claims shall not be reopened solely for vocational rehabilitation purposes.

NEW SECTION. Sec. 2. A new section is added to chapter 51.60 RCW to read as follows:

The limitation on the expenditure of three thousand dollars in any fifty-two week period established in RCW 51.32.095 shall not apply to the provision of vocational rehabilitation to workers in either long-term disability pilot project and the supervisor may at any time, in the supervisor's sole discretion, authorize the expenditure of a sum not to exceed six thousand dollars, exclusive of child care and travel, for the costs of vocational rehabilitation, including on-the-job training.

Passed the Senate February 7, 1996.

Passed the House February 28, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 60

[Senate Bill 6225]

INDUSTRIAL INSURANCE—EMPLOYER ASSESSMENTS REGULATED

AN ACT Relating to employer assessments; amending RCW 51.16.155; and repealing RCW 51.48.070.

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

Sec. 1. RCW 51.16.155 and 1985 c 315 s 3 are each amended to read as follows:

In every case where an employer insured with the state fails or refuses to file any report of payroll required by the department and fails or refuses to pay the premiums due on such unreported payroll, the department shall have authority to estimate such payroll and the premiums due thereon and collect premiums on the basis of such estimate.

If the report required and the premiums due thereon are not made within ten days from the mailing of such demand by the department, which shall include the amount of premiums estimated by the department, the employer shall be in default as provided by this title and the department may have and recover judgment, warrant, or file liens for such estimated premium or the actual premium, whichever is greater.

The director or the director's designee may compromise the amount of premiums estimated by the department, whether reduced to judgment or

otherwise, arising under this title if collection of the premiums estimated by the department would be against equity and good conscience.

NEW SECTION. Sec. 2. RCW 51.48.070 and 1980 c 14 s 14 are each repealed.

Passed the Senate February 2, 1996.

Passed the House February 28, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 61

[Senate Bill 6233]

MILITARY SERVICE REQUIREMENTS OF THE FEDERAL UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT ACT—IMPLEMENTATION

AN ACT Relating to implementing the military service credit requirements of the federal uniformed services employment and reemployment act; amending RCW 41.26.520, 41.32.810, 41.32.865, and 41.40.710; and providing an effective date.

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

Sec. 1. RCW 41.26.520 and 1994 c 197 s 10 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 (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 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) 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 41.26.450. 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.

(6) A member who leaves the employ of an employer to enter the armed forces of the United States shall be entitled to retirement system service credit for up to ~~((four))~~ 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 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; and

(ii) The member makes the employee contributions required under RCW 41.26.450 ~~((plus interest as determined by the department))~~ 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) 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) of this subsection shall be based on the ~~((average of the member's basic salary at both the time the member left the employ of the employer to enter the armed forces and the time the member resumed employment))~~ 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.

(7) 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. 2. RCW 41.32.810 and 1994 c 197 s 20 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 of the United States shall be entitled to retirement system service credit for up to ~~((four))~~ 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 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; and

(ii) The member makes the employee contributions required under RCW 41.32.775 ~~((plus interest as determined by the department))~~ 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) 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) of this subsection shall be based on the ~~((average of the member's earnable compensation at both the time the member left the employ of the employer to enter the armed forces and the time the member resumed employment))~~ 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.

Sec. 3. RCW 41.32.865 and 1995 c 239 s 111 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 of the United States shall be entitled to retirement system service credit for up to ~~((four))~~ five years of military service if within ninety days of the member's honorable discharge from 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. 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 (~~plus interest~~) to the defined contribution portion as determined by the department.

The contributions required shall be based on the ~~((average of the member's earnable compensation at both the time the member left the employ of the employer to enter the armed forces and the time the member resumed employment))~~ 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.

Sec. 4. RCW 41.40.710 and 1994 c 197 s 28 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 11 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 of the United States shall be entitled to retirement system service credit for up to ~~((four))~~ 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 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; and

(ii) The member makes the employee contributions required under RCW 41.40.650 ~~((plus interest as determined by the department))~~ 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) of this subsection, the department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.40.650 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii) of this subsection shall be based on the ~~((average of the member's compensation earnable at both the time the member left the employ of the employer to enter the armed forces and the time the member resumed employment))~~ 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.

NEW SECTION. Sec. 5. Section 3 of this act shall take effect July 1, 1996.

Passed the Senate February 5, 1996.

Passed the House February 28, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 62

[Substitute Senate Bill 6236]

SHORELINE MANAGEMENT PROJECT COMPLETION DEADLINES ESTABLISHED

AN ACT Relating to shoreline management project completion timelines; and adding a new section to chapter 90.58 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 90.58 RCW to read as follows:

(1) The time requirements of this section shall apply to all substantial development permits and to any development authorized pursuant to a variance or conditional use permit authorized under this chapter. Upon a finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the policy and provisions of the master program and this chapter, local government may adopt different time limits as a part of action on a substantial development permit.

(2) Construction activities shall be commenced or, where no construction activities are involved, the use or activity shall be commenced within two years of the effective date of a substantial development permit. However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record on the substantial development permit and to the department.

(3) Authorization to conduct construction activities shall terminate five years after the effective date of a substantial development permit. However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the department.

(4) The effective date of a substantial development permit shall be the date of the last action required on the substantial development permit and all other government permits and approvals for the development that authorize the development to proceed, including all administrative and legal actions on any permits or approvals.

Passed the Senate February 8, 1996.

Passed the House February 28, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 63

[Engrossed Substitute Senate Bill 6284]

PUBLIC RECORDS—SALES AND USE TAX EXEMPTIONS

AN ACT Relating to sales and use tax exemptions for public records; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 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 82.08 RCW to read as follows:

The tax levied by RCW 82.08.020 shall not apply to the sale of public records by state and local agencies, as the terms are defined in RCW 42.17.020,

that are copied under a request for the record for which no fee is charged other than a statutorily set fee or a fee to reimburse the agency for its actual costs directly incident to the copying. A request for a record includes a request for a document not available to the public but available to those persons who by law are allowed access to the document, such as requests for fire reports, law enforcement reports, taxpayer information, and academic transcripts.

NEW SECTION. Sec. 2. A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter shall not apply with respect to the use of public records sold by state and local agencies, as the terms are defined in RCW 42.17.020, that are obtained under a request for the record for which no fee is charged other than a statutorily set fee or a fee to reimburse the agency for its actual costs directly incident to the copying. A request for a record includes a request for a document not available to the public but available to those persons who by law are allowed access to the document, such as requests for fire reports, law enforcement reports, taxpayer information, and academic transcripts.

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 shall take effect April 1, 1996.

Passed the Senate February 8, 1996.

Passed the House February 29, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 64

[Senate Bill 6294]

MOTOR VEHICLE EXCISE TAXES—DISTRIBUTION TO CITIES

AN ACT Relating to the distribution of motor vehicle excise taxes to cities; amending RCW 82.14.210; and providing an effective date.

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

Sec. 1. RCW 82.14.210 and 1991 sp.s. c 13 s 16 are each amended to read as follows:

There is created in the state treasury a special account to be known as the "municipal sales and use tax equalization account." Into this account shall be placed such revenues as are provided under RCW 82.44.110(1)(e). Funds in this account shall be allocated by the state treasurer according to the following procedure:

(1) Prior to January 1st of each year the department of revenue shall determine the total and the per capita levels of revenues for each city and the state-wide weighted average per capita level of revenues for all cities imposing

the sales and use tax authorized under RCW 82.14.030(1) for the previous calendar year.

(2) At such times as distributions are made under RCW 82.44.150, the state treasurer shall apportion to each city not imposing the sales and use tax under RCW 82.14.030(2) an amount from the municipal sales and use tax equalization account equal to the amount distributed to the city under RCW 82.44.155, multiplied by ~~((thirty-five-sixty-fifths))~~ **forty-five fifty-fifths**.

(3) Subsequent to the distributions under subsection (2) of this section, and at such times as distributions are made under RCW 82.44.150, the state treasurer shall apportion to each city imposing the sales and use tax under RCW 82.14.030(1) at the maximum rate and receiving less than seventy percent of the state-wide weighted average per capita level of revenues for all cities as determined by the department of revenue under subsection (1) of this section, an amount from the municipal sales and use tax equalization account sufficient, when added to the per capita level of revenues received the previous calendar year by the city, to equal seventy percent of the state-wide weighted average per capita level of revenues for all cities determined under subsection (1) of this section, subject to reduction under subsection (6) of this section.

(4) Subsequent to the distributions under subsection (3) of this section, and at such times as distributions are made under RCW 82.44.150, the state treasurer shall apportion to each city imposing the sales and use tax under RCW 82.14.030(2) at the maximum rate and receiving a distribution under subsection (3) of this section, a third distribution from the municipal sales and use tax equalization account. The distribution to each qualifying city shall be equal to the distribution to the city under subsection (3) of this section, subject to the reduction under subsection (6) of this section. To qualify for the distributions under this subsection, the city must impose the tax under RCW 82.14.030(2) for the entire calendar year. Cities imposing the tax for less than the full year shall qualify for prorated allocations under this subsection proportionate to the number of months of the year during which the tax is imposed.

(5) For a city with an official incorporation date after January 1, 1990, municipal sales and use tax equalization distributions shall be made according to the procedures in this subsection. Municipal sales and use tax equalization distributions to eligible new cities shall be made at the same time as distributions are made under subsections (3) and (4) of this section. The department of revenue shall follow the estimating procedures outlined in this subsection until the new city has received a full year's worth of revenues under RCW 82.14.030(1) as of the January municipal sales and use tax equalization distribution.

(a) Whether a newly incorporated city determined to receive funds under this subsection receives its first equalization payment at the January, April, July, or October municipal sales and use tax equalization distribution shall depend on the date the city first imposes the tax authorized under RCW 82.14.030(1).

(i) A newly incorporated city imposing the tax authorized under RCW 82.14.030(1) effective as of January 1st shall be eligible to receive funds under this subsection beginning with the April municipal sales and use tax equalization distribution of that year.

(ii) A newly incorporated city imposing the tax authorized under RCW 82.14.030(1) effective as of February 1st, March 1st, or April 1st shall be eligible to receive funds under this subsection beginning with the July municipal sales and use tax equalization distribution of that year.

(iii) A newly incorporated city imposing the tax authorized under RCW 82.14.030(1) effective as of May 1st, June 1st, or July 1st shall be eligible to receive funds under this subsection beginning with the October municipal sales and use tax equalization distribution of that year.

(iv) A newly incorporated city imposing the tax authorized under RCW 82.14.030(1) effective as of August 1st, September 1st, or October 1st shall be eligible to receive funds under this subsection beginning with the January municipal sales and use tax equalization distribution of the next year.

(v) A newly incorporated city imposing the tax authorized under RCW 82.14.030(1) effective as of November 1st or December 1st shall be eligible to receive funds under this subsection beginning with the April municipal sales and use tax equalization distribution of the next year.

(b) For purposes of calculating the amount of funds the new city should receive under this subsection, the department of revenue shall:

(i) Estimate the per capita amount of revenues from the tax authorized under RCW 82.14.030(1) that the new city would have received had the city received revenues from the tax the entire calendar year;

(ii) Calculate the amount provided under subsection (3) of this section based on the per capita revenues determined under (b)(i) of this subsection;

(iii) Prorate the amount determined under (b)(ii) of this subsection by the number of months the tax authorized under RCW 82.14.030(1) is imposed.

(c) A new city imposing the tax under RCW 82.14.030(2) at the maximum rate and receiving a distribution calculated under (b) of this subsection shall receive another distribution from the municipal sales and use tax equalization account. This distribution shall be equal to the calculation made under (b)(ii) of this subsection, prorated by the number of months the city imposes the tax authorized under RCW 82.14.030(2) at the full rate.

(d) The department of revenue shall advise the state treasurer of the amounts calculated under (b) and (c) of this subsection and the state treasurer shall distribute these amounts to the new city from the municipal sales and use tax equalization account subject to the limitations imposed in subsection (6) of this section.

(e) Revenues estimated under this subsection shall not affect the calculation of the state-wide weighted average per capita level of revenues for all cities made under subsection (1) of this section.

(6) If inadequate revenues exist in the municipal sales and use tax equalization account to make the distributions under subsection (3), (4), or (5) of this section, then the distributions under subsections (3), (4), and (5) of this section shall be reduced ratably among the qualifying cities. At such time during the year as additional funds accrue to the municipal sales and use tax equalization account, additional distributions shall be made under subsections (3), (4), and (5) of this section to the cities.

(7) If the level of revenues in the municipal sales and use tax equalization account exceeds the amount necessary to make the distributions under subsections (2) through (5) of this section, then the additional revenues shall be apportioned among the several cities within the state ratably on the basis of population as last determined by the office of financial management: PROVIDED, That no such distribution shall be made to those cities receiving a distribution under subsection (2) of this section.

NEW SECTION. Sec. 2. This act shall take effect July 1, 1996.

Passed the Senate February 7, 1996.
Passed the House February 28, 1996.
Approved by the Governor March 13, 1996.
Filed in Office of Secretary of State March 13, 1996.

CHAPTER 65

[Senate Bill 6366]

LEWIS AND CLARK TRAIL BICENTENNIAL COMMEMORATION

AN ACT Relating to the Lewis and Clark trail bicentennial commemoration; and adding a new section to chapter 27.34 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 27.34 RCW to read as follows:

(1) The Washington state historical society shall work with and provide leadership to the Lewis and Clark trail committee in planning activities to commemorate Lewis and Clark's epic exploration to the northwest United States.

(2) The society shall coordinate its planning efforts with the parks and recreation commission, which provides staffing and administrative assistance to the Lewis and Clark trail committee.

(3) The society shall work with other associations and state agencies to coordinate, develop, and disseminate information regarding the planned activities.

Passed the Senate January 26, 1996.
Passed the House February 29, 1996.
Approved by the Governor March 13, 1996.
Filed in Office of Secretary of State March 13, 1996.

CHAPTER 66

[Senate Bill 6425]

PORT DISTRICTS—PUBLIC LOANS—COMPUTATION OF INDEBTEDNESS

AN ACT Relating to public loans to port districts; and amending RCW 53.36.030.

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

Sec. 1. RCW 53.36.030 and 1995 c 102 s 1 are each amended to read as follows:

(1)(a) Except as provided in (b) of this subsection, a port district may at any time contract indebtedness or borrow money for district purposes and may issue general obligation bonds therefor not exceeding an amount, together with any existing indebtedness of the district not authorized by the voters, of one-fourth of one percent of the value of the taxable property in the district.

(b) Port districts having less than eight hundred million dollars in value of taxable property during 1991 may at any time contract indebtedness or borrow money for port district purposes and may issue general obligation bonds therefor not exceeding an amount, combined with existing indebtedness of the district not authorized by the voters, of three-eighths of one percent of the value of the taxable property in the district. Prior to contracting for any indebtedness authorized by this subsection (1)(b), the port district must have a comprehensive plan for harbor improvements or industrial development and a long-term financial plan approved by the department of community, trade, and economic development. The department of community, trade, and economic development is immune from any liability for its part in reviewing or approving port district's improvement or development plans, or financial plans. Any indebtedness authorized by this subsection (1)(b) may be used only to acquire or construct a facility, and, prior to contracting for such indebtedness, the port district must have a lease contract for a minimum of five years for the facility to be acquired or constructed by the debt.

(2) With the assent of three-fifths of the voters voting thereon at a general or special port election called for that purpose, a port district may contract indebtedness or borrow money for district purposes and may issue general obligation bonds therefor provided the total indebtedness of the district at any such time shall not exceed three-fourths of one percent of the value of the taxable property in the district.

(3) In addition to the indebtedness authorized under subsections (1) and (2) of this section, port districts having less than two hundred million dollars in value of taxable property and operating a municipal airport may at any time contract indebtedness or borrow money for airport capital improvement purposes and may issue general obligation bonds therefor not exceeding an additional one-eighth of one percent of the value of the taxable property in the district without authorization by the voters; and, with the assent of three-fifths of the voters voting thereon at a general or special port election called for that purpose, may contract indebtedness or borrow money for airport capital improvement purposes and may issue general obligation bonds therefor for an additional three-eighths

of one percent provided the total indebtedness of the district for all port purposes at any such time shall not exceed one and one-fourth percent of the value of the taxable property in the district.

(4) Any port district may issue general district bonds evidencing any indebtedness, payable at any time not exceeding fifty years from the date of the bonds. Any contract for indebtedness or borrowed money authorized by RCW 53.36.030(1)(b) shall not exceed twenty-five years. The bonds shall be issued and sold in accordance with chapter 39.46 RCW.

(5) Elections required under this section shall be held as provided in RCW 39.36.050.

(6) For the purpose of this section, "indebtedness of the district" shall not include any debt of a county-wide district with a population less than twenty-five hundred people when the debt is secured by a mortgage on property leased to the federal government; and the term "value of the taxable property" shall have the meaning set forth in RCW 39.36.015.

(7) This section does not apply to a loan made under a loan agreement under chapter 39.69 RCW, and a computation of indebtedness under this chapter must exclude the amount of a loan under such a loan agreement.

Passed the Senate February 8, 1996.
Passed the House February 29, 1996.
Approved by the Governor March 13, 1996.
Filed in Office of Secretary of State March 13, 1996.

CHAPTER 67

[Substitute Senate Bill 6466]

**REVIEW OF MINOR NEW SOURCES OF AIR POLLUTION BY
THE DEPARTMENT OF ECOLOGY**

AN ACT Relating to review of minor new sources of air pollution; and amending RCW 70.94.152.

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

Sec. 1. RCW 70.94.152 and 1993 c 252 s 4 are each amended to read as follows:

(1) The department of ecology or board of any authority may require notice of the establishment of any proposed new sources except single family and duplex dwellings or de minimis new sources as defined in rules adopted under subsection (11) of this section. The department of ecology or board may require such notice to be accompanied by a fee and determine the amount of such fee: PROVIDED, That the amount of the fee may not exceed the cost of reviewing the plans, specifications, and other information and administering such notice: PROVIDED FURTHER, That any such notice given or notice of construction application submitted to either the board or to the department of ecology shall preclude a further submittal of a duplicate application to any board or to the department of ecology.

(2) The department shall, after opportunity for public review and comment, adopt rules that establish a workload-driven process for determination and review of the fee covering the direct and indirect costs of processing a notice of construction application and a methodology for tracking revenues and expenditures. All new source fees collected by the department from permit program sources shall be deposited in the air operating permit account. All new source fees collected by the delegated local air authorities from permit program sources shall be deposited in the dedicated accounts of their respective treasuries. All new source fees collected by the department from nonpermit program sources shall be deposited in the air pollution control account. All new source fees collected by local air authorities from nonpermit program sources shall be deposited in their respective treasuries.

(3) Within thirty days of receipt of a notice of construction application, the department of ecology or board may require, as a condition precedent to the establishment of the new source or sources covered thereby, the submission of plans, specifications, and such other information as it deems necessary to determine whether the proposed new source will be in accord with applicable rules and regulations in force under this chapter. If on the basis of plans, specifications, or other information required under this section the department of ecology or board determines that the proposed new source will not be in accord with this chapter or the applicable ordinances, resolutions, rules, and regulations adopted under this chapter, it shall issue an order denying permission to establish the new source. If on the basis of plans, specifications, or other information required under this section, the department of ecology or board determines that the proposed new source will be in accord with this chapter, and the applicable rules and regulations adopted under this chapter, it shall issue an order of approval for the establishment of the new source or sources, which order may provide such conditions as are reasonably necessary to assure the maintenance of compliance with this chapter and the applicable rules and regulations adopted under this chapter. Every order of approval under this chapter must be reviewed prior to issuance by a professional engineer or staff under the supervision of a professional engineer in the employ of the department of ecology or board.

(4) The determination required under subsection (3) of this section shall include a determination of whether the operation of the new air contaminant source at the location proposed will cause any ambient air quality standard to be exceeded.

(5) New source review of a modification shall be limited to the emission unit or units proposed to be modified and the air contaminants whose emissions would increase as a result of the modification.

(6) Nothing in this section shall be construed to authorize the department of ecology or board to require the use of emission control equipment or other equipment, machinery, or devices of any particular type, from any particular supplier, or produced by any particular manufacturer.

(7) Any features, machines, and devices constituting parts of or called for by plans, specifications, or other information submitted pursuant to subsection (1) or (3) of this section shall be maintained and operate in good working order.

(8) The absence of an ordinance, resolution, rule, or regulation, or the failure to issue an order pursuant to this section shall not relieve any person from his or her obligation to comply with applicable emission control requirements or with any other provision of law.

(9) Within thirty days of receipt of a notice of construction application the department of ecology or board shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within sixty days of receipt of a complete application the department or board shall either (a) issue a final decision on the application, or (b) for those projects subject to public notice, initiate notice and comment on a proposed decision, followed as promptly as possible by a final decision. A person seeking approval to construct or modify a source that requires an operating permit may elect to integrate review of the operating permit application or amendment required by RCW 70.94.161 and the notice of construction application required by this section. A notice of construction application designated for integrated review shall be processed in accordance with operating permit program procedures and deadlines.

(10) ~~((Best available control technology (BACT) is required for new sources except where the federal clean air act requires compliance with the lowest achievable emission rate (LAER).))~~ A notice of construction approval required under subsection (3) of this section shall include a determination that the new source will achieve best available control technology. If more stringent controls are required under federal law, the notice of construction shall include a determination that the new source will achieve the more stringent federal requirements. Nothing in this subsection is intended to diminish other state authorities under this chapter.

(11) No person is required to submit a notice of construction or receive approval for a new source that is deemed by the department of ecology or board to have de minimis impact on air quality. The department of ecology shall adopt and periodically update rules identifying categories of de minimis new sources. The department of ecology may identify de minimus new sources by category, size, or emission thresholds.

(12) For purposes of this section, "de minimus new sources" means new sources with trivial levels of emissions that do not pose a threat to human health or the environment.

Passed the Senate February 13, 1996.

Passed the House February 28, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 68

[Substitute Senate Bill 6529]

RECREATIONAL FISHING AND HUNTING LICENSES—SIMPLIFICATION

AN ACT Relating to fish and wildlife department recreational fishing and hunting licenses; and creating a new section.

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

NEW SECTION. Sec. 1. (1) The fish and wildlife commission shall develop proposed legislation for the 1998 legislative session that will simplify, consolidate, and modernize the recreational fishing and hunting license program. The commission shall evaluate the benefits and drawbacks of eliminating the distinction between food fish and game fish and make recommendations to retain or revise the statutes accordingly. An analysis must also be made to determine the suitability of merging the wildlife fund with the general fund.

The goal of the license simplification request legislation shall be to reduce the number of recreational licenses required while not adversely affecting the revenue to the department. The purpose of license simplification is to remove unnecessary burdens placed upon the recreational clientele of the department and to ease the sale of licenses by the license dealers. Evaluations must be made of modernized computer-based systems utilized in other states.

The requirements for individual catch or harvest records must be reviewed, and the commission shall determine on a case-by-case basis if some of these individual data-keeping requirements can be simplified or eliminated.

The commission shall also evaluate methods to improve and simplify service to the license dealers, investigate technology improvements to improve the durability of license forms to the deteriorating effects of moisture and laundry soap, and develop recommendations for adjusting the price of licenses to reflect the changes due to inflation or the need for program changes.

The proposed legislation must be submitted to the appropriate legislative committees on or before December 1, 1997.

(2) The commission shall review the current license system to achieve better service to the public and for the dealers during the interim period until a more modern system is in place.

(3) The commission shall make changes in the current system to eliminate the fraudulent issuance of duplicate licenses and shall report back to the legislature on or before December 1, 1996, on the present system improvements and fraud elimination procedures.

Passed the Senate February 8, 1996.

Passed the House February 28, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 69

[Substitute Senate Bill 6572]

COMPETITIVE BIDDING SYSTEM—REVISION

AN ACT Relating to the competitive bidding system; amending RCW 43.19.1911, 39.19.020, and 39.19.030; and creating new sections.

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

NEW SECTION. Sec. 1. It is the intent of the legislature to preserve the integrity of the competitive bidding system for state contracts. This dictates that, after competitive bids have been opened, the agency must award the contract to the responsible bidder who submitted the lowest responsive bid and that only in limited compelling circumstances may the agency reject all bids and cancel the solicitation. Further, after opening the competitive bids, the agency may not reject all bids and enter into direct negotiations with the bidders to complete the acquisition.

Sec. 2. RCW 43.19.1911 and 1989 c 431 s 60 are each amended to read as follows:

~~(When purchases are made through competitive bidding, the contract shall be let to)~~ (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. 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, ~~((subject to))~~ the agency shall consider any preferences provided by law to Washington products and vendors and to RCW 43.19.704, ~~((taking))~~ 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 ~~((: PROVIDED, That whenever there is reason to believe that the lowest acceptable bid is not the best price obtainable, all bids may be rejected and the division of purchasing may call for new bids or enter into direct negotiations to achieve the best possible price))~~.

(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:

~~((1))~~ (a) The ability, capacity, and skill of the bidder to perform the contract or provide the service required;

~~((2))~~ (b) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;

~~((3))~~ (c) Whether the bidder can perform the contract within the time specified;

~~((4))~~ (d) The quality of performance of previous contracts or services;

~~((5))~~ (e) The previous and existing compliance by the bidder with laws relating to the contract or services;

~~((6))~~ (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.

NEW SECTION. Sec. 3. It is the intent of the legislature to ensure that the counting of the dollar value of an agency's or educational institution's expenditures to certified minority and women's business enterprises meaningfully reflects the actual financial participation of the certified businesses.

Sec. 4. RCW 39.19.020 and 1987 c 328 s 2 are each amended to read as follows:

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

(1) "Advisory committee" means the advisory committee on minority and women's business enterprises.

(2) "Broker" means a person that provides a bona fide service, such as professional, technical, consultant, brokerage, or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for performance of a contract.

(3) "Director" means the director of the office of minority and women's business enterprises.

~~((3))~~ (4) "Educational institutions" means the state universities, the regional universities, The Evergreen State College, and the community colleges.

~~((4))~~ (5) "Goals" means annual overall agency goals, expressed as a percentage of dollar volume, for participation by minority and women-owned and controlled businesses and shall not be construed as a minimum goal for any particular contract or for any particular geographical area. It is the intent of this chapter that such overall agency goals shall be achievable and shall be met on a contract-by-contract or class-of-contract basis.

~~((5))~~ (6) "Goods and/or services" includes professional services and all other goods and services.

~~((6))~~ (7) "Office" means the office of minority and women's business enterprises.

~~((7))~~ (8) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons.

~~((8))~~ (9) "Procurement" means the purchase, lease, or rental of any goods or services.

~~((9))~~ (10) "Public works" means all work, construction, highway and ferry construction, alteration, repair, or improvement other than ordinary maintenance, which a state agency or educational institution is authorized or required by law to undertake.

~~((10))~~ (11) "State agency" includes the state of Washington and all agencies, departments, offices, divisions, boards, commissions, and correctional and other types of institutions.

Sec. 5. RCW 39.19.030 and 1989 c 175 s 85 are each amended to read as follows:

There is hereby created the office of minority and women's business enterprises. The governor shall appoint a director for the office, subject to confirmation by the senate. The director may employ a deputy director and a confidential secretary, both of which shall be exempt under chapter 41.06 RCW, and such staff as are necessary to carry out the purposes of this chapter.

The office shall consult with the minority and women's business enterprises advisory committee to:

(1) Develop, plan, and implement programs to provide an opportunity for participation by qualified minority and women-owned and controlled businesses in public works and the process by which goods and services are procured by state agencies and educational institutions from the private sector;

(2) Develop a comprehensive plan insuring that qualified minority and women-owned and controlled businesses are provided an opportunity to participate in public contracts for public works and goods and services;

(3) Identify barriers to equal participation by qualified minority and women-owned and controlled businesses in all state agency and educational institution contracts;

(4) Establish annual overall goals for participation by qualified minority and women-owned and controlled businesses for each state agency and educational institution to be administered on a contract-by-contract basis or on a class-of-contracts basis;

(5) Develop and maintain a central minority and women's business enterprise certification list for all state agencies and educational institutions. No business is entitled to certification under this chapter unless it meets the definition of small business concern as established by the office. All applications for certification under this chapter shall be sworn under oath;

(6) Develop, implement, and operate a system of monitoring compliance with this chapter;

(7) Adopt rules under chapter 34.05 RCW, the Administrative Procedure Act, governing: (a) Establishment of agency goals; (b) development and maintenance of a central minority and women's business enterprise certification program, including a definition of "small business concern" which shall be consistent with the small business requirements defined under section 3 of the

Small Business Act, 15 U.S.C. Sec. 632, and its implementing regulations as guidance; (c) procedures for monitoring and enforcing compliance with goals, regulations, contract provisions, and this chapter; ~~((and))~~ (d) utilization of standard clauses by state agencies and educational institutions, as specified in RCW 39.19.050; and (e) determination of an agency's or educational institution's goal attainment consistent with the limitations of section 6 of this act:

(8) Submit an annual report to the governor and the legislature outlining the progress in implementing this chapter;

(9) Investigate complaints of violations of this chapter with the assistance of the involved agency or educational institution; and

(10) Cooperate and act jointly or by division of labor with the United States or other states, and with political subdivisions of the state of Washington and their respective minority, socially and economically disadvantaged and women business enterprise programs to carry out the purposes of this chapter. However, the power which may be exercised by the office under this subsection permits investigation and imposition of sanctions only if the investigation relates to a possible violation of chapter 39.19 RCW, and not to violation of local ordinances, rules, regulations, however denominated, adopted by political subdivisions of the state.

NEW SECTION. **Sec. 6.** For purposes of measuring an agency's or educational institution's goal attainment, any regulations adopted under RCW 39.19.030(7)(e) must provide that if a certified minority and women's business enterprise is a broker of goods or materials required under a contract, the contracting agency or educational institution may count only the dollar value of the fee or commission charged and not the value of goods or materials provided. The contracting agency or educational institution may, at its discretion, fix the dollar value of the fee or commission charged at either the actual dollar value of the fee or commission charged or at a standard percentage of the total value of the brokered goods, which percentage must reflect the fees or commissions generally paid to brokers for providing such services.

Passed the Senate February 8, 1996.

Passed the House February 28, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 70

[Engrossed Senate Bill 6635]

MINES—APPLICATION FEES FOR THOSE USED PRIMARILY FOR PUBLIC WORKS IN SMALLER COUNTIES

AN ACT Relating to application fees for mines used primarily for public works projects in counties with 1993 populations of less than twenty thousand; and amending RCW 78.44.085.

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

Sec. 1. RCW 78.44.085 and 1993 c 518 s 14 are each amended to read as follows:

(1) An applicant for a public or private reclamation permit shall pay an application fee to the department before being granted a surface mining permit. The amount of the application fee shall be six hundred fifty dollars.

(2) After June 30, 1993, each public or private permit holder shall pay an annual permit fee of six hundred fifty dollars. The annual permit fee shall be payable to the department on the first anniversary of the permit date and each year thereafter. Annual fees paid by a county for ~~((small))~~ mines used exclusively for public works projects ~~((shall be paid on those small mines from which the county elects to extract minerals in the next calendar year and))~~ and having less than seven acres of disturbed area per mine shall not exceed one thousand dollars. Annual fees are waived for all mines used primarily for public works projects if the mines are owned and primarily operated by counties with 1993 populations of less than twenty thousand persons.

(3) After July 1, 1995, the department may modify annual permit fees by rule if:

(a) The total annual permit fees are reasonably related to the approximate costs of administering the department's surface mining regulatory program;

(b) The annual fee does not exceed five thousand dollars; and

(c) The mines are small mines in remote areas that are used primarily for public service, then lower annual permit fees may be established.

(4) Appeals from any determination of the department shall not stay the requirement to pay any annual permit fee. Failure to pay the annual fee may constitute grounds for an order to suspend surface mining or cancellation of the reclamation permit as provided in this chapter.

(5) All fees collected by the department shall be deposited into the surface mining reclamation account.

(6) If the department delegates enforcement responsibilities to a county, city, or town, the department may allocate funds collected under this section to ~~((such))~~ the county, city, or town.

Passed the Senate February 13, 1996.

Passed the House February 28, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 71

[Engrossed Senate Bill 6651]

PUBLIC RECORDS—STORAGE ON COMPACT DISKS ALLOWED

AN ACT Relating to storage of public records on compact discs; and amending RCW 40.14.010.

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

Sec. 1. RCW 40.14.010 and 1982 c 36 s 3 are each amended to read as follows:

As used in this chapter, the term "public records" shall include any paper, correspondence, completed form, bound record book, photograph, film, sound recording, map drawing, machine-readable material, compact disc meeting current industry ISO specifications, or other document, regardless of physical form or characteristics, and including such copies thereof, that have been made by or received by any agency of the state of Washington in connection with the transaction of public business, and legislative records as described in RCW 40.14.100.

For the purposes of this chapter, public records shall be classified as follows:

(1) Official public records shall include all original vouchers, receipts, and other documents necessary to isolate and prove the validity of every transaction relating to the receipt, use, and disposition of all public property and public income from all sources whatsoever; all agreements and contracts to which the state of Washington or any agency thereof may be a party; all fidelity, surety, and performance bonds; all claims filed against the state of Washington or any agency thereof; all records or documents required by law to be filed with or kept by any agency of the state of Washington; all legislative records as defined in RCW 40.14.100; and all other documents or records determined by the records committee, created in RCW 40.14.050, to be official public records.

(2) Office files and memoranda include such records as correspondence, exhibits, drawings, maps, completed forms, or documents not above defined and classified as official public records; duplicate copies of official public records filed with any agency of the state of Washington; documents and reports made for the internal administration of the office to which they pertain but not required by law to be filed or kept with such agency; and other documents or records as determined by the records committee to be office files and memoranda.

Passed the Senate February 7, 1996.

Passed the House February 28, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 72

[Substitute Senate Bill 6725]

**ELECTRICAL SWITCHGEAR AND CONTROL APPARATUS—EXEMPTION FROM
REGULATION BY STATE BOARD OF BOILER RULES**

AN ACT Relating to exempting electrical switchgear and control apparatus from chapter 70.79 RCW; and amending RCW 70.79.080.

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

Sec. 1. RCW 70.79.080 and 1994 c 64 s 2 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 ambient temperature;

(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 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.

Passed the Senate February 12, 1996.

Passed the House February 28, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 73

[Engrossed Senate Bill 6776]

FLOOD-DAMAGED SHORT-LINE OR LIGHT-DENSITY RAILROADS—
EMERGENCY GRANTS

AN ACT Relating to emergency grants to flood-damaged short-line or light-density railroads; amending RCW 47.76.250; creating new sections; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds that damage to light-density rail lines caused by recent flooding threatens public safety and the economic survival of several rail lines in the state. Therefore, the legislature intends to make an emergency exception to its policy of providing only loans to privately held rail lines. It is the further intent of the legislature that once the damages caused by the recent flooding have been sufficiently mitigated to restore these rail lines to safe operation, this emergency exception expires.

Sec. 2. RCW 47.76.250 and 1995 c 380 s 6 are each amended to read as follows:

(1) The essential rail assistance account is created in the state treasury. Moneys in the account may be appropriated only for the purposes specified in this section.

(2) Moneys appropriated from the account to the department of transportation may be used by the department or distributed by the department to cities, county rail districts, counties, economic development councils, and port districts for the purpose of:

- (a) Acquiring, rebuilding, rehabilitating, or improving rail lines;
- (b) Purchasing or rehabilitating railroad equipment necessary to maintain essential rail service;
- (c) Constructing railroad improvements to mitigate port access or mainline congestion;
- (d) Construction of loading facilities to increase business on light density lines or to mitigate the impacts of abandonment;
- (e) Preservation, including operation, of light density lines, as identified by the Washington state department of transportation, in compliance with this chapter; or
- (f) Preserving rail corridors for future rail purposes by purchase of rights of way. The department shall first pursue transportation enhancement program funds, available under the federal surface transportation program, to the greatest extent practicable to preserve rail corridors. Purchase of rights of way may include track, bridges, and associated elements, and must meet the following criteria:

- (i) The right of way has been identified and evaluated in the state rail plan prepared under this chapter;
- (ii) The right of way may be or has been abandoned; and
- (iii) The right of way has potential for future rail service.

(3) The department or the participating local jurisdiction is responsible for maintaining any right of way acquired under this chapter, including provisions for drainage management, fire and weed control, and liability associated with ownership.

(4) Nothing in this section impairs the reversionary rights of abutting landowners, if any, without just compensation.

(5) The department, cities, county rail districts, counties, and port districts may grant franchises to private railroads for the right to operate on lines acquired under this chapter.

(6) The department, cities, county rail districts, counties, and port districts may grant trackage rights over rail lines acquired under this chapter.

(7) If rail lines or rail rights of way are used by county rail districts, port districts, state agencies, or other public agencies for the purposes of rail operations and are later abandoned, the rail lines or rail rights of way cannot be used for any other purposes without the consent of the underlying fee title holder or reversionary rights holder, or until compensation has been made to the underlying fee title holder or reversionary rights holder.

(8) The department of transportation shall develop criteria for prioritizing freight rail projects that meet the minimum eligibility requirements for state assistance under RCW 47.76.240. The department shall develop criteria in consultation with the Washington state freight rail policy advisory committee. Project criteria should consider the level of local financial commitment to the project as well as cost/benefit ratio. Counties, local communities, railroads, shippers, and others who benefit from the project should participate financially to the greatest (~~extend-extend~~) extent practicable.

(9) Moneys received by the department from franchise fees, trackage rights fees, and loan payments shall be redeposited in the essential rail assistance account. Repayment of loans made under this section shall occur within a period not longer than fifteen years, as set by the department. The repayment schedule and rate of interest, if any, shall be determined before the distribution of the moneys.

(10) The state shall maintain a contingent interest in any equipment, property, rail line, or facility that has outstanding grants or loans. The owner may not use the line as collateral, remove track, bridges, or associated elements for salvage, or use it in any other manner subordinating the state's interest without permission from the department.

(11) Moneys distributed under this chapter should be provided as loans wherever practicable. Except as provided by section 3 of this act, for improvements on or to privately owned railroads, railroad property, or other private property, moneys distributed shall be provided solely as loans.

NEW SECTION. Sec. 3. The department of transportation may, for the period ending December 31, 1996, provide financial grants to short-line or light-density railroads to repair damages and to restore lines disrupted by storms and subsequent floods that occurred in February 1996.

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 the Senate February 29, 1996.

Passed the House March 7, 1996.

Approved by the Governor March 13, 1996.

Filed in Office of Secretary of State March 13, 1996.

CHAPTER 74

[House Bill 2638]

DEPARTMENT OF INFORMATION SERVICES—SUNSET REPEAL

AN ACT Relating to repeal of the sunset of the department of information services; and repealing RCW 43.131.353 and 43.131.354.

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 43.131.353 and 1992 c 20 s 12 & 1987 c 504 s 22; and
- (2) RCW 43.131.354 and 1992 c 20 s 13 & 1987 c 504 s 24.

Passed the House February 6, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 15, 1996.

Filed in Office of Secretary of State March 15, 1996.

CHAPTER 75

[Substitute House Bill 1008]

WINE AND BEER EDUCATOR'S LICENSES

AN ACT Relating to wine and beer educator's licenses; and adding a new section to chapter 66.24 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 66.24 RCW to read as follows:

(1) The board shall issue to an individual or corporation, not otherwise licensed by the board, an annual educator's license that permits the licensee to sell table wine or malt liquor by the glass for the purposes of conducting educational wine, beer, or wine and beer testings at one-day events, except as provided in subsection (4) of this section.

(2) A licensee under this section may purchase table wine for testings directly from a licensed wine wholesaler or beer from a licensed beer wholesaler. The license may not allow for the sale of wine by the bottle or beer by the bottle, can, or other-sized container intended for off-premises consumption. The licensee shall maintain accurate records including the listing of wine or beer diverted for personal use following an event.

(3) The cost of a license under this section is two hundred dollars with an additional ten dollars to be paid for each one-day event license for which the license is to be used.

(4) A special, extended event license for an activity such as a fair, convention, or festival for no more than five continuous days may be obtained by the licensee upon payment of a fee of fifty dollars.

(5) With the application to use the license for a specific event, the licensee must provide a letter of approval from the local law enforcement administrator having jurisdiction where the activity will be conducted. Local law enforcement may place restrictions on the use of the license at an event, and the approval letter must be on agency letterhead and must include all of these restrictions.

(6) An applicant must apply for an annual license under this section at least forty-five days before the date of the applicant's first event. An applicant must make a request for a license for an individual event at least thirty days before the event.

(7) This section shall expire on July 1, 1998.

Passed the House January 10, 1996.

Passed the Senate February 27, 1996.

Approved by the Governor March 15, 1996.

Filed in Office of Secretary of State March 15, 1996.

CHAPTER 76

[Substitute House Bill 1018]

LIMITED PARTNERSHIP TERMINATIONS

AN ACT Relating to the withdrawal from and the term of a limited partnership; and amending RCW 25.10.020, 25.10.330, and 25.10.440.

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

Sec. 1. RCW 25.10.020 and 1994 c 211 s 1309 are each amended to read as follows:

(1) The name of each limited partnership formed pursuant to this chapter as set forth in its certificate of limited partnership:

(a) Shall contain the words "limited partnership" or the abbreviation "L.P.";

(b) May not contain the name of a limited partner unless (i) it is also the name of a general partner, or the corporate name of a corporate general partner, or (ii) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(c) May not contain any of the following words or phrases: "Bank", "banking", "banker", "trust", "cooperative"; or any combination of the words "industrial" and "loan"; or any combination of any two or more of the words "building", "savings", "loan", "home", "association" and "society"; or any other words or phrases prohibited by any statute of this state;

(d) Except as authorized by subsections (2) and (3) of this section, must be distinguishable upon the records of the secretary of state from:

(i) The name or reserved name of a foreign or domestic limited partnership;
 (ii) The name of any limited liability company reserved, registered, or formed under the laws of this state or qualified to do business as a foreign limited liability company in this state;

(iii) The corporate name of a corporation incorporated or authorized to transact business in this state;

~~((iii))~~ (iv) A corporate name reserved or registered under RCW 23B.04.020 or 23B.04.030;

~~((iv))~~ (v) The fictitious name adopted pursuant to RCW 23B.15.060 by a foreign corporation authorized to transact business in this state because its real name is unavailable; and

~~((v))~~ (vi) The corporate name of a not-for-profit corporation incorporated or authorized to conduct affairs in this state~~((and~~

~~—(vi) The name of a limited liability company organized or authorized to transact business in this state)).~~

(2) A limited partnership may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records from one or more of the names described in subsection (1) of this section. The secretary of state shall authorize use of the name applied for if:

(a) The other limited partnership, corporation, or holder consents to the use in writing and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying limited partnership; or

(b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(3) A limited partnership may use the name, including the fictitious name, of another domestic or foreign limited partnership, limited liability company, or corporation that is used in this state if the other limited partnership, limited liability company, or corporation is organized, incorporated, or authorized to transact business in this state and the proposed user limited partnership:

(a) Has merged with the other limited partnership, limited liability company, or corporation; or

(b) Results from reorganization with the other limited partnership, limited liability company, or corporation.

(4) A name shall not be considered distinguishable upon the records of the secretary of state by virtue of:

(a) A variation in the designation, under subsection (1)(a) of this section, used for the same name;

(b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;

(c) Punctuation, capitalization, or special characters or symbols in the same name; or

(d) Use of abbreviation or the plural form of a word in the same name.

(5) This title does not control the use of assumed business names or "trade names."

Sec. 2. RCW 25.10.330 and 1987 c 55 s 25 are each amended to read as follows:

A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in and in accordance with the partnership agreement. If the partnership agreement does not specify the time or the events upon the happening of which a limited partner may withdraw ~~((or a definite))~~, a limited partner may not withdraw prior to the time for the dissolution and winding up of the limited partnership~~((, a limited partner may withdraw upon not less than six months' prior written notice to each general partner at that partner's address on the books of the limited partnership at its office in this state))~~.

Sec. 3. RCW 25.10.440 and 1991 c 269 s 30 are each amended to read as follows:

A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(1) At the ~~((time))~~ date specified in the certificate of limited partnership as amended from time to time, or if no date is specified, at a date which is thirty years after the effective date of filing the original certificate of limited partnership;

(2) Upon the happening of events specified in the partnership agreement;

(3) Written consent of all partners;

(4) An event of withdrawal of a general partner unless at the time there is at least one other general partner and the partnership agreement permits the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if, within ninety days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired;

(5) Entry of a decree of judicial dissolution under RCW 25.10.450; or

(6) Administrative dissolution under RCW 25.10.455.

Passed the House March 4, 1996.

Passed the Senate February 29, 1996.

Approved by the Governor March 15, 1996.

Filed in Office of Secretary of State March 15, 1996.

CHAPTER 77

[Second Substitute House Bill 1182]

UNIFORM COMMERCIAL CODE REVISIONS

AN ACT Relating to the uniform commercial code; amending RCW 62A.2-511, 62A.3-112, 62A.9-203, 62A.9-206, 62A.9-302, and 62A.9-312; and reenacting and amending RCW 62A.1-201. Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 62A.1-201 and 1993 c 230 s 2A-602 and 1993 c 229 s 1 are each reenacted and amended to read as follows:

Subject to additional definitions contained in the subsequent Articles of this Title which are applicable to specific Articles or Parts thereof, and unless the context otherwise requires, in this Title:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Title (RCW 62A.1-205 ~~((and))~~, RCW 62A.2-208, and RCW 62A.2A-207). Whether an agreement has legal consequences is determined by the provisions of this Title, if applicable; otherwise by the law of contracts (RCW 62A.1-103). (Compare "Contract".)

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but

does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this Title and any other applicable rules of law. (Compare "Agreement".)

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this Title to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder" with respect to a document of title means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his or her debts in the ordinary course of business or cannot pay his or her debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

(25) A person has "notice" of a fact when

(a) he or she has actual knowledge of it; or

(b) he or she has received a notice or notification of it; or

(c) from all the facts and circumstances known to him or her at the time in question he or she has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he or she has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this Title.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when

(a) it comes to his or her attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him or her as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his or her attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his or her regular duties or unless he or she has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within this Title.

(30) "Person" includes an individual or an organization (See RCW 62A.1-102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation, except for lease-purchase agreements under chapter 63.19 RCW. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (RCW 62A.2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper which is subject to Article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under RCW 62A.2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Article 9. Unless a consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment in any event is subject to the provisions on consignment sales (RCW 62A.2-326).

Whether a transaction creates a lease or security interest is determined by the facts of each case. However, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:

(a) The original term of the lease is equal to or greater than the remaining economic life of the goods;

(b) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(c) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(d) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that:

(a) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(b) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods;

(c) The lessee has an option to renew the lease or to become the owner of the goods;

(d) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed;

(e) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed; or

(f) The amount of rental payments may or will be increased or decreased by reference to the amount realized by the lessor upon sale or disposition of the goods.

For purposes of this subsection (37):

(a) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(b) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(c) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The

receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (RCW 62A.3-303, RCW ((62A.4-208)) 62A.4-210, and RCW ((62A.4-209)) 62A.4-211) a person gives "value" for rights if he or she acquires them

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim;

or

(c) by accepting delivery pursuant to a pre-existing contract for purchase;

or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

Sec. 2. RCW 62A.2-511 and 1965 ex.s. c 157 s 2-511 are each amended to read as follows:

(1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this Title on the effect of an instrument on an obligation (RCW ((62A.3-802)) 62A.3-310), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

Sec. 3. RCW 62A.3-112 and 1993 c 229 s 14 are each amended to read as follows:

(a) Unless otherwise provided in the instrument or in RCW 19.52.010, (i) an instrument is not payable with interest, and (ii) interest on an interest-bearing instrument is payable from the date of the instrument.

(b) Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest, but the amount of interest payable cannot be ascertained from the description, then except as otherwise provided in RCW 19.52.010, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues.

Sec. 4. RCW 62A.9-203 and 1995 c 48 s 63 are each amended to read as follows:

(1) Subject to the provisions of RCW ((~~62A.4-208~~) 62A.4-210) on the security interest of a collecting bank, RCW 62A.9-115 and 62A.9-116 on security interests in investment property, and RCW 62A.9-113 on a security interest arising under the Article on Sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(a) the collateral is in the possession of the secured party pursuant to agreement, the collateral is investment property and the secured party has control pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;

(b) value has been given; and

(c) the debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by RCW 62A.9-306.

(4) A transaction, although subject to this Article, is also subject to chapters 31.04, 31.12, 31.16, 31.20, and 31.24 RCW, and in the case of conflict between the provisions of this Article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

Sec. 5. RCW 62A.9-206 and 1965 ex.s. c 157 s 9-206 are each amended to read as follows:

(1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have

against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the Article on ~~((Commercial Paper))~~ Negotiable Instruments (Article 3).

(2) When a seller retains a purchase money security interest in goods the Article on Sales (Article 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties.

Sec. 6. RCW 62A.9-302 and 1995 c 48 s 65 are each amended to read as follows:

(1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under RCW 62A.9-305;

(b) a security interest temporarily perfected in instruments, certificated securities, or documents without delivery under RCW 62A.9-304 or in proceeds for a ten day period under RCW 62A.9-306;

(c) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(d) a purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered and other property subject to subsection (3) of this section; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in RCW 62A.9-313;

(e) a security interest of a collecting bank ~~((RCW 62A.4-208))~~ (RCW 62A.4-210) or arising under the Articles on Sales and Leases (RCW 62A.9-113) or covered in subsection (3) of this section;

(f) an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

(g) a security interest in investment property which is perfected without filing under RCW 62A.9-115 or 62A.9-116.

(2) If a secured party assigns a perfected security interest, no filing under this Article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this Article is not necessary or effective to perfect a security interest in property subject to

(a) a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this Article for filing of the security interest; or

(b) the following statute of this state: RCW 46.12.095 or 88.02.070; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this Article (Part 4) apply to a security interest in that collateral created by him as debtor; or

(c) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (subsection (2) of RCW 62A.9-103).

(4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this Article, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in RCW 62A.9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this Article.

(5) Part 4 of this Article does not apply to a security interest in property of any description created by a deed of trust or mortgage made by any corporation primarily engaged in the railroad or street railway business, the furnishing of telephone or telegraph service, the transmission of oil, gas or petroleum products by pipe line, or the production, transmission or distribution of electricity, steam, gas or water, but such security interest may be perfected under this Article by filing such deed of trust or mortgage with the department of licensing. When so filed, such instrument shall remain effective until terminated, without the need for filing a continuation statement. Assignments and releases of such instruments may also be filed with the department of licensing. The director of licensing shall be a filing officer for the foregoing purposes.

Sec. 7. RCW 62A.9-312 and 1995 c 48 s 70 are each amended to read as follows:

(1) The rules of priority stated in other sections of this Part and in the following sections shall govern when applicable: ~~RCW ((62A.4-208))~~ 62A.4-210 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; RCW 62A.9-103 on security interests related to other jurisdictions; RCW 62A.9-114 on consignments; RCW 62A.9-115 on security interests in investment property.

(2) Conflicting priorities between security interests in crops shall be governed by chapter 60.11 RCW.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if

(a) the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) the purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the twenty-one day period where the purchase money security interest is temporarily perfected without filing or possession (subsection (5) of RCW 62A.9-304); and

(c) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within twenty days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under RCW 62A.9-115 or 62A.9-116 on investment property, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

Passed the House January 19, 1996.

Passed the Senate February 27, 1996.

Approved by the Governor March 15, 1996.

Filed in Office of Secretary of State March 15, 1996.

CHAPTER 78

[House Bill 1302]

FOOD STAMPS—CRIMINAL PENALTIES

AN ACT Relating to crimes involving food stamps; amending RCW 9.91.140; and prescribing penalties.

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

Sec. 1. RCW 9A.20.021 and 1988 c 62 s 1 are each amended to read as follows:

(1) A person who sells food ~~((coupons))~~ stamps obtained through the program established under RCW 74.04.500, or food purchased therewith, is guilty of a gross misdemeanor under RCW 9A.20.021 if the value of the ~~((coupons))~~ stamps or food transferred exceeds one hundred dollars, and is guilty of a misdemeanor under RCW 9A.20.021 if the value of the ~~((coupons))~~ stamps or food transferred is one hundred dollars or less.

(2) A person who purchases, or who otherwise acquires and sells, or who traffics in, food ~~((coupons issued to another person through the program established under RCW 74.04.500))~~ stamps as defined by the federal food stamp act, as amended, (7 U.S.C. Sec. 2011 et seq.), is guilty of a class C felony under RCW 9A.20.021 if the face value of the ~~((coupons))~~ stamps exceeds one hundred dollars, and is guilty of a gross misdemeanor under RCW 9A.20.021 if the face value of the ~~((coupons))~~ stamps is one hundred dollars or less.

(3) A person who, in violation of 7 U.S.C. Sec. 2024(c), obtains and presents food ~~((coupons))~~ stamps as defined by the federal food stamp act, as amended, (7 U.S.C. Sec. 2011 et seq.), for redemption or causes such ~~((coupons))~~ stamps to be presented for redemption through the program established under RCW 74.04.500 is guilty of a class C felony under RCW 9A.20.021.

Passed the House January 10, 1996.

Passed the Senate February 27, 1996.

Approved by the Governor March 15, 1996.

Filed in Office of Secretary of State March 15, 1996.

CHAPTER 79

[Engrossed House Bill 1647]

EMPLOYMENT SECURITY DATA SHARING

AN ACT Relating to the authority of the employment security department to share data; amending RCW 50.13.060 and 50.13.080; creating a new section; and providing an effective date.

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

Sec. 1. RCW 50.13.060 and 1993 c 281 s 59 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 ~~((7))~~ (8) 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.

(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) 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.

~~((7))~~ (8) 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.

~~((8))~~ (9) 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.

Sec. 2. RCW 50.13.080 and 1977 ex.s. c 153 s 8 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~~((5))~~(9).

(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 ~~((hundred))~~ 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.

NEW SECTION. Sec. 3. 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 hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall 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. 4. This act shall take effect July 1, 1996.

Passed the House March 2, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 15, 1996.

Filed in Office of Secretary of State March 15, 1996.

CHAPTER 80

[Engrossed House Bill 2133]

AGRICULTURAL BUSINESS AND COMMODITY COMMISSION—RECORD DISCLOSURE

AN ACT Relating to disclosure of agricultural business and commodity commission records; amending RCW 42.17.310; adding a new section to chapter 43.23 RCW; and adding a new section to chapter 42.17 RCW.

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

Sec. 1. RCW 42.17.310 and 1995 c 267 s 6 are each 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 82.32.330 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, 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 chapter 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 and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(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.

(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 18.130.140 maintained in the files of the department shall automatically be withheld from public inspection and copying if the provider has provided the department with an accurate alternative or business address and telephone number.

(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, regardless of which agency is in possession of the information and documents.

(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.

NEW SECTION. Sec. 2. A new section is added to chapter 43.23 RCW to read as follows:

Except for release of statistical information not descriptive of any readily identifiable person or persons, all financial and commercial information and records supplied by persons to the department with respect to export market development projects shall be kept confidential unless confidentiality is waived by the party supplying the information. For purposes of this section, persons include any natural person, joint venture, firm, partnership or association, private or public corporation, or governmental entity.

NEW SECTION. Sec. 3. A new section is added to chapter 42.17 RCW to read as follows:

The following agricultural business and commodity commission records are exempt from the disclosure requirements of this chapter:

(1) Production or sales records required to determine assessment levels and actual assessment payments to commodity commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, and 16.67 RCW or required by the department of agriculture under RCW 15.13.310(4) or 15.49.370(6);

(2) 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; and

(3) Financial and commereial information and records supplied by persons to commodity commissions formed under chapters 15.24, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, and 16.67 RCW with respect to domestic or export marketing activities or individual producer's production information.

Passed the House January 31, 1996.

Passed the Senate March 1, 1996.

Approved by the Governor March 15, 1996.

Filed in Office of Secretary of State March 15, 1996.

CHAPTER 81

[House Bill 2152]

ADULT FAMILY HOME PROVIDERS—REGISTRATION REQUIREMENTS

AN ACT Relating to registration of adult family home providers and resident managers; amending RCW 70.128.120, 18.48.010, and 18.48.020; reenacting and amending RCW 18.130.040; adding new sections to chapter 18.48 RCW; and providing an effective date.

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

Sec. 1. RCW 70.128.120 and 1995 1st sp.s. c 18 s 117 are each amended to read as follows:

~~((An))~~ Each adult family home provider and each resident manager shall have the following minimum qualifications:

- (1) Twenty-one years of age or older;
- (2) Good moral and responsible character and reputation;
- (3) Literacy;
- (4) Management and administrative ability to carry out the requirements of this chapter;
- (5) Satisfactory completion of department-approved initial training and continuing education training as specified by the department in rule;
- (6) Satisfactory completion of department-approved, or equivalent, special care training before a provider may provide special care services to a resident;
- (7) Not been convicted of any crime listed in RCW 43.43.830 and 43.43.842; and
- (8) Effective July 1, 1996, registered with the department of health.

Sec. 2. RCW 18.48.010 and 1995 c 260 s 7 are each amended to read as follows:

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

- (1) "Secretary" means the secretary of the department of health.
- (2) "Adult family home" means a regular family abode of a person or persons who provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.
- (3) ~~("Operator" means a provider who is licensed under chapter 70.128 RCW to operate an adult family home.~~
- ~~(4) "Person" includes an individual, firm, corporation, partnership, or association))~~ "Resident manager" means a person who is employed or otherwise is contracted with by the provider to manage the adult family home.

(4) "Provider" means any person who is licensed under chapter 70.128 RCW to operate an adult family home. For the purposes of this section, "person" means any individual, partnership, corporation, association, or limited liability company.

NEW SECTION. **Sec. 3.** A new section is added to chapter 18.48 RCW to read as follows:

A provider who operates more than one adult family home must register for each separate location.

Sec. 4. RCW 18.48.020 and 1995 c 260 s 8 are each amended to read as follows:

~~((A person who operates an adult family home shall register the home with the secretary. Each separate location of the business of an adult family home shall have a separate registration.))~~ (1) The secretary shall register adult family home providers and resident managers.

(2) The secretary, by policy or rule, shall define terms and establish forms and procedures for ((the processing of operator)) registration applications, including the payment of registration fees pursuant to RCW 43.70.250. An application for an adult family home ((operator)) resident manager or provider registration shall include at least the following information:

~~((1))~~ (a) ((The names and addresses of the operator of the adult family home)) Name and address; and

~~((2))~~ (b) If the ((operator)) provider is a corporation, copies of its articles of incorporation and current bylaws, together with the names and addresses of its officers and directors.

~~((A registration issued by the secretary in accordance with this section shall remain effective for a period of one year from the date of its issuance unless the registration is revoked or suspended pursuant to RCW 18.48.030, or unless))~~

(3) The secretary shall adopt policies or rules to establish the registration periods, fees, and procedures. If the adult family home is sold or ownership or management is transferred, ((in which case)) the registration ((of the home)) shall be voided and the ((operator)) provider and resident manager shall apply for a new registration.

Sec. 5. RCW 18.130.040 and 1995 c 336 s 2, 1995 c 323 s 16, 1995 c 260 s 11, and 1995 c 1 s 19 (Initiative Measure No. 607) are each reenacted and amended to read as follows:

(1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

- (i) Dispensing opticians licensed under chapter 18.34 RCW;
- (ii) Naturopaths licensed under chapter 18.36A RCW;
- (iii) Midwives licensed under chapter 18.50 RCW;
- (iv) Ocularists licensed under chapter 18.55 RCW;
- (v) Massage operators and businesses licensed under chapter 18.108 RCW;
- (vi) Dental hygienists licensed under chapter 18.29 RCW;
- (vii) Acupuncturists licensed under chapter 18.06 RCW;

(viii) Radiologic technologists certified and x-ray technicians registered under chapter 18.84 RCW;

(ix) Respiratory care practitioners certified under chapter 18.89 RCW;

(x) Persons registered or certified under chapter 18.19 RCW;

(xi) Persons registered as nursing pool operators under chapter 18.52C RCW;

(xii) Nursing assistants registered or certified under chapter 18.79 RCW;

(xiii) Health care assistants certified under chapter 18.135 RCW;

(xiv) Dietitians and nutritionists certified under chapter 18.138 RCW;

(xv) Sex offender treatment providers certified under chapter 18.155 RCW;

(xvi) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;

(xvii) Persons registered as adult family home (~~operators~~) providers and resident managers under RCW 18.48.020; and

(xviii) Denturists licensed under chapter 18.30 RCW.

(b) The boards and commissions having authority under this chapter are as follows:

(i) The podiatric medical board as established in chapter 18.22 RCW;

(ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;

(iii) The dental quality assurance commission as established in chapter 18.32 RCW;

(iv) The board on fitting and dispensing of hearing aids as established in chapter 18.35 RCW;

(v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;

(viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW; and

(xiv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered pursuant to RCW 18.130.160 by the disciplining authority.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the uniform disciplinary act, among the disciplining authorities listed in subsection (2) of this section.

NEW SECTION. Sec. 6. A new section is added to chapter 18.48 RCW to read as follows:

A multiple facility operator must successfully demonstrate to the department financial solvency and management experience for the homes under its ownership and the ability to meet other relevant safety, health, and operating standards pertaining to the operation of multiple homes, including ways to mitigate the potential impact of vehicular traffic related to the operation of the homes.

NEW SECTION. Sec. 7. This act shall take effect July 1, 1996.

Passed the House March 4, 1996.

Passed the Senate February 29, 1996.

Approved by the Governor March 15, 1996.

Filed in Office of Secretary of State March 15, 1996.

CHAPTER 82

[House Bill 2340]

SUPERIOR COURT JUDGES ASSOCIATION—ANNUAL MEETINGS

AN ACT Relating to the annual meeting of the association of superior court judges; and amending RCW 2.16.050.

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

Sec. 1. RCW 2.16.050 and 1955 c 38 s 10 are each amended to read as follows:

The association shall meet annually ~~((in July or August,))~~ at a time established by the association's governing board. ~~At ((which)) the meeting~~ officers shall be chosen for the ensuing year, and ~~((such))~~ other business transacted as may properly come before the association.

Passed the House February 5, 1996.

Passed the Senate March 1, 1996.

Approved by the Governor March 15, 1996.

Filed in Office of Secretary of State March 15, 1996.

CHAPTER 83

[House Bill 2494]

PRIVATE SCHOOLS—KINDERGARTEN

AN ACT Relating to including kindergarten in the approval of private schools; and amending RCW 28A.305.130.

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

Sec. 1. RCW 28A.305.130 and 1995 c 369 s 9 are each amended to read as follows:

In addition to any other powers and duties as provided by law, the state board of education shall:

(1) Approve or disapprove the program of courses leading to teacher, school administrator, and school specialized personnel certification offered by all institutions of higher education within the state which may be accredited and whose graduates may become entitled to receive such certification.

(2) Conduct every five years a review of the program approval standards, including the minimum standards for teachers, administrators, and educational staff associates, to reflect research findings and assure continued improvement of preparation programs for teachers, administrators, and educational staff associates.

(3) Investigate the character of the work required to be performed as a condition of entrance to and graduation from any institution of higher education in this state relative to such certification as provided for in subsection (1) above, and prepare a list of accredited institutions of higher education of this and other states whose graduates may be awarded such certificates.

(4)(a) The state board of education shall adopt rules to allow a teacher certification candidate to fulfill, in part, teacher preparation program requirements through work experience as a noncertificated teacher's aide in a public school or private school meeting the requirements of RCW 28A.195.010. The rules shall include, but are not limited to, limitations based upon the recency of the teacher preparation candidate's teacher aide work experience, and limitations based on the amount of work experience that may apply toward teacher preparation program requirements under this chapter.

(b) The state board of education shall require that at the time of the individual's enrollment in a teacher preparation program, the supervising teacher and the building principal shall jointly provide to the teacher preparation program of the higher education institution at which the teacher candidate is enrolled, a written assessment of the performance of the teacher candidate. The assessment shall contain such information as determined by the state board of

education and shall include: Evidence that at least fifty percent of the candidate's work as a noncertificated teacher's aide was involved in instructional activities with children under the supervision of a certificated teacher and that the candidate worked a minimum of six hundred thirty hours for one school year; the type of work performed by the candidate; and a recommendation of whether the candidate's work experience as a noncertificated teacher's aide should be substituted for teacher preparation program requirements. In compliance with such rules as may be established by the state board of education under this section, the teacher preparation programs of the higher education institution where the candidate is enrolled shall make the final determination as to what teacher preparation program requirements may be fulfilled by teacher aide work experience.

(5) Supervise the issuance of such certificates as provided for in subsection (1) above and specify the types and kinds of certificates necessary for the several departments of the common schools by rule or regulation in accordance with RCW 28A.410.010.

(6) Accredite, subject to such accreditation standards and procedures as may be established by the state board of education, all schools that apply for accreditation, and approve, subject to the provisions of RCW 28A.195.010, private schools carrying out a program for any or all of the grades ~~((one))~~ kindergarten through twelve: PROVIDED, That no private school may be approved that operates a kindergarten program only: PROVIDED FURTHER, That no public or private schools shall be placed upon the list of accredited schools so long as secret societies are knowingly allowed to exist among its students by school officials: PROVIDED FURTHER, That the state board may elect to require all or certain classifications of the public schools to conduct and participate in such pre-accreditation examination and evaluation processes as may now or hereafter be established by the board.

(7) Make rules and regulations governing the establishment in any existing nonhigh school district of any secondary program or any new grades in grades nine through twelve. Before any such program or any new grades are established the district must obtain prior approval of the state board.

(8) Prepare such outline of study for the common schools as the board shall deem necessary, and prescribe such rules for the general government of the common schools, as shall seek to secure regularity of attendance, prevent truancy, secure efficiency, and promote the true interest of the common schools.

(9) Continuously reevaluate courses and adopt and enforce regulations within the common schools so as to meet the educational needs of students and articulate with the institutions of higher education and unify the work of the public school system.

(10) Carry out board powers and duties relating to the organization and reorganization of school districts under RCW 28A.315.010 through 28A.315.680 and 28A.315.900.

(11) By rule or regulation promulgated upon the advice of the chief of the Washington state patrol, through the director of fire protection, provide for instruction of pupils in the public and private schools carrying out a K through 12 program, or any part thereof, so that in case of sudden emergency they shall be able to leave their particular school building in the shortest possible time or take such other steps as the particular emergency demands, and without confusion or panic; such rules and regulations shall be published and distributed to certificated personnel throughout the state whose duties shall include a familiarization therewith as well as the means of implementation thereof at their particular school.

(12) Hear and decide appeals as otherwise provided by law.

The state board of education is given the authority to promulgate information and rules dealing with the prevention of child abuse for purposes of curriculum use in the common schools.

Passed the House February 6, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 15, 1996.

Filed in Office of Secretary of State March 15, 1996.

CHAPTER 84

[House Bill 2495]

EDUCATIONAL PROGRAMS—JUVENILES IN DETENTION

AN ACT Relating to educational program for juveniles in detention facilities; and amending RCW 28A.190.010.

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

Sec. 1. RCW 28A.190.010 and 1990 c 33 s 170 are each amended to read as follows:

A program of education shall be provided for by the department of social and health services and the several school districts of the state for common school age persons who have been admitted to facilities staffed and maintained or contracted pursuant to RCW 13.40.320 by the department of social and health services for the education and treatment of juveniles who have been diverted or who have been found to have committed a juvenile offense. The division of duties, authority, and liabilities of the department of social and health services and the several school districts of the state respecting the educational programs shall be the same in all respects as set forth in RCW 28A.190.030 through 28A.190.060 respecting programs of education for state residential school residents. For the purposes of this section, the term "residential school" or "schools" as used in RCW 28A.190.030 through 28A.190.060 shall be construed to mean a facility staffed and maintained by the department of social and health services or a program established under RCW 13.40.320, for the education and treatment of juvenile offenders on probation or parole. Nothing in this section

shall prohibit a school district from utilizing the services of an educational service district subject to RCW 28A.310.180.

Passed the House February 8, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 15, 1996.

Filed in Office of Secretary of State March 15, 1996.

CHAPTER 85

[Substitute House Bill 2513]

INDUSTRIAL INSURANCE PREMIUMS—FAILURE TO PAY

AN ACT Relating to employers' failure to pay industrial insurance premiums; 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) The legislature finds that there is a continuing problem of employers illegally failing to pay industrial insurance premiums. When an employec of an illegally uninsured employer files a claim for benefits, the department of labor and industries is forced to pass on the cost of the benefits provided to other legally insured employers in the same risk classification. It is the intent of the legislature that a method should be devised to place the financial burden of paying for the industrial insurance benefits provided to the injured employee on the illegally uninsured employer.

(2) To find a method for placing the financial burden more fairly, a legislative joint task force shall review and make rcommendations for legislation. Issues that should be rcviewed include: (a) The number of employers who fail to obtain industrial insurance for their workers and the resulting cost to other employers in the state fund; (b) the number of these employers who also fail to pay other state taxcs generally required of employers and the resulting cost to the state for failure to pay; (c) methods of improving compliance with industrial insurance and other employer responsibilities under state law; and (d) any other issues considered relevant by the task force.

(3) The joint task force shall consist of eight members, one member from each caucus of the senate labor, commerce, and trade committee, appointed by the chair of the committee; one member from each caucus of the house of representatives commerce and labor committee, appointed by the chair of the committee; two members representing business, appointed jointly by the two committee chairs; and two members representing labor, appointed jointly by the two committee chairs. In addition, the department of labor and industries shall cooperate with the task force and maintain a liaison with the task force. The task force shall choose its chair from among its membership.

(4) The task force shall report its findings and recommendations to the appropriate committees of the legislature by Deccmber 1, 1996.

(5) This section shall expire June 1, 1997.

Passed the House February 9, 1996.
 Passed the Senate February 28, 1996.
 Approved by the Governor March 15, 1996.
 Filed in Office of Secretary of State March 15, 1996.

CHAPTER 86

[Substitute House Bill 2520]

TERMINAL SAFETY AUDIT FEES

AN ACT Relating to extending terminal safety audit fees to vehicles operating under the International Registration Plan; amending RCW 46.32.090; and providing an effective date.

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

Sec. 1. RCW 46.32.090 and 1995 c 272 s 2 are each amended to read as follows:

The department shall collect a fee of ten dollars, in addition to all other fees and taxes, for each motor vehicle base plated in the state of Washington that is subject to highway inspections and terminal audits under RCW 46.32.080, at the time of registration and renewal of registration under chapter 46.16 or 46.87 RCW, or the International Registration Plan if based plated in a foreign jurisdiction. The ten-dollar fee must be apportioned for those vehicles operating interstate and registered under the International Registration Plan. This fee does not apply to nonmotor powered vehicles, including trailers. Refunds will not be provided for fees paid under this section when the vehicle is no longer subject to RCW 46.32.080. The department may deduct an amount equal to the cost of administering the program. All remaining fees shall be deposited with the state treasurer and credited to the state patrol highway account of the motor vehicle fund.

NEW SECTION. Sec. 2. Section 1 of this act becomes effective with motor vehicle registration fees due or to become due January 1, 1997.

Passed the House February 5, 1996.
 Passed the Senate February 28, 1996.
 Approved by the Governor March 15, 1996.
 Filed in Office of Secretary of State March 15, 1996.

CHAPTER 87

[House Bill 2551]

LIMOUSINE AND FOR HIRE VEHICLE REGULATION

AN ACT Relating to the regulation of limousines and for hire vehicles carrying passengers; amending RCW 46.72.010; reenacting and amending RCW 46.63.020; adding new sections to chapter 46.04 RCW; adding new sections to chapter 46.72 RCW; adding a new chapter to Title 46 RCW; creating a new section; repealing RCW 81.90.010, 81.90.020, 81.90.030, 81.90.040, 81.90.050, 81.90.060, 81.90.070, 81.90.080, 81.90.090, 81.90.100, 81.90.110, 81.90.120, 81.90.130, 81.90.140, 81.90.150, and 81.90.160; 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:

"Chauffeur" means a person authorized by the department under this title to drive a limousine, and, if operating in a port district that regulates limousines under section 6(2) of this act, meets the licensing requirements of that port district.

NEW SECTION. Sec. 2. A new section is added to chapter 46.04 RCW to read as follows:

"Limousine" means a category of for hire, chauffeur-driven, unmarked, unmarked luxury motor vehicles that meets one of the following definitions:

(1) "Stretch limousine" means an automobile with a seating capacity of not more than twelve passengers in the rear seating area. The wheelbase has been factory or otherwise altered beyond the original manufacturer's specifications and meets standards of the United States department of transportation. The automobile is equipped with amenities in the rear seating area not normally found in passenger cars. These amenities may include, but are not limited to a television, musical sound system, telephone, ice storage, power-operated dividers, or additional interior lighting. The term "stretch limousine" excludes trucks, auto transportation companies, excursion buses, charter buses, minibuses, vehicles regulated under chapter 81.66 RCW, taxicabs, executive sedans, funeral home vehicles, station wagons, executive vans, vans, minivans, and courtesy vans.

(2) "Executive sedan" means a four-door sedan automobile having a seating capacity of not more than three passengers behind the driver and a minimum wheelbase of 114.5 inches. An executive sedan is equipped with standard factory amenities, and the wheelbase may not be altered. The term "executive sedan" excludes trucks, auto transportation companies, excursion buses, minibuses, charter buses, vehicles regulated under chapter 81.66 RCW, taxicabs, stretch limousines, funeral home vehicles, station wagons, executive vans, vans, minivans, and courtesy vans.

(3) "Executive van" means a van, minivan, or minibus having a seating capacity of not less than seven passengers and not more than fourteen passengers behind the driver. The term "executive van" excludes trucks, auto transportation companies, excursion buses, charter buses, vehicles regulated under chapter 81.66 RCW, taxicabs, stretch limousines, executive sedans, funeral home vehicles, station wagons, and courtesy vans.

(4) "Classic car" means a fine or distinctive, American or foreign automobile that is thirty years old or older.

NEW SECTION. Sec. 3. A new section is added to chapter 46.04 RCW to read as follows:

"Limousine carrier" means a person engaged in the transportation of a person or group of persons, who, under a single contract, acquires, on a prearranged basis, the use of a limousine to travel to a specified destination or

for a particular itinerary. The term "prearranged basis" refers to the manner in which the carrier dispatches vehicles.

NEW SECTION. Sec. 4. The legislature finds and declares that privately operated limousine transportation service is a vital part of the transportation system within the state and provides prearranged transportation services to state residents, tourists, and out-of-state business people. Consequently, the safety, reliability, and stability of privately operated limousine transportation services are matters of state-wide importance. The regulation of privately operated limousine transportation services is thus an essential governmental function. Therefore, it is the intent of the legislature to permit the department and a port district in a county with a population of one million or more to regulate limousine transportation services without liability under federal antitrust laws.

NEW SECTION. Sec. 5. All limousine carriers must operate from a main office and may have satellite offices. However, no office may be solely in a vehicle of any type. All arrangements for the carrier's services must be made through its offices and dispatched to the carrier's vehicles. Under no circumstances may customers or customers' agents make arrangements for immediate rental of a carrier's vehicle with the driver of the vehicle, even if the driver is an owner or officer of the company, with the single exception of stand-hail limousines only at a facility owned and operated by a port district in a county with a population of one million or more that are licensed and restricted by the rules and policies set forth by the port district.

NEW SECTION. Sec. 6. (1) The department, in conjunction with the Washington state patrol, shall regulate limousine carriers with respect to entry, safety of equipment, chauffeur qualifications, and operations. The department shall adopt rules and require such reports as are necessary to carry out this chapter.

(2) In addition, a port district in a county with a population of one million or more may regulate limousine carriers with respect to entry, safety of equipment, chauffeur qualifications, and operations. The county in which the port district is located may adopt ordinances and rules to assist the port district in enforcement of limousine regulations only at port facilities. In no event may this be construed to grant the county the authority to regulate limousines within its jurisdiction. The port district may not set limousine rates, but the limousine carriers shall file their rates and schedules with the port district.

(3) The department, a port district in a county with a population of at least one million, or a county in which the port district is located may enter into cooperative agreements for the joint regulation of limousines.

(4) The Washington state patrol shall annually conduct a vehicle inspection of each limousine licensed under this chapter, except when a port district regulates limousine carriers under subsection (2) of this section, that port district or county in which the port is located shall conduct the annual vehicle

inspection. The patrol, the port district, or the county may impose an annual vehicle inspection fee.

NEW SECTION. Sec. 7. Except when a port district regulates limousine carriers under section 6(2) of this act, the state of Washington fully occupies and preempts the entire field of regulation over limousine carriers as regulated by this chapter. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to limousine carriers that are consistent with this chapter.

NEW SECTION. Sec. 8. No limousine carrier may operate a limousine upon the highways of this state without first obtaining a business license from the department. The applicant shall forward an application for a business license to the department along with a fee established by rule. Upon approval of the application, the department shall issue a business license and unified business identifier authorizing the carrier to operate limousines upon the highways of this state.

In addition, a limousine carrier shall annually obtain, upon payment of the appropriate fee, a vehicle certificate for each limousine operated by the carrier.

NEW SECTION. Sec. 9. The department shall require limousine carriers to obtain and continue in effect, liability and property damage insurance from a company licensed to sell liability insurance in this state for each limousine used to transport persons for compensation.

The department shall fix the amount of the insurance policy or policies, giving consideration to the character and amount of traffic, the number of persons affected, and the degree of danger that the proposed operation involves. The limousine carrier must maintain the liability and property damage insurance in force on each motor-propelled vehicle while so used.

Failure to file and maintain in effect this insurance is a gross misdemeanor.

NEW SECTION. Sec. 10. If the limousine carrier substitutes a liability and property damage insurance policy after a vehicle certificate has been issued, a new vehicle certificate is required. The limousine carrier shall submit the substituted policy to the department for approval, together with a fee. If the department approves the substituted policy, the department shall issue a new vehicle certificate.

If a vehicle certificate has been lost, destroyed, or stolen, a duplicate vehicle certificate may be obtained by filing an affidavit of loss and paying a fee. A limousine carrier who operates a vehicle without first having received a vehicle certificate as required by this chapter is guilty of a misdemeanor on the first offense and a gross misdemeanor on a second or subsequent offense.

NEW SECTION. Sec. 11. (1) No limousine carrier may advertise without listing the carrier's unified business identifier issued by the department in the advertisement and specifying the type of service offered as provided in section 2 of this act. No limousine carrier may advertise or hold itself out to the public as providing taxicab transportation services.

(2) All advertising, contracts, correspondence, cards, signs, posters, papers, and documents that show a limousine carrier's name or address shall list the carrier's unified business identifier and the type of service offered. The alphabetized listing of limousine carriers appearing in the advertising sections of telephone books or other directories and all advertising that shows the carrier's name or address must show the carrier's current unified business identifier.

(3) Advertising by electronic transmission need not contain the carrier's unified business identifier if the carrier provides it to the person selling the advertisement and it is recorded in the advertising contract.

(4) It is a gross misdemeanor for a person to (a) falsify a unified business identifier or use a false or inaccurate unified business identifier; (b) fail to specify the type of service offered; or (c) advertise or otherwise hold itself out to the public as providing taxicab transportation services in connection with a solicitation or identification as an authorized limousine carrier.

NEW SECTION. Sec. 12. The limousine carrier shall certify to the appropriate regulating authority that each chauffeur hired to operate a limousine meets the following criteria: (1) Is at least twenty-one years of age; (2) holds a valid Washington state driver's license; (3) has successfully completed a training course approved by the department; (4) has successfully passed a written examination; (5) has successfully completed a background check performed by the Washington state patrol; and (6) has submitted a medical certificate certifying the individual's fitness as a chauffeur. Upon initial application and every three years thereafter, a chauffeur must file a physician's certification with the limousine carrier validating the individual's fitness to drive a limousine. The department shall determine the scope of the examination. The director may require a chauffeur to be reexamined at any time.

The limousine carrier shall keep on file and make available for inspection all documents required by this section.

NEW SECTION. Sec. 13. The department may suspend, revoke, or refuse to issue a license if it has good reason to believe that one of the following is true of a chauffeur hired to drive a limousine: (1) The person has been convicted of an offense of such a nature as to indicate that he or she is unfit to qualify as a chauffeur; (2) the person is guilty of committing two or more offenses for which mandatory revocation of a driver's license is provided by law; (3) the person has been convicted of vehicular homicide or vehicular assault; (4) the person is intemperate or addicted to narcotics.

NEW SECTION. Sec. 14. The department shall transmit all fees received under this chapter, together with a proper identifying report, to the state treasurer to be deposited by the state treasurer in the master license fund.

NEW SECTION. Sec. 15. The department may adopt and enforce such rules, including the setting of fees, as may be consistent with and necessary to carry out this chapter. The fees must approximate the cost of administration.

NEW SECTION. Sec. 16. A vehicle operated as a limousine under chapter 81.90 RCW before April 1, 1996, may continue to operate as a limousine even though it may not meet the definition of limousine in section 2 of this act as long as the owner is the same as the registered owner on April 1, 1996, and the vehicle and limousine carrier otherwise comply with this chapter.

NEW SECTION. Sec. 17. A new section is added to chapter 46.72 RCW to read as follows:

The legislature finds and declares that privately operated for hire transportation service is a vital part of the transportation system within the state. Consequently, the safety, reliability, and stability of privately operated for hire transportation services are matters of state-wide importance. The regulation of privately operated for hire transportation services is thus an essential governmental function. Therefore, it is the intent of the legislature to permit political subdivisions of the state to regulate for hire transportation services without liability under federal antitrust laws.

Sec. 18. RCW 46.72.010 and 1991 c 99 s 1 are each amended to read as follows:

When used in this chapter:

(1) The term "for hire vehicle" includes all vehicles used for the transportation of passengers for compensation, except auto stages, school buses operating exclusively under a contract to a school district, ride-sharing vehicles under chapter 46.74 RCW, ((and)) limousine ((charter party)) carriers licensed under chapter ((81.90)) 46. — RCW ((whose sole use as a for hire vehicle is that of a limousine charter party carrier)) (sections 4 through 16 of this act), vehicles used by nonprofit transportation providers for elderly or handicapped persons and their attendants under chapter 81.66 RCW, vehicles used by auto transportation companies licensed under chapter 81.68 RCW, vehicles used to provide courtesy transportation at no charge to and from parking lots, hotels, and rental offices, and vehicles used by charter party carriers of passengers and excursion service carriers licensed under chapter 81.70 RCW;

(2) The term "for hire operator" means and includes any person, concern, or entity engaged in the transportation of passengers for compensation in for hire vehicles.

NEW SECTION. Sec. 19. A new section is added to chapter 46.72 RCW to read as follows:

Cities, counties, and port districts may license, control, and regulate all for hire vehicles operating within their respective jurisdictions. The power to regulate includes:

(1) Regulating entry into the business of providing for hire vehicle transportation services;

(2) Requiring a license to be purchased as a condition of operating a for hire vehicle and the right to revoke, cancel, or refuse to reissue a license for failure to comply with regulatory requirements;

(3) Controlling the rates charged for providing for hire vehicle transportation service and the manner in which rates are calculated and collected;

(4) Regulating the routes and operations of for hire vehicles, including restricting access to airports;

(5) Establishing safety and equipment requirements; and

(6) Any other requirements adopted to ensure safe and reliable for hire vehicle transportation service.

NEW SECTION. Sec. 20. A new section is added to chapter 46.72 RCW to read as follows:

The department, a city, county, or port district may enter into cooperative agreements with any other city, town, county, or port district for the joint regulation of for hire vehicles. Cooperative agreements may provide for, but are not limited to, the granting, revocation, and suspension of joint for hire vehicle licenses.

Sec. 21. RCW 46.63.020 and 1995 1st sp.s. c 16 s 1, 1995 c 332 s 16, and 1995 c 256 s 25 are each reenacted and 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 (6) or (9) relating to unauthorized use or acquisition of a special placard or license plate for disabled persons' parking;

(10) RCW 46.20.021 relating to driving without a valid driver's license;

(11) RCW 46.20.336 relating to the unlawful possession and use of a driver's license;

(12) RCW 46.20.342 relating to driving with a suspended or revoked license or status;

- (13) RCW 46.20.410 relating to the violation of restrictions of an occupational driver's license;
- (14) RCW 46.20.420 relating to the operation of a motor vehicle with a suspended or revoked license;
- (15) RCW 46.20.750 relating to assisting another person to start a vehicle equipped with an ignition interlock device;
- (16) RCW 46.25.170 relating to commercial driver's licenses;
- (17) Chapter 46.29 RCW relating to financial responsibility;
- (18) RCW 46.30.040 relating to providing false evidence of financial responsibility;
- (19) RCW 46.37.435 relating to wrongful installation of sunscreening material;
- (20) RCW 46.44.180 relating to operation of mobile home pilot vehicles;
- (21) RCW 46.48.175 relating to the transportation of dangerous articles;
- (22) RCW 46.52.010 relating to duty on striking an unattended car or other property;
- (23) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;
- (24) RCW 46.52.090 relating to reports by repairmen, storagemen, and appraisers;
- (25) RCW 46.52.100 relating to driving under the influence of liquor or drugs;
- (26) 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;
- (27) RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;
- (28) RCW 46.55.035 relating to prohibited practices by tow truck operators;
- (29) RCW 46.61.015 relating to obedience to police officers, flagmen, or fire fighters;
- (30) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;
- (31) RCW 46.61.022 relating to failure to stop and give identification to an officer;
- (32) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;
- (33) RCW 46.61.500 relating to reckless driving;
- (34) RCW 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;
- (35) RCW ((~~46.61.505 (section 5, chapter 332 (Substitute Senate Bill No. 5141), Laws of 1995~~)) 46.61.503 relating to a person under age twenty-one driving a motor vehicle after consuming alcohol;
- (36) RCW 46.61.520 relating to vehicular homicide by motor vehicle;
- (37) RCW 46.61.522 relating to vehicular assault;

- (38) RCW 46.61.525 relating to negligent driving;
- (39) RCW 46.61.527(4) relating to reckless endangerment of roadway workers;
- (40) RCW 46.61.530 relating to racing of vehicles on highways;
- (41) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;
- (42) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;
- (43) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;
- (44) Chapter 46.65 RCW relating to habitual traffic offenders;
- (45) 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;
- (46) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;
- (47) Section 9 of this act relating to limousine carrier insurance;
- (48) Section 10 of this act relating to operation of a limousine without a vehicle certificate;
- (49) Section 11 of this act relating to false advertising by a limousine carrier;
- (50) Chapter 46.80 RCW relating to motor vehicle wreckers;
- ((48)) (51) Chapter 46.82 RCW relating to driver's training schools;
- ((49)) (52) 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;
- ((50)) (53) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW.

NEW SECTION. See. 22. (1) All powers, duties, and functions of the utilities and transportation commission pertaining to the regulation of limousines and limousine charter party carriers are transferred to the department of licensing. All references to the utilities and transportation commission in the Revised Code of Washington shall be construed to mean the director or the department of licensing when referring to the functions transferred in this section.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the utilities and transportation commission pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the department of licensing. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the utilities and transportation commission in carrying out the powers, functions, and duties transferred shall be made available to the department of licensing. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the department of licensing.

(b) Any appropriations made to the utilities and transportation commission for carrying out the powers, functions, and duties transferred shall, on the effective date of this act, be transferred and credited to the department of licensing.

(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 rules and all pending business before the utilities and transportation commission pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the department of licensing. All existing contracts and obligations shall remain in full force and shall be performed by the department of licensing.

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

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

NEW SECTION. Sec. 23. The following acts or parts of acts are each repealed:

- (1) RCW 81.90.010 and 1989 c 283 s 1;
- (2) RCW 81.90.020 and 1989 c 283 s 2;
- (3) RCW 81.90.030 and 1989 c 283 s 3;
- (4) RCW 81.90.040 and 1989 c 283 s 4;
- (5) RCW 81.90.050 and 1989 c 283 s 5;
- (6) RCW 81.90.060 and 1989 c 283 s 6;
- (7) RCW 81.90.070 and 1989 c 283 s 7;
- (8) RCW 81.90.080 and 1989 c 283 s 8;
- (9) RCW 81.90.090 and 1989 c 283 s 9;
- (10) RCW 81.90.100 and 1989 c 283 s 10;
- (11) RCW 81.90.110 and 1989 c 283 s 11;
- (12) RCW 81.90.120 and 1989 c 283 s 12;
- (13) RCW 81.90.130 and 1989 c 283 s 13;
- (14) RCW 81.90.140 and 1989 c 283 s 14;
- (15) RCW 81.90.150 and 1989 c 283 s 15; and
- (16) RCW 81.90.160 and 1989 c 283 s 16.

NEW SECTION. Sec. 24. Sections 4 through 16 of this act constitute a new chapter in Title 46 RCW.

Passed the House February 5, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 15, 1996.

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CHAPTER 88

[House Bill 2591]

TAX STATUTES—TECHNICAL CORRECTIONS

AN ACT Relating to technical corrections to tax statutes; amending RCW 82.12.0282; adding a new section to chapter 82.23A RCW; creating new sections; repealing RCW 59.22.060; and providing an effective date.

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

NEW SECTION. Sec. 1. RCW 59.22.060 and 1990 c 171 s 10, 1989 c 201 s 7, & 1988 c 280 s 4 are each repealed.

NEW SECTION. Sec. 2. The department of revenue shall not collect any fees owed under RCW 59.21.095. A mobile home park owner subject to the provisions of RCW 59.21.095 is relieved of any obligation under RCW 59.21.095.

NEW SECTION. Sec. 3. A new section is added to chapter 82.23A RCW to read as follows:

This chapter shall expire on June 1, 2001, coinciding with the expiration of chapter 70.148 RCW.

Sec. 4. RCW 82.12.0282 and 1993 c 488 s 4 are each amended to read as follows:

The tax imposed by this chapter shall not apply with respect to the use of passenger motor vehicles used as ride-sharing vehicles, as defined in RCW 46.74.010(3), by not less than five persons, including the driver, with a gross vehicle weight not to exceed 10,000 pounds where the primary usage is for commuter ride-sharing, as defined in RCW 46.74.010(1), by not less than four persons including the driver when at least two of those persons are confined to wheelchairs when riding, or passenger motor vehicles where the primary usage is for ride-sharing for the elderly and the handicapped, as defined in RCW 46.74.010(2), if the vehicles are exempt under RCW 82.44.015 for thirty-six consecutive months beginning within thirty days of application for exemption under this section. If used as a ride-sharing vehicle for less than thirty-six consecutive months, the registered owner of one of these vehicles shall notify the department of revenue upon termination of primary use of the vehicle as a ride-sharing vehicle and is liable for the tax imposed by this chapter.

To qualify for the tax exemption, those passenger motor vehicles with five or six passengers, including the driver, used for commuter ride-sharing, must

be operated either within the state's eight largest counties that are required to develop commute trip reduction plans as directed by chapter 70.94 RCW or in other counties, or cities and towns within those counties, that elect to adopt and implement a commute trip reduction plan. Additionally at least one of the following conditions must apply: (1) The vehicle must be operated by a public transportation agency for the general public; or (2) the vehicle must be used by a major employer, as defined in RCW 70.94.524 as an element of its commute trip reduction program for their employees; or (3) the vehicle must be owned and operated by individual employees and must be registered either with the employer as part of its commute trip reduction program or with a public transportation agency serving the area where the employees live or work. Individual employee owned and operated motor vehicles will require certification that the vehicle is registered with a major employer or a public transportation agency. Major employers who own and operate motor vehicles for their employees must certify that the commuter ride-sharing arrangement conforms to a carpool/vanpool element contained within their commute trip reduction program.

NEW SECTION. Sec. 5. This act shall not be construed as affecting 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 as affecting any proceeding instituted under those sections.

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 shall take effect July 1, 1996.

Passed the House February 6, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 15, 1996.

Filed in Office of Secretary of State March 15, 1996.

CHAPTER 89

[House Bill 2595]

IMPOUNDMENT OF VEHICLES—COURT PROCEDURES

AN ACT Relating to court procedures following impoundment of vehicles; amending RCW 46.55.113 and 46.55.120; and repealing RCW 46.20.435.

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

Sec. 1. RCW 46.55.113 and 1994 c 275 s 32 are each amended to read as follows:

Whenever the driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504, the arresting officer may take custody of the vehicle and provide for its prompt removal to a place of safety. In addition, a police

officer may take custody of a vehicle and provide for its prompt removal to a place of safety under any of the following circumstances:

(1) Whenever a police officer finds a vehicle standing upon the roadway in violation of any of the provisions of RCW 46.61.560, the officer may provide for the removal of the vehicle or require the driver or other person in charge of the vehicle to move the vehicle to a position off the roadway;

(2) Whenever a police officer finds a vehicle unattended upon a highway where the vehicle constitutes an obstruction to traffic or jeopardizes public safety;

(3) Whenever a police officer finds an unattended vehicle at the scene of an accident or when the driver of a vehicle involved in an accident is physically or mentally incapable of deciding upon steps to be taken to protect his or her property;

(4) Whenever the driver of a vehicle is arrested and taken into custody by a police officer;

(5) Whenever a police officer discovers a vehicle that the officer determines to be a stolen vehicle;

(6) Whenever a vehicle without a special license plate, card, or decal indicating that the vehicle is being used to transport a disabled person under RCW 46.16.381 is parked in a stall or space clearly and conspicuously marked under RCW 46.61.581 which space is provided on private property without charge or on public property;

(7) Upon determining that a person is operating a motor vehicle without a valid driver's license in violation of RCW 46.20.021 or with a license that has been expired for ninety days or more, or with a suspended or revoked license in violation of RCW 46.20.342 or 46.20.420.

Nothing in this section may derogate from the powers of police officers under the common law. For the purposes of this section, a place of safety may include the business location of a registered tow truck operator.

Sec. 2. RCW 46.55.120 and 1995 c 360 s 7 are each amended to read as follows:

(1) Vehicles or other items of personal property registered or titled with the department that are impounded by registered tow truck operators pursuant to RCW 46.55.080, 46.55.085, or 46.55.113 may be redeemed only under the following circumstances:

(a) Only the legal owner, the registered owner, a person authorized in writing by the registered owner or the vehicle's insurer, a person who is determined and verified by the operator to have the permission of the registered owner of the vehicle or other item of personal property registered or titled with the department, or one who has purchased a vehicle or item of personal property registered or titled with the department from the registered owner who produces proof of ownership or written authorization and signs a receipt therefor, may redeem an impounded vehicle or items of personal property registered or titled with the department.

(b) The vehicle or other item of personal property registered or titled with the department shall be released upon the presentation to any person having custody of the vehicle of commercially reasonable tender sufficient to cover the costs of towing, storage, or other services rendered during the course of towing, removing, impounding, or storing any such vehicle. Commercially reasonable tender shall include, without limitation, cash, major bank credit cards, or personal checks drawn on in-state banks if accompanied by two pieces of valid identification, one of which may be required by the operator to have a photograph. If the towing firm can determine through the customer's bank or a check verification service that the presented check would not be paid by the bank or guaranteed by the service, the towing firm may refuse to accept the check. Any person who stops payment on a personal check or credit card, or does not make restitution within ten days from the date a check becomes insufficient due to lack of funds, to a towing firm that has provided a service pursuant to this section or in any other manner defrauds the towing firm in connection with services rendered pursuant to this section shall be liable for damages in the amount of twice the towing and storage fees, plus costs and reasonable attorney's fees.

(2)(a) The registered tow truck operator shall give to each person who seeks to redeem an impounded vehicle, or item of personal property registered or titled with the department, written notice of the right of redemption and opportunity for a hearing, which notice shall be accompanied by a form to be used for requesting a hearing, the name of the person or agency authorizing the impound, and a copy of the towing and storage invoice. The registered tow truck operator shall maintain a record evidenced by the redeeming person's signature that such notification was provided.

(b) Any person seeking to redeem an impounded vehicle under this section has a right to a hearing in the district court for the jurisdiction in which the vehicle was impounded to contest the validity of the impoundment or the amount of towing and storage charges. The district court has jurisdiction to determine the issues involving all impoundments including those authorized by the state or its agents. Any request for a hearing shall be made in writing on the form provided for that purpose and must be received by the district court within ten days of the date the opportunity was provided for in subsection (2)(a) of this section. If the hearing request is not received by the district court within the ten-day period, the right to a hearing is waived and the registered owner is liable for any towing, storage, or other impoundment charges permitted under this chapter. Upon receipt of a timely hearing request, the district court shall proceed to hear and determine the validity of the impoundment.

(3)(a) The district court, within five days after the request for a hearing, shall notify the registered tow truck operator, the person requesting the hearing if not the owner, the registered and legal owners of the vehicle or other item of personal property registered or titled with the department, and the person or agency authorizing the impound in writing of the hearing date and time.

(b) At the hearing, the person or persons requesting the hearing may produce any relevant evidence to show that the impoundment, towing, or storage fees charged were not proper. The court may consider a written report made under oath by the officer who authorized the impoundment in lieu of the officer's personal appearance at the hearing.

(c) At the conclusion of the hearing, the district court shall determine whether the impoundment was proper, whether the towing or storage fees charged were in compliance with the posted rates, and who is responsible for payment of the fees. The court may not adjust fees or charges that are in compliance with the posted or contracted rates.

(d) If the impoundment is found proper, the impoundment, towing, and storage fees as permitted under this chapter together with court costs shall be assessed against the person or persons requesting the hearing, unless the operator did not have a signed and valid impoundment authorization from a private property owner or an authorized agent.

(e) If the impoundment is determined to be in violation of this chapter, then the registered and legal owners of the vehicle or other item of personal property registered or titled with the department shall bear no impoundment, towing, or storage fees, and any security shall be returned or discharged as appropriate, and the person or agency who authorized the impoundment shall be liable for any towing, storage, or other impoundment fees permitted under this chapter. The court shall enter judgment in favor of the registered tow truck operator against the person or agency authorizing the impound for the impoundment, towing, and storage fees paid. In addition, the court shall enter judgment in favor of the registered and legal owners of the vehicle, or other item of personal property registered or titled with the department, for reasonable damages for loss of the use of the vehicle during the time the same was impounded, for not less than fifty dollars per day, against the person or agency authorizing the impound. If any judgment entered is not paid within fifteen days of notice in writing of its entry, the court shall award reasonable attorneys' fees and costs against the defendant in any action to enforce the judgment. Notice of entry of judgment may be made by registered or certified mail, and proof of mailing may be made by affidavit of the party mailing the notice. Notice of the entry of the judgment shall read essentially as follows:

TO:

YOU ARE HEREBY NOTIFIED JUDGMENT was entered against you in the Court located at in the sum of \$., in an action entitled, Case No. YOU ARE FURTHER NOTIFIED that attorneys fees and costs will be awarded against you under RCW . . . if the judgment is not paid within 15 days of the date of this notice.

DATED this day of, 19. . .

Signature
Typed name and address
of party mailing notice

(4) Any impounded abandoned vehicle or item of personal property registered or titled with the department that is not redeemed within fifteen days of mailing of the notice of custody and sale as required by RCW 46.55.110(2) shall be sold at public auction in accordance with all the provisions and subject to all the conditions of RCW 46.55.130. A vehicle or item of personal property registered or titled with the department may be redeemed at any time before the start of the auction upon payment of the applicable towing and storage fees.

NEW SECTION. Sec. 3. RCW 46.20.435 and 1995 c 360 s 9, 1985 c 391 s 1, & 1982 c 8 s 1 are each repealed.

Passed the House January 5, 1996.
Passed the Senate March 1, 1996.
Approved by the Governor March 15, 1996.
Filed in Office of Secretary of State March 15, 1996.

CHAPTER 90

[House Bill 2659]

COMPUTATION OF SPECIAL FUEL CONSUMPTION

AN ACT Relating to computation of special fuel consumption on a mileage basis; and amending RCW 82.38.060 and 82.38.140.

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

Sec. 1. RCW 82.38.060 and 1989 c 142 s 1 are each amended to read as follows:

In the event the tax on special fuel imported into this state in the fuel supply tanks of motor vehicles for taxable use on Washington highways can be more accurately determined on a mileage basis the department is authorized to approve and adopt such basis. When a special fuel user imports special fuel into or exports special fuel from the state of Washington in the fuel supply tanks of motor vehicles, the amount of special fuel consumed in such vehicles on Washington highways shall be deemed to be such proportion of the total amount of such special fuel consumed in his entire operations within and without this state as the total number of miles traveled on the public highways within this state bears to the total number of miles traveled within and without the state. The department may also adopt such mileage basis for determining the taxable use of special fuel used in motor vehicles which travel regularly over prescribed courses on and off the highways within the state of Washington. In the absence of records showing the number of miles actually operated per gallon of special fuel consumed, ~~((it shall be prima facie presumed that not less than))~~ fuel consumption shall be calculated at the rate of one gallon ~~((of special fuel was consumed))~~ for every: (1) Four miles traveled by vehicles over forty thousand

pounds gross vehicle weight; (2) seven miles traveled by vehicles twelve thousand one to forty thousand pounds gross vehicle weight; (3) ten miles traveled by vehicles six thousand one to twelve thousand pounds gross vehicle weight; and (4) sixteen miles traveled by vehicles six thousand pounds or less gross vehicle weight.

Sec. 2. RCW 82.38.140 and 1995 c 274 s 22 are each amended to read as follows:

(1) Every special fuel dealer, special fuel user, and every person importing, manufacturing, refining, dealing in, transporting, or storing special fuel in this state shall keep for a period of not less than three years open to inspection at all times during the business hours of the day to the department or its authorized representatives, a complete record of all special fuel purchased or received and all of such products sold, delivered, or used by them. Such records shall show:

- (a) The date of each receipt;
- (b) The name and address of the person from whom purchased or received;
- (c) The number of gallons received at each place of business or place of storage in the state of Washington;
- (d) The date of each sale or delivery;
- (e) The number of gallons sold, delivered, or used for taxable purposes;
- (f) The number of gallons sold, delivered, or used for any purpose not subject to the tax imposed herein;
- (g) The name, address, and special fuel license number of the purchaser if the special fuel tax is not collected on the sale or delivery;
- (b) The inventories of special fuel on hand at each place of business at the end of each month.

(2)(a) All special fuel users using special fuel in vehicles licensed for highway operation shall maintain detailed mileage records on an individual vehicle basis.

(b) Such operating records shall show both on-highway and off-highway usage of special fuel on a daily basis for each vehicle.

(c) In the absence of operating records that show both on-highway and off-highway usage of special fuel on a daily basis for each vehicle, fuel consumption must be computed under RCW 82.38.060.

(3) Persons using special fuel for heating purposes only are not required to maintain records of fuel usage.

(4) Invoices shall be prepared for sales and deliveries of special fuel in the manner and containing such information as may be prescribed by the department.

Every special fuel dealer or special fuel user making such sales or deliveries of special fuel and every person so receiving and purchasing special fuel must each retain one copy of each such invoice as part of the dealer's permanent records for the time and purposes above provided.

(5) Every special fuel user shall keep, in addition to the dealer's records of deliveries into motor vehicles, a complete record as prescribed by the depart-

ment of the total gallons of special fuel used for other purposes during each month and the purposes for which said special fuel was used.

(6) Subsections (1)(f), (2)(b), and (5) of this section do not apply to special fuel users when the special fuel is used off-highway in farming, construction, or logging operations. Upon filing a special fuel user tax report, every such special fuel user shall certify and bear the burden of proof as to the number of gallons of special fuel used off-highway.

Passed the House February 5, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 15, 1996.

Filed in Office of Secretary of State March 15, 1996.

CHAPTER 91

[House Bill 2660]

MOTOR VEHICLE FEES AND SPECIAL FUEL TAXES—REFUNDS AND CREDITS

AN ACT Relating to refunds and credits of certain motor vehicle fees and special fuel taxes; amending RCW 46.87.150, 46.87.310, 46.87.330, and 82.38.190; and providing an effective date.

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

Sec. 1. RCW 46.87.150 and 1987 c 244 s 28 are each amended to read as follows:

Whenever a person has been required to pay a fee or tax pursuant to this chapter that amounts to an overpayment of (~~five~~) ten dollars or more, the person is entitled to a refund of the entire amount of such overpayment, regardless of whether or not a refund of the overpayment has been requested. Nothing in this subsection precludes anyone from applying for a refund of such overpayment if the overpayment is less than (~~five~~) ten dollars. Conversely, if the department or its agents has failed to charge and collect the full amount of fees or taxes pursuant to this chapter, which underpayment is in the amount of (~~five~~) ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the fees and taxes due.

Sec. 2. RCW 46.87.310 and 1993 c 307 s 15 are each amended to read as follows:

Any owner whose application for proportional registration has been accepted shall preserve the records on which the application is based for a period of four years following the preceding year or period upon which the application is based. These records shall be complete and shall include, but not be limited to, the following: Copies of proportional registration applications and supplements for all jurisdictions in which the fleet is prorated; proof of proportional or full registration with other jurisdictions; vehicle license or trip permits; temporary authorization permits; documents establishing the latest purchase year and cost of each fleet vehicle in ready-for-the-road condition; weight certificates indicating the unladen, ready-for-the-road, weight of each vehicle in the fleet; periodic summaries of mileage by fleet and by individual

vehicles; individual trip reports, driver's daily logs, or other source documents maintained for each individual trip that provide trip dates, points of origin and destinations, total miles traveled, miles traveled in each jurisdiction, routes traveled, vehicle equipment number, driver's full name, and all other information pertinent to each trip. Upon request of the department, the owner shall make the records available to the department at its designated office for audit as to accuracy of records, computations, and payments. The department shall assess and collect any unpaid fees and taxes found to be due the state and provide credits or refunds for overpayments of Washington fees and taxes as determined in accordance with formulas and other requirements prescribed in this chapter. If the owner fails to maintain complete records as required by this section, the department shall attempt to reconstruct or reestablish such records. However, if the department is unable to do so and the missing or incomplete records involve mileages accrued by vehicles while they are part of the fleet, the department may assess an amount not to exceed the difference between the Washington proportional fees and taxes paid and one hundred percent of the fees and taxes. Further, if the owner fails to maintain complete records as required by this section, or if the department determines that the owner should have registered more vehicles in this state under this chapter, the department may deny the owner the right of any further benefits provided by this chapter until any final audit or assessment made under this chapter has been satisfied.

The department may audit the records of any owner and may make arrangements with agencies of other jurisdictions administering motor vehicle registration laws for joint audits of any such owner. No assessment for deficiency or claim for credit may be made for any period for which records are no longer required. Any fees, taxes, penalties, or interest found to be due and owing the state upon audit shall bear interest at the rate of one percent per month, or fraction thereof, from the first day of the calendar month after the amount should have been paid until the date of payment. If the audit discloses a deliberate and willful intent to evade the requirements of payment under RCW 46.87.140, a penalty of ten percent shall also be assessed.

If the audit discloses that an overpayment to the state in excess of ~~((five))~~ ten dollars has been made, the department shall certify the overpayment to the state treasurer who shall issue a warrant for the overpayment to the vehicle operator. Overpayments shall bear interest at the rate of eight percent per annum from the date on which the overpayment is incurred until the date of payment.

Sec. 3. RCW 46.87.330 and 1987 c 244 s 46 are each amended to read as follows:

An owner of proportionally registered vehicles against whom an assessment is made under RCW ~~((46.87.140 or))~~ 46.87.310 may petition for reassessment thereof within thirty days after service of notice of the assessment upon the owner of the proportionally registered vehicles. If the petition is not filed within

the thirty-day period, the amount of the assessment becomes final at the expiration of that time period.

If a petition for reassessment is filed within the thirty-day period, the department shall reconsider the assessment and, if the petitioner has so requested in the petition, shall grant the petitioner an oral hearing and give the petitioner ten days notice of the time and place of the hearing. The department may continue the hearing from time to time. The decision of the department upon a petition for reassessment becomes final thirty days after service upon the petitioner of notice of the decision.

Every assessment made under ~~((this chapter))~~ RCW 46.87.310 becomes due and payable at the time it is served on the owner. If the assessment is not paid in full when it becomes final, the department shall add a penalty of ten percent of the amount of the assessment.

Any notice of assessment, reassessment, oral hearing, or decision required by this section shall be served personally or by mail. If served by mail, service is deemed to have been accomplished on the date the notice was deposited in the United States mail, postage prepaid, addressed to the owner of the proportionally registered vehicles at the owner's address as it appears in the proportional registration records of the department.

No injunction or writ of mandate or other legal or equitable process may be issued in any suit, action, or proceeding in any court against any officer of the state to prevent or enjoin the collection under this chapter of any fee or tax or any amount of fee or tax required to be collected, except as specifically provided for in chapter 34.05 RCW.

Sec. 4. RCW 82.38.190 and 1979 c 40 s 14 are each amended to read as follows:

(1) Claims under RCW 82.38.180 shall be filed with the department on forms prescribed by the department and shall show the date of filing and the period covered in the claim, the number of gallons of special fuel used for purposes subject to tax refund, and such other facts and information as may be required. Every such claim shall be supported by an invoice or invoices issued to or by the claimant, as may be prescribed by the department, and such other information as the department may require.

(2) Any amount determined to be refundable by the department under RCW 82.38.180 shall first be credited on any amounts then due and payable from the special fuel dealer or special fuel user or to any person to whom the refund is due, and the department shall then certify the balance thereof to the state treasurer, who shall thereupon draw his warrant for such certified amount to such special fuel dealer or special fuel user or any person: PROVIDED, HOWEVER, That the department shall deduct fifty cents from all such refunds as a filing fee, which fee shall be deducted from the warrant issued in payment of such refund to defray expenses in furnishing the claim forms and other forms provided for in this chapter.

(3) No refund or credit shall be approved by the department unless a written claim for refund or credit stating the specific grounds upon which the claim is founded is filed with the department:

(a) Within thirteen months from the date of purchase or from the last day of the month following the close of the reporting period for which the refundable amount or credit is due with respect to refunds or credits allowable under RCW 82.38.180, subsections (1), (2), (4) and (5), and if not filed within this period the right to refund shall be forever barred.

(b) Within three years from the last day of the month following the close of the reporting period for which the overpayment is due with respect to the refunds or credits allowable under RCW 82.38.180(3). The department shall refund any amount paid that has been verified by the department to be more than ten dollars over the amount actually due for the reporting period. Payment credits shall not be carried forward and applied to subsequent tax returns.

(4) Within thirty days after disallowing any claim in whole or in part, the department shall serve written notice of its action on the claimant.

(5) Interest shall be paid upon any refundable amount or credit due under RCW 82.38.180(3) at the rate of one percent per month from the last day of the calendar month following the reporting period for which the refundable amount or credit is due.

The interest shall be paid:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he has not already filed a claim, is notified by the department that a claim may be filed or the date upon which the claim is approved by the department, whichever date is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

If the department determines that any overpayment has been made intentionally or by reason of carelessness, it shall not allow any interest thereon.

(6) No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against this state or against any officer of the state to prevent or enjoin the collection under this chapter of any tax or any amount of tax required to be collected.

NEW SECTION. Sec. 5. This act takes effect July 1, 1996.

Passed the House February 5, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 15, 1996.

Filed in Office of Secretary of State March 15, 1996.

CHAPTER 92

[House Bill 2687]

VEHICLE SIZE AND LOAD REGULATION

AN ACT Relating to vehicle size and load regulation; amending RCW 46.44.096 and 46.44.105; and prescribing penalties.

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

Sec. 1. RCW 46.44.096 and 1993 c 102 s 6 are each amended to read as follows:

In determining fees according to RCW 46.44.0941, mileage on state primary and secondary highways shall be determined from the planning survey records of the department of transportation, and the gross weight of the vehicle or vehicles, including load, shall be declared by the applicant. Overweight on which fees shall be paid will be gross loadings in excess of loadings authorized by law or axle loadings in excess of loadings authorized by law, whichever is the greater. Loads which are overweight and oversize shall be charged the fee for the overweight permit without additional fees being assessed for the oversize features.

Special permits issued under RCW 46.44.047, 46.44.0941, or 46.44.095, may be obtained from offices of the department of transportation, ports of entry, or other agents appointed by the department.

The department may appoint agents for the purposes of selling special motor vehicle permits, temporary additional tonnage permits, and log tolerance permits. Agents so appointed may retain three dollars and fifty cents for each permit sold to defray expenses incurred in handling and selling the permits. If the fee is collected by the department of transportation, the department shall certify the fee so collected to the state treasurer for deposit to the credit of the motor vehicle fund.

The department may select a third party contractor, by means of competitive bid, to perform the department's permit issuance function, as provided under RCW 46.44.090. Factors the department shall consider, but is not limited to, in the selection of a third party contractor are economic benefit to both the department and the motor carrier industry, and enhancement of the overall level of permit service. For purposes of this section, "third party contractor" means a business entity that is authorized by the department to issue special permits. The transportation commission may adopt rules specifying the criteria that a business entity must meet in order to qualify as a third party contractor under this section.

Fees established in RCW 46.44.0941 shall be paid to the political body issuing the permit if the entire movement is to be confined to roads, streets, or highways for which that political body is responsible. When a movement involves a combination of state highways, county roads, and/or city streets the fee shall be paid to the state department of transportation. When a movement is confined within the city limits of a city or town upon city streets, including

routes of state highways on city streets, all fees shall be paid to the city or town involved. A permit will not be required from city or town authorities for a move involving a combination of city or town streets and state highways when the move through a city or town is being confined to the route of the state highway. When a move involves a combination of county roads and city streets the fee shall be paid to the county authorities, but the fee shall not be collected nor the county permit issued until valid permits are presented showing that the city or town authorities approve of the move in question. When the movement involves only county roads the fees collected shall be paid to the county involved. Fees established shall be paid to the political body issuing the permit if the entire use of the vehicle during the period covered by the permit shall be confined to the roads, streets, or highways for which that political body is responsible.

Sec. 2. RCW 46.44.105 and 1993 c 403 s 4 are each amended to read as follows:

(1) Violation of any of the provisions of (~~RCW 46.44.041, 46.44.042, 46.44.047, 46.44.090, 46.44.091, and 46.44.095, or failure to obtain a permit as provided by RCW 46.44.090 and 46.44.095, or misrepresentation of the size or weight of any load or failure to follow the requirements and conditions of a permit issued hereunder~~) this chapter is a traffic infraction, and upon the first finding thereof shall be assessed a basic penalty of not less than fifty dollars; and upon a second finding thereof shall be assessed a basic penalty of not less than seventy-five dollars; and upon a third or subsequent finding shall be assessed a basic penalty of not less than one hundred dollars.

(2) In addition to the penalties imposed in subsection (1) of this section, any person violating RCW 46.44.041, 46.44.042, 46.44.047, 46.44.090, 46.44.091, or 46.44.095 shall be assessed a penalty for each pound overweight, as follows:

(a) One pound through four thousand pounds overweight is three cents for each pound (of excess weight);

(b) Four thousand one pounds through ten thousand pounds overweight is one hundred twenty dollars plus twelve cents per pound for each additional pound over four thousand pounds overweight;

(c) Ten thousand one pounds through fifteen thousand pounds overweight is eight hundred forty dollars plus sixteen cents per pound for each additional pound over ten thousand pounds overweight;

(d) Fifteen thousand one pounds through twenty thousand pounds overweight is one thousand six hundred forty dollars plus twenty cents per pound for each additional pound over fifteen thousand pounds overweight;

(e) Twenty thousand one pounds and more is two thousand six hundred forty dollars plus thirty cents per pound for each additional pound over twenty thousand pounds overweight.

Upon a first violation in any calendar year, the court may suspend the penalty for five hundred pounds of excess weight for each axle on any vehicle or combination of vehicles, not to exceed a two thousand pound suspension. In

no case may the basic penalty assessed in subsection (1) of this section or the additional penalty assessed in subsection (2) of this section, except as provided for the first violation, be suspended.

(3) Whenever any vehicle or combination of vehicles is involved in two violations of RCW 46.44.041, 46.44.042, 46.44.047, 46.44.090, 46.44.091, or 46.44.095 during any twelve-month period, the court may suspend the certificate of license registration of the vehicle or combination of vehicles for not less than thirty days. Upon a third or succeeding violation in any twelve-month period, the court shall suspend the certificate of license registration for not less than thirty days. Whenever the certificate of license registration is suspended, the court shall secure such certificate and immediately forward the same to the director with information concerning the suspension.

(4) Any person found to have violated any posted limitations of a highway or section of highway shall be assessed a monetary penalty of not less than one hundred and fifty dollars, and the court shall in addition thereto upon second violation within a twelve-month period involving the same power unit, suspend the certificate of license registration for not less than thirty days.

(5) It is unlawful for the driver of a vehicle to fail or refuse to stop and submit the vehicle and load to a weighing, or to fail or refuse, when directed by an officer upon a weighing of the vehicle to stop the vehicle and otherwise comply with the provisions of this section. It is unlawful for a driver of a commercial motor vehicle as defined in RCW 46.32.005, other than the driver of a bus as defined in RCW 46.32.005(2), to fail or refuse to stop at a weighing station when proper traffic control signs indicate scales are open.

Any police officer is authorized to require the driver of any vehicle or combination of vehicles to stop and submit to a weighing either by means of a portable or stationary scale and may require that the vehicle be driven to the nearest public scale. Whenever a police officer, upon weighing a vehicle and load, determines that the weight is unlawful, the officer may require the driver to stop the vehicle in a suitable location and remain standing until such portion of the load is removed as may be necessary to reduce the gross weight of the vehicle to the limit permitted by law. If the vehicle is loaded with grain or other perishable commodities, the driver shall be permitted to proceed without removing any of the load, unless the gross weight of the vehicle and load exceeds by more than ten percent the limit permitted by this chapter. The owner or operator of the vehicle shall care for all materials unloaded at the risk of the owner or operator.

Any vehicle whose driver or owner represents that the vehicle is disabled or otherwise unable to proceed to a weighing location shall have its load sealed or otherwise marked by any police officer. The owner or driver shall be directed that upon completion of repairs, the vehicle shall submit to weighing with the load and markings and/or seal intact and undisturbed. Failure to report for weighing, appearing for weighing with the seal broken or the markings disturbed, or removal of any cargo prior to weighing is unlawful. Any person

so convicted shall be fined (~~five hundred~~) one thousand dollars, and in addition the certificate of license registration shall be suspended for not less than thirty days.

(6) Any other provision of law to the contrary notwithstanding, district courts having venue have concurrent jurisdiction with the superior courts for the imposition of any penalties authorized under this section.

(7) For the purpose of determining additional penalties as provided by subsection (2) of this section, "~~(excess weight)~~ overweight" means the poundage in excess of the maximum allowable gross weight or axle/axle grouping weight prescribed by RCW 46.44.041 (~~and~~), 46.44.042 (~~plus the weights allowed by RCW~~), 46.44.047, 46.44.091, and 46.44.095.

(8) The penalties provided in subsections (1) and (2) of this section shall be remitted as provided in chapter 3.62 RCW or RCW 10.82.070. For the purpose of computing the basic penalties and additional penalties to be imposed under (~~the provisions of~~) subsections (1) and (2) of this section, the convictions shall be on the same vehicle or combination of vehicles within a twelve-month period under the same ownership.

(9) Any state patrol officer or any weight control officer who finds any person operating a vehicle or a combination of vehicles in violation of the conditions of a permit issued under RCW 46.44.047, 46.44.090, and 46.44.095 may confiscate the permit and forward it to the state department of transportation which may return it to the permittee or revoke, cancel, or suspend it without refund. The department of transportation shall keep a record of all action taken upon permits so confiscated, and if a permit is returned to the permittee the action taken by the department of transportation shall be endorsed thereon. Any permittee whose permit is suspended or revoked may upon request receive a hearing before the department of transportation or person designated by that department. After the hearing the department of transportation may reinstate any permit or revise its previous action.

Every permit issued as provided for in this chapter shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any law enforcement officer or authorized agent of any authority granting such a permit.

Upon the third finding within a calendar year of a violation of the requirements and conditions of a permit issued under RCW 46.44.095 (~~as now or hereafter amended~~), the permit shall be canceled, and the canceled permit shall be immediately transmitted by the court or the arresting officer to the department of transportation. The vehicle covered by the canceled permit is not eligible for a new permit for a period of thirty days.

(10) For the purposes of determining gross weights the actual scale weight taken by the arresting officer is prima facie evidence of the total gross weight.

(11) It is a traffic infraction to direct the loading of a vehicle with knowledge that it violates the requirements in RCW 46.44.041, 46.44.042,

46.44.047, 46.44.090, 46.44.091, or 46.44.095 and that it is to be operated on the public highways of this state.

(12) The chief of the state patrol, with the advice of the department, may adopt reasonable rules to aid in the enforcement of this section.

Passed the House February 5, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 15, 1996.

Filed in Office of Secretary of State March 15, 1996.

CHAPTER 93

[House Bill 2692]

REVISED CODE OF WASHINGTON—INTERNAL REFERENCE CORRECTIONS

AN ACT Relating to technical corrections of internal references to the Revised Code of Washington; amending RCW 9.94A.120, 9.94A.440, and 82.04.010; and reenacting and amending RCW 46.63.020.

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

Sec. 1. RCW 9.94A.120 and 1995 c 108 s 3 are each amended to read as follows:

When a person is convicted of a felony, the court shall impose punishment as provided in this section.

(1) Except as authorized in subsections (2), (4), (5), (6), and (8) of this section, the court shall impose a sentence within the sentence range for the offense.

(2) The court may impose a sentence outside the standard sentence range for that offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(3) Whenever a sentence outside the standard 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 range shall be a determinate sentence.

(4) A persistent offender shall be sentenced to a term of total confinement for life without the possibility of parole or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death, notwithstanding the maximum sentence under any other law. An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than twenty years. An offender convicted of the crime of assault in the first degree or assault of a child in the first degree where the offender used force or means likely to result in death or intended to kill the victim shall be sentenced to a term of total confinement not less than five years. An offender convicted of the crime of rape in the first degree shall be sentenced to a term of total confinement not less than five years. The foregoing minimum terms of total confinement are mandatory and shall not be varied or modified as provided in subsection (2) of this section. In addition, all offenders subject to

the provisions of this subsection shall not be eligible for community custody, earned early release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8), or any other form of authorized leave of absence from the correctional facility while not in the direct custody of a corrections officer or officers during such minimum terms of total confinement except in the case of an offender in need of emergency medical treatment or for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree.

(5) In sentencing a first-time offender the court may waive the imposition of a sentence within the sentence range and impose a sentence which may include up to ninety days of confinement in a facility operated or utilized under contract by the county and a requirement that the offender refrain from committing new offenses. The sentence may also include up to two years of community supervision, which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:

- (a) Devote time to a specific employment or occupation;
- (b) Undergo available outpatient treatment for up to two years, or inpatient treatment not to exceed the standard range of confinement for that offense;
- (c) Pursue a prescribed, secular course of study or vocational training;
- (d) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (e) Report as directed to the court and a community corrections officer; or
- (f) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030 and/or perform community service work.

(6)(a) An offender is eligible for the special drug offender sentencing alternative if:

(i) The offender is convicted of the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in Schedule I or II that is a narcotic drug or a felony that is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes, and the violation does not involve a sentence enhancement under RCW 9.94A.310 (3) or (4);

(ii) The offender has no prior convictions for a felony in this state, another state, or the United States; and

(iii) 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.

(b) If the midpoint of the standard range is greater than one year and the sentencing judge determines that the offender is eligible for this option and that the offender and the community will benefit from the use of the special drug

offender sentencing alternative, the judge may waive imposition of a sentence within the standard 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 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. If the midpoint of the standard range is twenty-four months or less, no more than three months of the sentence may be served in a work release status. The court shall also impose one year of concurrent community custody and community supervision that must include appropriate outpatient substance abuse treatment, crime-related prohibitions including a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status. The court may require that the monitoring for controlled substances be conducted by the department or by a treatment ~~((alternative[s]))~~ 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 service work;

(vi) Stay out of areas designated by the sentencing judge.

(c) If the offender violates any of the sentence conditions in (b) of this subsection, the department shall impose sanctions administratively, with notice to the prosecuting attorney and the sentencing court. Upon motion of the court or the prosecuting attorney, a violation hearing shall be held by the court. If the court finds that conditions have been willfully violated, the court may impose confinement consisting of up to the remaining one-half of the midpoint of the standard range. All total confinement served during the period of community custody shall be credited to the offender, regardless of whether the total confinement is served as a result of the original sentence, as a result of a sanction imposed by the department, or as a result of a violation found by the court. The term of community supervision shall be tolled by any period of time served in total confinement as a result of a violation found by the court.

(d) 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 the courts, the office of financial management, and the commission.

(7) If a sentence range has not been established for the defendant's crime, the court shall impose a determinate sentence which may include not more than one year of confinement, community service work, a term of community supervision not to exceed one year, and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement if the court finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(8)(a)(i) When an offender is convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense and has no prior convictions for a sex offense or any other felony sex offenses in this or any other state, the sentencing court, on its own motion or the motion of the state or the defendant, may order an examination to determine whether the defendant is amenable to treatment.

The report of the examination shall include at a minimum the following: The defendant's version of the facts and the official version of the facts, the defendant's offense history, an assessment of problems in addition to alleged deviant behaviors, the offender's social and employment situation, and other evaluation measures used. The report shall set forth the sources of the evaluator's information.

The examiner shall assess and report regarding the defendant's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

- (A) Frequency and type of contact between offender and therapist;
- (B) Specific issues to be addressed in the treatment and description of planned treatment modalities;
- (C) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;
- (D) Anticipated length of treatment; and
- (E) Recommended crime-related prohibitions.

The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(ii) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this special sexual offender sentencing alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this subsection. If the court determines that this special sex offender sentencing alternative is appropriate, the court shall then impose a sentence within the sentence range. If this sentence

is less than eight years of confinement, the court may suspend the execution of the sentence and impose the following conditions of suspension:

(A) The court shall place the defendant on community supervision for the length of the suspended sentence or three years, whichever is greater; and

(B) The court shall order treatment for any period up to three years in duration. The court in its discretion shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court, and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change. In addition, as conditions of the suspended sentence, the court may impose other sentence conditions including up to six months of confinement, not to exceed the sentence range of confinement for that offense, crime-related prohibitions, and requirements that the offender perform any one or more of the following:

(I) Devote time to a specific employment or occupation;

(II) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(III) Report as directed to the court and a community corrections officer;

(IV) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030, perform community service work, or any combination thereof; or

(V) Make recoupment to the victim for the cost of any counseling required as a result of the offender's crime.

(iii) The sex offender therapist shall submit quarterly reports on the defendant's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, defendant's compliance with requirements, treatment activities, the defendant's relative progress in treatment, and any other material as specified by the court at sentencing.

(iv) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment. Prior to the treatment termination hearing, the treatment professional and community corrections officer shall submit written reports to the court and parties regarding the defendant's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community supervision conditions. Either party may request and the court may order another evaluation regarding the advisability of termination from treatment. The defendant shall pay the cost of any additional evaluation ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost. At the treatment termination hearing the court may: (A) Modify conditions of community supervision, and either (B) terminate

treatment, or (C) extend treatment for up to the remaining period of community supervision.

(v) The court may revoke the suspended sentence at any time during the period of community supervision and order execution of the sentence if: (A) The defendant violates the conditions of the suspended sentence, or (B) the court finds that the defendant is failing to make satisfactory progress in treatment. All confinement time served during the period of community supervision shall be credited to the offender if the suspended sentence is revoked.

(vi) Except as provided in (a)(vii) of this subsection, after July 1, 1991, examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to chapter 18.155 RCW.

(vii) A sex offender therapist who examines or treats a sex offender pursuant to this subsection (8) does not have to be certified by the department of health pursuant to chapter 18.155 RCW if the court finds that: (A) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (B) no certified providers are available for treatment within a reasonable geographical distance of the offender's home; and (C) the evaluation and treatment plan comply with this subsection (8) and the rules adopted by the department of health.

For purposes of this subsection, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(b) When an offender commits any felony sex offense on or after July 1, 1987, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, request the department of corrections to evaluate whether the offender is amenable to treatment and the department may place the offender in a treatment program within a correctional facility operated by the department.

Except for an offender who has been convicted of a violation of RCW 9A.44.040 or 9A.44.050, if the offender completes the treatment program before the expiration of his or her term of confinement, the department of corrections may request the court to convert the balance of confinement to community supervision and to place conditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

- (i) Devote time to a specific employment or occupation;
- (ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (iii) Report as directed to the court and a community corrections officer;

(iv) Undergo available outpatient treatment.

If the offender violates any of the terms of his or her community supervision, the court may order the offender to serve out the balance of his or her community supervision term in confinement in the custody of the department of corrections.

Nothing in this subsection (8)(b) shall confer eligibility for such programs for offenders convicted and sentenced for a sex offense committed prior to July 1, 1987. This subsection (8)(b) does not apply to any crime committed after July 1, 1990.

(c) Offenders convicted and sentenced for a sex offense committed prior to July 1, 1987, may, subject to available funds, request an evaluation by the department of corrections to determine whether they are amenable to treatment. If the offender is determined to be amenable to treatment, the offender may request placement in a treatment program within a correctional facility operated by the department. Placement in such treatment program is subject to available funds.

(9)(a) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, assault of a child in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW not sentenced under subsection (6) of this section, committed on or after July 1, 1988, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of such community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(b) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or serious violent offense committed on or after July 1, 1990, the court shall in addition to other terms of the sentence, sentence the offender to community placement for two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community placement shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2).

When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence. Unless a condition is waived by the court, the terms of community placement for offenders sentenced pursuant to this section shall include the following conditions:

(i) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

(ii) The offender shall work at department of corrections-approved education, employment, and/or community service;

(iii) The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions;

(iv) An offender in community custody shall not unlawfully possess controlled substances;

(v) The offender shall pay supervision fees as determined by the department of corrections; and

(vi) The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

(c) The court may also order any of the following special conditions:

(i) The offender shall remain within, or outside of, a specified geographical boundary;

(ii) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(iii) The offender shall participate in crime-related treatment or counseling services;

(iv) The offender shall not consume alcohol; or

(v) The offender shall comply with any crime-related prohibitions.

(d) Prior to transfer to, or during, community placement, any conditions of community placement may be removed or modified so as not to be more restrictive by the sentencing court, upon recommendation of the department of corrections.

(10) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(11) If a sentence imposed includes payment of a legal financial obligation, the sentence shall specify the total amount of the legal financial obligation owed, and shall require the offender to pay a specified monthly sum toward that legal financial obligation. Restitution to victims shall be paid prior to any other payments of monetary obligations. Any legal financial obligation that is imposed

by the court may be collected by the department, which shall deliver the amount paid to the county clerk for credit. The offender's compliance with payment of legal financial obligations shall be supervised by the department. All monetary payments ordered shall be paid no later than ten years after the last date of release from confinement pursuant to a felony conviction or the date the sentence was entered. Independent of the department, the party or entity to whom the legal financial obligation is owed shall have the authority to utilize any other remedies available to the party or entity to collect the legal financial obligation. Nothing in this section makes the department, the state, or any of its employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations. If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order.

(12) Except as provided under RCW 9.94A.140(1) and 9.94A.142(1), a court may not impose a sentence providing for a term of confinement or community supervision or community placement which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(13) All offenders sentenced to terms involving community supervision, community service, community placement, or legal financial obligation shall be under the supervision of the secretary of the department of corrections or such person as the secretary may designate and shall follow explicitly the instructions of the secretary including reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, notifying the community corrections officer of any change in the offender's address or employment, and paying the supervision fee assessment. The department may require offenders to pay for special services rendered on or after July 25, 1993, including electronic monitoring, day reporting, and telephone reporting, dependent upon the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

(14) All offenders sentenced to terms involving community supervision, community service, or community placement under the supervision of the department of corrections shall not own, use, or possess firearms or ammunition. Offenders who own, use, or are found to be in actual or constructive possession of firearms or ammunition shall be subject to the appropriate violation process and sanctions. "Constructive possession" as used in this subsection means the power and intent to control the firearm or ammunition. "Firearm" as used in this subsection means a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

(15) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

(16) A departure from the standards in RCW 9.94A.400 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in subsections (2) and (3) of

this section, and may be appealed by the defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

(17) The court shall order restitution whenever the offender is convicted of a felony that results in injury to any person or damage to or loss of property, whether the offender is sentenced to confinement or placed under community supervision, unless extraordinary circumstances exist that make restitution inappropriate in the court's judgment. The court shall set forth the extraordinary circumstances in the record if it does not order restitution.

(18) As a part of any sentence, the court may impose and enforce an order that relates directly to the circumstances of the crime for which the offender has been convicted, prohibiting the offender from having any contact with other specified individuals or a specific class of individuals for a period not to exceed the maximum allowable sentence for the crime, regardless of the expiration of the offender's term of community supervision or community placement.

(19) In any sentence of partial confinement, the court may require the defendant to serve the partial confinement in work release, in a program of home detention, on work crew, or in a combined program of work crew and home detention.

(20) All court-ordered legal financial obligations collected by the department and remitted to the county clerk shall be credited and paid where restitution is ordered. Restitution shall be paid prior to any other payments of monetary obligations.

EXPLANATORY NOTE

Initiative 159 (Chapter 129, Laws of 1995) amended RCW 9.94A.310 by dividing the substance of the former subsection (3) into two parts and placing them in subsections (3) and (4). However, it failed to correct a reference to this provision in RCW 9.94A.120(6)(a)(i). The purpose of section 1 of this bill is to correct that reference.

Sec. 2. RCW 9.94A.440 and 1995 c 288 s 3 are each amended to read as follows:

(1) Decision not to prosecute.

STANDARD: A prosecuting attorney may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

GUIDELINE/COMMENTARY:

Examples

The following are examples of reasons not to prosecute which could satisfy the standard.

(a) Contrary to Legislative Intent - It may be proper to decline to charge where the application of criminal sanctions would be clearly contrary to the intent of the legislature in enacting the particular statute.

(b) Antiquated Statute - It may be proper to decline to charge where the statute in question is antiquated in that:

- (i) It has not been enforced for many years; and
- (ii) Most members of society act as if it were no longer in existence; and
- (iii) It serves no deterrent or protective purpose in today's society; and
- (iv) The statute has not been recently reconsidered by the legislature.

This reason is not to be construed as the basis for declining cases because the law in question is unpopular or because it is difficult to enforce.

(c) *De Minimus Violation* - It may be proper to decline to charge where the violation of law is only technical or insubstantial and where no public interest or deterrent purpose would be served by prosecution.

(d) *Confinement on Other Charges* - It may be proper to decline to charge because the accused has been sentenced on another charge to a lengthy period of confinement; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iii) Conviction of the new offense would not serve any significant deterrent purpose.

(e) *Pending Conviction on Another Charge* - It may be proper to decline to charge because the accused is facing a pending prosecution in the same or another county; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) Conviction in the pending prosecution is imminent;

(iii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iv) Conviction of the new offense would not serve any significant deterrent purpose.

(f) *High Disproportionate Cost of Prosecution* - It may be proper to decline to charge where the cost of locating or transporting, or the burden on, prosecution witnesses is highly disproportionate to the importance of prosecuting the offense in question. This reason should be limited to minor cases and should not be relied upon in serious cases.

(g) *Improper Motives of Complainant* - It may be proper to decline charges because the motives of the complainant are improper and prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

(h) *Immunity* - It may be proper to decline to charge where immunity is to be given to an accused in order to prosecute another where the accused's information or testimony will reasonably lead to the conviction of others who are responsible for more serious criminal conduct or who represent a greater danger to the public interest.

(i) Victim Request - It may be proper to decline to charge because the victim requests that no criminal charges be filed and the case involves the following crimes or situations:

- (i) Assault cases where the victim has suffered little or no injury;
- (ii) Crimes against property, not involving violence, where no major loss was suffered;
- (iii) Where doing so would not jeopardize the safety of society.

Care should be taken to insure that the victim's request is freely made and is not the product of threats or pressure by the accused.

The presence of these factors may also justify the decision to dismiss a prosecution which has been commenced.

Notification

The prosecutor is encouraged to notify the victim, when practical, and the law enforcement personnel, of the decision not to prosecute.

(2) Decision to prosecute.

STANDARD:

Crimes against persons will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact-finder. With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and 9A.64.020 the prosecutor should avoid pre-filing agreements or diversions intended to place the accused in a program of treatment or counseling, so that treatment, if determined to be beneficial, can be provided pursuant to RCW 9.94A.120((7))(8).

Crimes against property/other crimes will be filed if the admissible evidence is of such convincing force as to make it probable that a reasonable and objective fact-finder would convict after hearing all the admissible evidence and the most plausible defense that could be raised.

See table below for the crimes within these categories.

CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

CRIMES AGAINST PERSONS

Aggravated Murder

1st Degree Murder

2nd Degree Murder

1st Degree Kidnaping

1st Degree Assault

1st Degree Assault of a Child

1st Degree Rape

1st Degree Robbery

1st Degree Rape of a Child

1st Degree Arson

2nd Degree Kidnaping

2nd Degree Assault
2nd Degree Assault of a Child
2nd Degree Rape
2nd Degree Robbery
1st Degree Burglary
1st Degree Manslaughter
2nd Degree Manslaughter
1st Degree Extortion
Indecent Liberties
Incest
2nd Degree Rape of a Child
Vehicular Homicide
Vehicular Assault
3rd Degree Rape
3rd Degree Rape of a Child
1st Degree Child Molestation
2nd Degree Child Molestation
3rd Degree Child Molestation
2nd Degree Extortion
1st Degree Promoting Prostitution
Intimidating a Juror
Communication with a Minor
Intimidating a Witness
Intimidating a Public Servant
Bomb Threat (if against person)
3rd Degree Assault
3rd Degree Assault of a Child
Unlawful Imprisonment
Promoting a Suicide Attempt
Riot (if against person)

CRIMES AGAINST PROPERTY/OTHER CRIMES

2nd Degree Arson
1st Degree Escape
2nd Degree Burglary
1st Degree Theft
1st Degree Perjury
1st Degree Introducing Contraband
1st Degree Possession of Stolen Property
Bribery
Bribing a Witness
Bribe received by a Witness
Bomb Threat (if against property)
1st Degree Malicious Mischief
2nd Degree Theft

2nd Degree Escape
 2nd Degree Introducing Contraband
 2nd Degree Possession of Stolen Property
 2nd Degree Malicious Mischief
 1st Degree Reckless Burning
 Taking a Motor Vehicle without Authorization
 Forgery
 2nd Degree Perjury
 2nd Degree Promoting Prostitution
 Tampering with a Witness
 Trading in Public Office
 Trading in Special Influence
 Receiving/Granting Unlawful Compensation
 Bigamy
 Eluding a Pursuing Police Vehicle
 Willful Failure to Return from Furlough
 Escape from Community Custody
 Riot (if against property)
 Thefts of Livestock

ALL OTHER UNCLASSIFIED FELONIES

Selection of Charges/Degree of Charge

(1) The prosecutor should file charges which adequately describe the nature of defendant's conduct. Other offenses may be charged only if they are necessary to ensure that the charges:

- (a) Will significantly enhance the strength of the state's case at trial; or
- (b) Will result in restitution to all victims.

(2) The prosecutor should not overcharge to obtain a guilty plea. Overcharging includes:

- (a) Charging a higher degree;
- (b) Charging additional counts.

This standard is intended to direct prosecutors to charge those crimes which demonstrate the nature and seriousness of a defendant's criminal conduct, but to decline to charge crimes which are not necessary to such an indication. Crimes which do not merge as a matter of law, but which arise from the same course of conduct, do not all have to be charged.

GUIDELINES/COMMENTARY:

Police Investigation

A prosecuting attorney is dependent upon law enforcement agencies to conduct the necessary factual investigation which must precede the decision to prosecute. The prosecuting attorney shall ensure that a thorough factual investigation has been conducted before a decision to prosecute is made. In ordinary circumstances the investigation should include the following:

- (1) The interviewing of all material witnesses, together with the obtaining of written statements whenever possible;
- (2) The completion of necessary laboratory tests; and
- (3) The obtaining, in accordance with constitutional requirements, of the suspect's version of the events.

If the initial investigation is incomplete, a prosecuting attorney should insist upon further investigation before a decision to prosecute is made, and specify what the investigation needs to include.

Exceptions

In certain situations, a prosecuting attorney may authorize filing of a criminal complaint before the investigation is complete if:

- (1) Probable cause exists to believe the suspect is guilty; and
- (2) The suspect presents a danger to the community or is likely to flee if not apprehended; or
- (3) The arrest of the suspect is necessary to complete the investigation of the crime.

In the event that the exception to the standard is applied, the prosecuting attorney shall obtain a commitment from the law enforcement agency involved to complete the investigation in a timely manner. If the subsequent investigation does not produce sufficient evidence to meet the normal charging standard, the complaint should be dismissed.

Investigation Techniques

The prosecutor should be fully advised of the investigatory techniques that were used in the case investigation including:

- (1) Polygraph testing;
- (2) Hypnosis;
- (3) Electronic surveillance;
- (4) Use of informants.

Pre-Filing Discussions with Defendant

Discussions with the defendant or his/her representative regarding the selection or disposition of charges may occur prior to the filing of charges, and potential agreements can be reached.

Pre-Filing Discussions with Victim(s)

Discussions with the victim(s) or victims' representatives regarding the selection or disposition of charges may occur before the filing of charges. The discussions may be considered by the prosecutor in charging and disposition decisions, and should be considered before reaching any agreement with the defendant regarding these decisions.

EXPLANATORY NOTE

RCW 9.94A.120 was amended by 1995 c 108 s 3, and the provisions of former subsection (7) are now contained in subsection (8). The purpose of section 2 of this bill is to correct that reference.

Sec. 3. RCW 46.63.020 and 1995 1st sp.s. c 16 s 1, 1995 c 332 s 16, and 1995 c 256 s 25 are each reenacted and 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 (6) or (9) relating to unauthorized use or acquisition of a special placard or license plate for disabled persons' parking;
- (10) RCW 46.20.021 relating to driving without a valid driver's license;
- (11) RCW 46.20.336 relating to the unlawful possession and use of a driver's license;
- (12) RCW 46.20.342 relating to driving with a suspended or revoked license or status;
- (13) RCW 46.20.410 relating to the violation of restrictions of an occupational driver's license;
- (14) RCW 46.20.420 relating to the operation of a motor vehicle with a suspended or revoked license;
- (15) RCW 46.20.750 relating to assisting another person to start a vehicle equipped with an ignition interlock device;
- (16) RCW 46.25.170 relating to commercial driver's licenses;
- (17) Chapter 46.29 RCW relating to financial responsibility;
- (18) RCW 46.30.040 relating to providing false evidence of financial responsibility;
- (19) RCW 46.37.435 relating to wrongful installation of suncreening material;
- (20) RCW 46.44.180 relating to operation of mobile home pilot vehicles;
- (21) RCW 46.48.175 relating to the transportation of dangerous articles;
- (22) RCW 46.52.010 relating to duty on striking an unattended car or other property;

(23) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(24) RCW 46.52.090 relating to reports by repairmen, storagemen, and appraisers;

(25) RCW 46.52.100 relating to driving under the influence of liquor or drugs;

(26) 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;

(27) RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;

(28) RCW 46.55.035 relating to prohibited practices by tow truck operators;

(29) RCW 46.61.015 relating to obedience to police officers, flagmen, or fire fighters;

(30) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;

(31) RCW 46.61.022 relating to failure to stop and give identification to an officer;

(32) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;

(33) RCW 46.61.500 relating to reckless driving;

(34) RCW 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;

(35) RCW (~~46.61.5055 (section 5, chapter 332 (Substitute Senate Bill No. 5141), Laws of 1995))~~ 46.61.503 relating to a person under age twenty-one driving a motor vehicle after consuming alcohol;

(36) RCW 46.61.520 relating to vehicular homicide by motor vehicle;

(37) RCW 46.61.522 relating to vehicular assault;

(38) RCW 46.61.525 relating to negligent driving;

(39) RCW 46.61.527(4) relating to reckless endangerment of roadway workers;

(40) RCW 46.61.530 relating to racing of vehicles on highways;

(41) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;

(42) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;

(43) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;

(44) Chapter 46.65 RCW relating to habitual traffic offenders;

(45) 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;

(46) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;

- (47) Chapter 46.80 RCW relating to motor vehicle wreckers;
- (48) Chapter 46.82 RCW relating to driver's training schools;
- (49) 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;
- (50) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW.

EXPLANATORY NOTE

RCW 46.61.5055, referred to in subsection (35) of this section, does not specifically relate to persons under twenty-one. Substitute Senate Bill No. 5141 was amended and reordered several times during its enactment as chapter 332, Laws of 1995, and the substance of a previous section 5 was placed into section 2, codified as RCW 46.61.503. The purpose of section 3 of this bill is to correct that reference.

Sec. 4. RCW 82.04.010 and 1961 c 15 s 82.04.010 are each amended to read as follows:

~~((For the purposes of this chapter, unless otherwise required by the context, the terms used herein shall have the meaning given to them in RCW 82.04.020 through 82.04.212.))~~ Unless the context clearly requires otherwise, the definitions set forth in the sections preceding RCW 82.04.220 apply throughout this chapter.

EXPLANATORY NOTE

The reference to "RCW 82.04.020 through 82.04.212" has become too restrictive with the 1993 and 1994 enactment of RCW 82.04.213 and 82.04.214, and probable future additions to this series of definition sections would increase the problem. The purpose of section 4 of this bill is to enact language that allows reference to current and future definition sections.

- Passed the House February 6, 1996.
- Passed the Senate February 27, 1996.
- Approved by the Governor March 15, 1996.
- Filed in Office of Secretary of State March 15, 1996.

CHAPTER 94

[Substitute House Bill 2730]

MOTOR VEHICLE FUNDS—DEDUCTIONS TO CITIES AND TOWNS

AN ACT Relating to deductions from motor vehicle funds to cities and towns; and reenacting and amending RCW 46.68.110.

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

Sec. 1. RCW 46.68.110 and 1991 sp.s. c 15 s 46 and 1991 c 342 s 59 are each reenacted and amended to read as follows:

Funds credited to the incorporated cities and towns of the state as set forth in ~~((subdivision (1) of))~~ RCW 46.68.100(1) shall be subject to deduction and distribution as follows:

(1) One and one-half percent of such sums 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 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) ~~((From April 1, 1992, two))~~ One percent of such funds shall be deducted monthly, as such funds accrue, to be deposited in the city hardship assistance account, hereby created in the motor vehicle fund, 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 1, 1996, and 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 (4) of this section;

(4) 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 the House February 6, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 15, 1996.

Filed in Office of Secretary of State March 15, 1996.

CHAPTER 95

[Substitute House Bill 2746]

INSURANCE POLICIES—RATE OR TERM CHANGES

AN ACT Relating to unfair practices when the rates or terms of an insurance policy are being changed; and amending RCW 48.18.230.

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

Sec. 1. RCW 48.18.230 and 1947 c 79 s .18.23 are each amended to read as follows:

(1) A "binder" is used to bind insurance temporarily pending the issuance of the policy. No binder shall be valid beyond the issuance of the policy as to which it was given, or beyond ninety days from its effective date, whichever period is the shorter.

(2) If the policy has not been issued a binder may be extended or renewed beyond such ninety days upon the commissioner's written approval, or in accordance with such rules and regulations relative thereto as the commissioner may promulgate.

(3) Where the premium used in the binder differs from the actual policy premium by less than ten dollars, the insurer shall not be required to notify the insured and may use the actual policy premium.

Passed the House February 6, 1996.

Passed the Senate February 27, 1996.

Approved by the Governor March 15, 1996.

Filed in Office of Secretary of State March 15, 1996.

CHAPTER 96

[Senate Bill 6089]

FIREARMS RANGE ACCOUNT FUNDING

AN ACT Relating to eligibility for firearms range account funding; and amending RCW 77.12.720.

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

Sec. 1. RCW 77.12.720 and 1994 sp.s. c 7 s 443 are each amended to read as follows:

The firearms range account is hereby created in the state general fund. Moneys in the account shall be subject to legislative appropriation and shall be used for purchase and development of land, construction or improvement of range facilities, including fixed structure construction or remodeling, equipment purchase, safety or environmental improvements, noise abatement, and liability protection for public and nonprofit firearm range training and practice facilities.

Grant funds shall not be used for expendable shooting supplies, or normal operating expenses. In making grants, the interagency committee for outdoor recreation shall give priority to projects for noise abatement or safety improvement. Grant funds shall not supplant funds for other organization programs.

The funds will be available to nonprofit shooting organizations, school districts, and state, county, or local governments on a match basis. All entities receiving matching funds must be open on a regular basis and usable by law enforcement personnel or the general public who possess Washington concealed pistol licenses or Washington hunting licenses or who are enrolled in a firearm safety class.

Applicants for a grant from the firearms range account shall provide matching funds in either cash or in-kind contributions. The match must represent one dollar in value for each one dollar of the grant except that in the

case of a grant for noise abatement or safety improvements the match must represent one dollar in value for each two dollars of the grant. In-kind contributions include but are not limited to labor, materials, and new property. Existing assets and existing development may not apply to the match.

Applicants other than school districts or local or state government must be registered as a nonprofit or not-for-profit organization with the Washington secretary of state (~~and the United States internal revenue service~~). The organization's articles of incorporation must contain provisions for the organization's structure, officers, legal address, and registered agent.

Organizations requesting grants must provide the hours of range availability for public and law enforcement use. The fee structure will be submitted with the grant application.

Any nonprofit organization or agency accepting a grant under this program will be required to pay back the entire grant amount to the firearms range account if the use of the range facility is discontinued less than ten years after the grant is accepted.

Entities receiving grants must make the facilities for which grant funding is received open for hunter safety education classes and firearm safety classes on a regular basis for no fee.

Government units or school districts applying for grants must open their range facility on a regular basis for hunter safety education classes and firearm safety classes.

The interagency committee for outdoor recreation shall adopt rules to implement chapter 195, Laws of 1990, pursuant to chapter 34.05 RCW.

Passed the Senate March 2, 1996.

Passed the House February 28, 1996.

Approved by the Governor March 15, 1996.

Filed in Office of Secretary of State March 15, 1996.

CHAPTER 97

[Senate Bill 6177]

STUDENT CONSUMER PROTECTION

AN ACT Relating to student consumer protection; and amending RCW 28B.85.040.

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

Sec. 1. RCW 28B.85.040 and 1994 c 38 s 2 are each amended to read as follows:

(1) An institution or person shall not advertise, offer, sell, or award a degree or any other type of educational credential unless the student has enrolled in and successfully completed a prescribed program of study, as outlined in the institution's publications. This prohibition shall not apply to honorary credentials clearly designated as such on the front side of the diploma or certificate and awarded by institutions offering other educational credentials in compliance with state law.

(2) Except as provided in subsection (1) of this section, this chapter shall not apply to:

(a) Any public college, university, community college, technical college, or institute operating as part of the public higher educational system of this state((-));

(b) Institutions that have been accredited by an accrediting association recognized by the agency for the purposes of this chapter(~~(- provided)~~); PROVIDED, That those institutions meet minimum exemption standards adopted by the agency; and PROVIDED FURTHER, That an institution, branch, extension, or facility operating within the state of Washington which is affiliated with an institution operating in another state must be a separately accredited member institution of any such accrediting association to qualify for this exemption((-));

(c) Institutions of a religious character, but only as to those education programs devoted exclusively to religious or theological objectives if the programs are represented in an accurate manner in institutional catalogs and other official publications((-); or

(d) Institutions not otherwise exempt which offer only workshops or seminars lasting no longer than three calendar days and for which academic credit is not awarded.

Passed the Senate February 9, 1996.

Passed the House February 29, 1996.

Approved by the Governor March 15, 1996.

Filed in Office of Secretary of State March 15, 1996.

CHAPTER 98

[Senate Bill 6292]

LIFE AND DISABILITY INSURANCE GUARANTY ASSOCIATION

AN ACT Relating to member insurers and the persons to whom coverage is available under the Washington life and disability insurance guaranty association; and amending RCW 48.32A.020, 48.32A.030, and 48.32A.040.

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

Sec. 1. RCW 48.32A.020 and 1994 c 149 s 2 are each amended to read as follows:

This chapter shall apply as follows to life insurance policies, disability insurance policies, and annuity contracts of impaired or insolvent insurers, other than separate account variable policies and contracts authorized by chapter 48.18A RCW:

(1) ~~((To all such policies and contracts of a domestic, foreign, or alien insurer authorized to transact such insurance or annuity business in this state at the time such policies or contracts were issued or at the time the insurer becomes an impaired or insolvent insurer, and of which the policy or contract owner, insured, annuitant, beneficiary, or payee is a resident.~~

~~(2))~~ To persons, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, who are the beneficiaries, assignees, or payees of the persons covered under subsection (2) of this section.

(2) To persons who are owners of or certificate holders under such policies or contracts; or, in the case of unallocated annuity contracts, to the persons who are the contract holders, and who:

(a) Are residents; or

(b) Are not residents, but only under all of the following conditions:

(i) The insurers that issued the policies or contracts are domiciled in this state;

(ii) The insurers never held a certificate of authority in the states in which the persons reside;

(iii) The states have associations similar to the association created by this chapter; and

(iv) These persons are not eligible for coverage by these associations. To policies and contracts only of impaired or insolvent insurers.

~~((3))~~ (4) The obligations of the association created under this chapter shall apply only as to contractual obligations of the insurer under insurance policies and annuity contracts, and shall be no greater than such obligations of the impaired or insolvent insurer. However, the liability of the association shall in no event exceed:

(a) With respect to any one life, regardless of the number of policies or contracts:

(i) Five hundred thousand dollars in life insurance death benefits, including any net cash surrender and net cash withdrawal values for life insurance;

(ii) Five hundred thousand dollars in disability insurance benefits, including any net cash surrender and net cash withdrawal values; or

(iii) Five hundred thousand dollars in the present value of allocated annuity benefits and annuities established under section 403(b) of the United States internal revenue code.

The association shall not be liable to expend more than five hundred thousand dollars in the aggregate with respect to any one individual under this subsection; or

(b) With respect to any one contract owner covered by any unallocated annuity contract, including governmental retirement plans established under section 401 or 457 of the United States internal revenue code, five million dollars in benefits, irrespective of the number of such contracts held by that contract owner.

~~((4))~~ (5) This chapter shall not apply to:

(a) Fraternal benefit societies;

(b) Health care service contractors;

(c) Insurance or liability assumed by the impaired or insolvent insurer under a contract of reinsurance other than bulk reinsurance;

(d) Any unallocated annuity contract issued to an employee benefit plan protected under the federal pension benefit guaranty corporation; or

(e) Any portion of any unallocated annuity contract which is not issued to or in connection with a specific employee, union, association of natural persons benefit plan, or a government lottery.

Sec. 2. RCW 48.32A.030 and 1994 c 149 s 3 are each amended to read as follows:

Within the meaning of this chapter:

(1) "Account" means any one of the three guaranty fund accounts created under RCW 48.32A.080(1).

(2) "Assessment" means a charge made upon an insurer by the board under this chapter for payment into a guaranty fund. The charge constitutes a legal liability of the insurer so assessed.

(3) "Association" means "the Washington life and disability insurance guaranty association."

(4) "Board" means the board of directors of the Washington life and disability insurance guaranty association.

(5) "Certificate" means a certificate of contribution provided for in RCW 48.32A.090.

(6) "Commissioner" means the insurance commissioner of this state.

(7) "Contributor" means an insurer that has paid an assessment.

(8) "Fund" means a guaranty fund provided for in RCW 48.32A.080.

(9) "Impaired insurer" means an insurer that, after June 9, 1994, is not an insolvent insurer, and is placed under an order of rehabilitation or conservation, or a substantially similar order, by a court of competent jurisdiction.

(10) "Insolvent insurer" means an insurer with respect to which an order of liquidation has been entered by a court of competent jurisdiction.

(11) "Member insurer" means any insurer that holds a certificate of authority to transact life insurance, disability insurance, or annuity insurance business in this state, and includes any insurer whose license or certificate of authority in this state has been suspended, revoked, not renewed, or voluntarily withdrawn.

(12) "Policies" means life or disability insurance policies; "contracts" means annuity contracts and contracts supplemental to such insurance policies and annuity contracts.

~~((12))~~ (13) "Resident" means a person who resides and is domiciled in this state at the time an insurer is determined to be an impaired or insolvent insurer and to whom a contractual obligation is owed. A person may be resident of only one state, which in the case of a person other than an individual is its principal place of business.

~~((13))~~ (14) "Unallocated annuity contract" means any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate.

Sec. 3. RCW 48.32A.040 and 1971 ex.s. c 259 s 4 are each amended to read as follows:

(1) There is hereby created a nonprofit unincorporated legal entity to be known as the Washington life and disability insurance guaranty association, which shall be composed of the commissioner, ex officio, and of each member insurer authorized to transact life insurance, or disability insurance, or annuity business in this state. All such insurers shall be and remain members of the association during the continuance of, and as a condition to, their authority to transact such business in this state.

(2) The association shall be managed by a board of directors composed of the commissioner, ex officio, and of not less than five nor more than nine member insurers, each of whom shall initially be appointed by the commissioner to serve for terms of one, two, or three years. After the initial board is appointed, the board shall provide in its bylaws for selection of board members by member insurers subject to the commissioner's approval; members so selected shall serve for three year terms, acceding to office upon expiration of the terms of the respective initial board members; and board members shall thereafter serve for three year terms and shall continue in office until their respective successors be selected, approved, and have qualified. At least a majority of the members of the board shall be domestic insurers. In case of a vacancy for any reason on the initial board appointed, the commissioner shall appoint a member insurer to fill the unexpired term; vacancies on the board thereafter shall be filled in the same manner as in the original selection and approval. Board members may be reimbursed for reasonable and necessary expenses incurred in connection with the performance of their duties.

(3) A director, officer, employee, agent or other representative of the association or of a member insurer, or the commissioner or his representative shall in no event be individually liable to any person, including the association, for any act or omission to act, or for any liability incurred or assumed, on behalf of the association or by virtue thereof, any such liability so incurred or assumed to be collectible only out of a fund; nor shall any insurer member of the association be subject to any liability except for assessment as in this chapter provided.

(4) The association shall be under the immediate supervision of the commissioner and shall be subject to such provisions of the insurance code of the state of Washington as may be applicable and not inconsistent with the provisions of this chapter.

(5) The board may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

Passed the Senate February 10, 1996.

Passed the House March 1, 1996.

Approved by the Governor March 15, 1996.

Filed in Office of Secretary of State March 15, 1996.

CHAPTER 99

[Substitute Senate Bill 6379]

WORK FORCE TRAINING AND EDUCATION COORDINATING BOARD

AN ACT Relating to the work force training and education coordinating board; and amending RCW 28C.18.005, 28C.18.010, 28C.18.030, and 28C.18.060.

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

Sec. 1. RCW 28C.18.005 and 1991 c 238 s 1 are each amended to read as follows:

The legislature finds that the state's system of work force training and education is inadequate for meeting the needs of the state's workers, employers, and economy. A growing shortage of skilled workers is already hurting the state's economy. There is a shortage of available workers and too often prospective employees lack the skills and training needed by employers. Moreover, with demographic changes in the state's population employers will need to employ a more culturally diverse work force in the future.

The legislature further finds that the state's current work force training and education system is fragmented among numerous agencies, councils, boards, and committees, with inadequate overall coordination. No comprehensive strategic plan guides the different parts of the system. There is no single point of leadership and responsibility. There is insufficient guidance from employers and workers built into the system to ensure that the system is responsive to the needs of its customers. Adult work force education lacks a uniform system of governance, with an inefficient division in governance between community colleges and vocational technical institutes, and inadequate local authority. The parts of the system providing adult basic skills and literacy education are especially uncoordinated and lack sufficient visibility to adequately address the needs of the large number of adults in the state who are functionally illiterate. The work force training and education system's data and evaluation methods are inconsistent and unable to provide adequate information for determining how well the system is performing on a regular basis so that the system may be held accountable for the outcomes it produces. Much of the work force training and education system provides inadequate opportunities to meet the needs of people from culturally diverse backgrounds. Finally, our public and private educational institutions are not producing the number of people educated in vocational/technical skills needed by employers.

The legislature recognizes that we must make certain that our public and private institutions of education place appropriate emphasis on the needs of employers and on the needs of the approximately eighty percent of our young people who enter the world of work without completing a four-year program of higher education. We must make our work force education and training system better coordinated, more efficient, more responsive to the needs of business and workers and local communities, more accountable for its performance, and more open to the needs of a culturally diverse population.

Sec. 2. RCW 28C.18.010 and 1991 c 238 s 2 are each amended to read as follows:

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

(1) "Board" means the work force training and education coordinating board.

(2) "Director" means the director of the work force training and education coordinating board.

(3) "Training system" means programs and courses of secondary vocational education, technical college programs and courses, community college vocational programs and courses, private career school and college programs and courses, employer-sponsored training, adult basic education programs and courses, programs and courses funded by the job training partnership act, programs and courses funded by the federal vocational act, programs and courses funded under the federal adult education act, publicly funded programs and courses for adult literacy education, and apprenticeships, and programs and courses offered by private and public nonprofit organizations that are representative of communities or significant segments of communities and provide job training or adult literacy services.

(4) "Work force skills" means skills developed through applied learning that strengthen and reinforce an individual's academic knowledge, critical thinking, problem solving, and work ethic and, thereby, develop the employability, occupational skills, and management of home and work responsibilities necessary for economic independence.

(5) "Vocational education" means organized educational programs offering a sequence of courses which are directly related to the preparation or retraining of individuals in paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or advanced degree. Such programs shall include competency-based applied learning which contributes to an individual's academic knowledge, higher-order reasoning, and problem-solving skills, work attitudes, general employability skills, and the occupational-specific skills necessary for economic independence as a productive and contributing member of society. Such term also includes applied technology education.

(6) "Adult basic education" means instruction designed to achieve mastery of skills in reading, writing, oral communication, and computation at a level sufficient to allow the individual to function effectively as a parent, worker, and citizen in the United States, commensurate with that individual's actual ability level, and includes English as a second language and preparation and testing service for the general education development exam.

Sec. 3. RCW 28C.18.030 and 1991 c 238 s 4 are each amended to read as follows:

The purpose of the board is to provide planning, coordination, evaluation, monitoring, and policy analysis for the state training system as a whole, and

advice to the governor and legislature concerning the state training system, in cooperation with ~~((the agencies which comprise))~~ the state training system~~(?)~~ and the higher education coordinating board.

Sec. 4. RCW 28C.18.060 and 1993 c 280 s 17 are each amended to read as follows:

The board, in cooperation with the operating agencies of the state training system and private career schools and colleges shall:

(1) Concentrate its major efforts on planning, coordination evaluation, policy analysis, and recommending improvements to the state's training system.

(2) Advocate for the state training system and for meeting the needs of employers and the work force for work force education and training.

(3) Establish and maintain an inventory of the programs of the state training system, and related state programs, and perform a biennial assessment of the vocational education, training, and adult basic education and literacy needs of the state; identify ongoing and strategic education needs; and assess the extent to which employment, training, vocational and basic education, rehabilitation services, and public assistance services represent a consistent, integrated approach to meet such needs.

(4) Develop and maintain a state comprehensive plan for work force training and education, including but not limited to, goals, objectives, and priorities for the state training system, and review the state training system for consistency with the state comprehensive plan. In developing the state comprehensive plan for work force training and education, the board shall use, but shall not be limited to: Economic, labor market, and populations trends reports in office of financial management forecasts; joint office of financial management and employment security department labor force, industry employment, and occupational forecasts; the results of scientifically based outcome, net-impact and cost-benefit evaluations; the needs of employers as evidenced in formal employer surveys and other employer input; and the needs of program participants and workers as evidenced in formal surveys and other input from program participants and the labor community.

(5) In consultation with the higher education coordinating board, review and make recommendations to the office of financial management and the legislature on operating and capital facilities budget requests for operating agencies of the state training system for purposes of consistency with the state comprehensive plan for work force training and education.

(6) Provide for coordination among the different operating agencies and components of the state training system at the state level and at the regional level.

(7) Develop a consistent and reliable data base on vocational education enrollments, costs, program activities, and job placements from publicly funded vocational education programs in this state.

(8) Establish standards for data collection and maintenance for the operating agencies of the state training system in a format that is accessible to use by the

board. The board shall require a minimum of common core data to be collected by each operating agency of the state training system.

The board shall develop requirements for minimum common core data in consultation with the office of financial management and the operating agencies of the training system.

(9) Establish minimum standards for program evaluation for the operating agencies of the state training system, including, but not limited to, the use of common survey instruments and procedures for measuring perceptions of program participants and employers of program participants, and monitor such program evaluation.

(10) Every two years administer scientifically based outcome evaluations of the state training system, including, but not limited to, surveys of program participants, surveys of employers of program participants, and matches with employment security department payroll and wage files. Every five years administer scientifically based net-impact and cost-benefit evaluations of the state training system.

(11) In cooperation with the employment security department, provide for the improvement and maintenance of quality and utility in occupational information and forecasts for use in training system planning and evaluation. Improvements shall include, but not be limited to, development of state-based occupational change factors involving input by employers and employees, and delineation of skill and training requirements by education level associated with current and forecasted occupations.

(12) Provide for the development of common course description formats, common reporting requirements, and common definitions for operating agencies of the training system.

(13) Provide for effectiveness and efficiency reviews of the state training system.

(14) In cooperation with the higher education coordinating board, facilitate transfer of credit policies and agreements between institutions of the state training system, and encourage articulation agreements for programs encompassing two years of secondary work force education and two years of postsecondary work force education.

(15) In cooperation with the higher education coordinating board, facilitate transfer of credit policies and agreements between private training institutions and institutions of the state training system.

(16) Participate in the development of coordination criteria for activities under the job training partnership act with related programs and services provided by state and local education and training agencies.

(17) Make recommendations to the commission of student assessment, the state board of education, and the superintendent of public instruction, concerning basic skill competencies and essential core competencies for K-12 education. Basic skills for this purpose shall be reading, writing, computation, speaking, and critical thinking, essential core competencies for this purpose shall be

English, math, science/technology, history, geography, and critical thinking. The board shall monitor the development of and provide advice concerning secondary curriculum which integrates vocational and academic education.

(18) Establish and administer programs for marketing and outreach to businesses and potential program participants.

(19) Facilitate the location of support services, including but not limited to, child care, financial aid, career counseling, and job placement services, for students and trainees at institutions in the state training system, and advocate for support services for trainees and students in the state training system.

(20) Facilitate private sector assistance for the state training system, including but not limited to: Financial assistance, rotation of private and public personnel, and vocational counseling.

(21) Facilitate programs for school-to-work transition that combine classroom education and on-the-job training in industries and occupations without a significant number of apprenticeship programs.

(22) Encourage and assess progress for the equitable representation of racial and ethnic minorities, women, and people with disabilities among the students, teachers, and administrators of the state training system. Equitable, for this purpose, shall mean substantially proportional to their percentage of the state population in the geographic area served. This function of the board shall in no way lessen more stringent state or federal requirements for representation of racial and ethnic minorities, women, and people with disabilities.

(23) Participate in the planning and policy development of governor set-aside grants under P.L. 97-300, as amended.

(24) Administer veterans' programs, licensure of private vocational schools, the job skills program, and the Washington award for vocational excellence.

(25) Allocate funding from the state job training trust fund.

(26) Work with the director of community, trade, and economic development to ensure coordination between work force training priorities and that department's economic development efforts.

(27) Adopt rules as necessary to implement this chapter.

The board may delegate to the director any of the functions of this section.

Passed the Senate March 2, 1996.

Passed the House February 26, 1996.

Approved by the Governor March 15, 1996.

Filed in Office of Secretary of State March 15, 1996.

CHAPTER 100

[Senate Bill 6380]

TUITION RECOVERY TRUST FUND—REPEAL OF PRIVATE VOCATIONAL SCHOOLS PARTICIPATION

AN ACT Relating to technical and career training and education; creating a new section; and repealing RCW 28B.85.200 and 28B.85.210.

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

NEW SECTION. Sec. 1. The legislature finds that the higher education coordinating board has never implemented legislation requiring degree-granting private vocational schools to participate in the tuition recovery trust fund established under RCW 28C.10.082. The legislature also finds that federal requirements for degree-granting private schools are in conflict with the provisions of Washington law. Therefore, the legislature intends to repeal the requirement that degree-granting private vocational schools participate in the tuition recovery trust fund.

NEW SECTION. Sec. 2. The following acts or parts of acts are each repealed:

- (1) RCW 28B.85.200 and 1995 c 176 s 1 & 1994 c 38 s 3; and
- (2) RCW 28B.85.210 and 1995 c 176 s 2 & 1994 c 38 s 4.

Passed the Senate February 12, 1996.

Passed the House February 29, 1996.

Approved by the Governor March 15, 1996.

Filed in Office of Secretary of State March 15, 1996.

CHAPTER 101

[Substitute Senate Bill 6533]

FISH AND WILDLIFE COMMISSION—AUCTIONS AND RAFFLES

AN ACT Relating to auctions and raffles authorized by the fish and wildlife commission; amending RCW 9.46.010, 77.12.170, 77.32.050, 77.32.060, 77.32.090, 77.32.230, and 77.32.250; adding a new section to chapter 9.46 RCW; adding a new section to chapter 77.08 RCW; adding new sections to chapter 77.12 RCW; creating a new section; and repealing RCW 77.12.700.

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

NEW SECTION. Sec. 1. The legislature finds that it is in the best interest of recreational hunters to provide them with the variety of hunting opportunities provided by auctions and raffles. Raffles provide an affordable opportunity for most hunters to participate in special hunts for big game animals and wild turkeys. The legislature also finds that wildlife management and recreation are not adequately funded and that such auctions and raffles can increase revenues to improve wildlife management and recreation.

Sec. 2. RCW 9.46.010 and 1994 c 218 s 2 are each amended to read as follows:

The public policy of the state of Washington on gambling is to keep the criminal element out of gambling and to promote the social welfare of the people by limiting the nature and scope of gambling activities and by strict regulation and control.

It is hereby declared to be the policy of the legislature, recognizing the close relationship between professional gambling and organized crime, to restrain all persons from seeking profit from professional gambling activities in this state; to restrain all persons from patronizing such professional gambling

activities; to safeguard the public against the evils induced by common gamblers and common gambling houses engaged in professional gambling; and at the same time, both to preserve the freedom of the press and to avoid restricting participation by individuals in activities and social pastimes, which activities and social pastimes are more for amusement rather than for profit, do not maliciously affect the public, and do not breach the peace.

The legislature further declares that the raising of funds for the promotion of bona fide charitable or nonprofit organizations is in the public interest as is participation in such activities and social pastimes as are hereinafter in this chapter authorized.

The legislature further declares that the conducting of bingo, raffles, and amusement games and the operation of punch boards, pull-tabs, card games and other social pastimes, when conducted pursuant to the provisions of this chapter and any rules and regulations adopted pursuant thereto, are hereby authorized, as are only such lotteries for which no valuable consideration has been paid or agreed to be paid as hereinafter in this chapter provided.

The legislature further declares that fishing derbies shall not constitute any form of gambling and shall not be considered as a lottery, a raffle, or an amusement game and shall not be subject to the provisions of this chapter or any rules and regulations adopted hereunder.

The legislature further declares that raffles authorized by the fish and wildlife commission involving hunting big game animals or wild turkeys shall not be subject to the provisions of this chapter or any rules and regulations adopted hereunder, with the exception of this section and section 3 of this act.

All factors incident to the activities authorized in this chapter shall be closely controlled, and the provisions of this chapter shall be liberally construed to achieve such end.

NEW SECTION. Sec. 3. A new section is added to chapter 9.46 RCW to read as follows:

Any raffle authorized by the fish and wildlife commission involving hunting big game animals or wild turkeys shall not be subject to any provisions of this chapter other than RCW 9.46.010 and this section or to any rules or regulations of the gambling commission.

NEW SECTION. Sec. 4. A new section is added to chapter 77.08 RCW to read as follows:

"Raffle," as used in this title, 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.

NEW SECTION. Sec. 5. A new section is added to chapter 77.12 RCW to read as follows:

(1) The commission in consultation with the director may authorize hunting of big game animals and wild turkeys through auction. The department may conduct the auction for the hunt or contract with a nonprofit wildlife conservation organization to conduct the auction for the hunt.

(2) The commission in consultation with the director may authorize hunting of up to a total of fifteen big game animals and wild turkeys per year through raffle. The department may conduct raffles or contract with a nonprofit wildlife conservation organization to conduct raffles for hunting these animals. In consultation with the gambling commission, the director may adopt rules for the implementation of raffles involving hunting.

(3) The director shall establish the procedures for the hunts, which shall require any participants to obtain any required license, permit, or tag. Representatives of the department may participate in the hunt upon the request of the commission to ensure that the animals to be killed are properly identified.

(4) After deducting the expenses of conducting an auction or raffle, any revenues retained by a nonprofit organization, as specified under contract with the department, shall be devoted solely for wildlife conservation, consistent with its qualification as a bona fide nonprofit organization for wildlife conservation.

(5) The department's share of revenues from auctions and raffles shall be deposited in the state wildlife fund. The revenues shall be used to improve the habitat, health, and welfare of the species auctioned or raffled and shall supplement, rather than replace, other funds budgeted for management of that species. The commission may solicit input from groups or individuals with special interest in and expertise on a species in determining how to use these revenues.

(6) A nonprofit wildlife conservation organization may petition the commission to authorize an auction or raffle for a special hunt for big game animals and wild turkeys.

NEW SECTION. Sec. 6. A new section is added to chapter 77.12 RCW to read as follows:

If a private entity has a private lands wildlife management area agreement in effect with the department, the commission may authorize the private entity to conduct raffles for access to hunt for big game animals and wild turkeys to meet the conditions of the agreement. The private entity shall comply with all applicable rules adopted under section 5 of this act for the implementation of raffles; however, raffle hunts conducted pursuant to this section shall not be counted toward the number of raffle hunts the commission may authorize under section 5 of this act. The director shall establish the procedures for the hunts, which shall require any participants to obtain any required license, permit, or tag. Representatives of the department may participate in the hunt upon the request of the commission to ensure that the animals to be killed are properly identified.

Sec. 7. RCW 77.12.170 and 1989 c 314 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, stamps, and punchcards required by this title;

(d) Fees for informational materials published by the department;
 (e) Fees for personalized vehicle license plates as provided in chapter 46.16 RCW;

(f) Articles or wildlife sold by the director under this title;
 (g) Compensation for wildlife losses or gifts or grants received under RCW 77.12.320;

(h) Excise tax on anadromous game fish collected under chapter 82.27 RCW; ~~(and)~~

(i) The sale of personal property seized by the department for wildlife violations; and

(j) The department's share of revenues from auctions and raffles authorized by the commission.

(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.

Sec. 8. RCW 77.32.050 and 1995 c 116 s 1 are each amended to read as follows:

Licenses, permits, tags, and stamps required by this chapter and raffle tickets authorized under chapter 77.12 RCW shall be issued under the authority of the commission. The director may authorize department personnel, county auditors, or other reputable citizens to issue licenses, permits, tags, ~~(and)~~ stamps, and raffle tickets, and collect the appropriate fees. The authorized persons shall pay on demand or before the tenth day of the following month the fees collected and shall make reports as required by the director. The director may adopt rules for issuing licenses, permits, tags, ~~(and)~~ stamps, and raffle tickets, collecting and paying fees, and making reports.

Sec. 9. RCW 77.32.060 and 1995 c 116 s 2 are each amended to read as follows:

The director may adopt rules establishing the amount a license dealer may charge and keep for each license, tag, permit, ~~(or)~~ stamp, or raffle ticket issued. The director shall establish the amount to be retained by dealers to be at least fifty cents for each license issued, and twenty-five cents for each tag, permit, ~~(or)~~ stamp, or raffle ticket, issued. The director shall report to the next regular session of the legislature explaining any increase in the amount

retained by license dealers. Fees retained by dealers shall be uniform throughout the state.

Sec. 10. RCW 77.32.090 and 1995 c 116 s 4 are each amended to read as follows:

The director may adopt rules pertaining to the form, period of validity, use, possession, and display of licenses, permits, tags, and stamps required by this chapter and raffle tickets authorized under chapter 77.12 RCW.

Sec. 11. RCW 77.32.230 and 1994 c 255 s 12 are each amended to read as follows:

(1) A person sixty-five years of age or older who is an honorably discharged veteran of the United States armed forces having a service-connected disability and who is a resident may receive upon written application a hunting and fishing license free of charge.

(2) Residents who are honorably discharged veterans of the United States armed forces with a thirty percent or more service-connected disability may receive upon written application a hunting and fishing license free of charge.

(3) An honorably discharged veteran who is a resident and is confined to a wheelchair shall receive upon application a hunting license free of charge.

(4) A person who is blind, or a person with a developmental disability as defined in RCW 71A.10.020 with documentation of the disability from the department of social and health services, or a physically handicapped person confined to a wheelchair may receive upon written application a fishing license free of charge.

(5) A person who is blind or a physically handicapped person confined to a wheelchair who has been issued a card for a permanent disability under RCW 46.16.381 may use that card in place of a fishing license.

(6) A fishing license is not required for residents under the age of fifteen.

(7) Tags, permits, stamps, and steelhead licenses required by this chapter and raffle tickets authorized under chapter 77.12 RCW shall be purchased separately by persons receiving a free or reduced-fee license.

(8) Licenses issued at no charge under this section shall be issued from Olympia as provided by rule of the director, and are valid for five years.

Sec. 12. RCW 77.32.250 and 1995 c 116 s 5 are each amended to read as follows:

Licenses, permits, tags, and stamps required by this chapter and raffle tickets authorized under chapter 77.12 RCW shall not be transferred and, unless otherwise provided in this chapter, are void on January 1st following the year for which the license, permit, tag, ~~((ø))~~ stamp, or raffle ticket was issued.

Upon request of a wildlife agent or ex officio wildlife agent, persons licensed, operating under a permit, or possessing wildlife under the authority of this chapter shall produce required licenses, permits, tags, ~~((ø))~~ stamps, or raffle tickets for inspection and write their signatures for comparison and in

addition display their wildlife. Failure to comply with the request is prima facie evidence that the person has no license or is not the person named.

NEW SECTION. Sec. 13. RCW 77.12.700 and 1987 c 506 s 56 are each repealed.

Passed the Senate March 2, 1996.
Passed the House February 27, 1996.
Approved by the Governor March 15, 1996.
Filed in Office of Secretary of State March 15, 1996.

CHAPTER 102

[Senate Bill 6615]

BUSINESS INFORMATION PROTECTION

AN ACT Relating to protection of certain business information; amending RCW 34.05.370; and adding a new section to chapter 42.17 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 42.17 RCW to read as follows:

The disclosure requirements of this chapter do not apply to information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business.

Sec. 2. RCW 34.05.370 and 1995 c 403 s 801 are each amended to read as follows:

(1) Each agency shall maintain an official rule-making file for each rule that it (a) proposes by publication in the state register, or (b) adopts. The file and materials incorporated by reference shall be available for public inspection.

(2) The agency rule-making file shall contain all of the following:

(a) Copies of all publications in the state register with respect to the rule or the proceeding upon which the rule is based;

(b) Copies of any portions of the agency's public rule-making docket containing entries relating to the rule or the proceeding on which the rule is based;

(c) All written petitions, requests, submissions, and comments received by the agency and all other written material regarded by the agency as important to adoption of the rule or the proceeding on which the rule is based;

(d) Any official transcript of oral presentations made in the proceeding on which the rule is based or, if not transcribed, any tape recording or stenographic record of them, and any memorandum prepared by a presiding official summarizing the contents of those presentations;

(e) All petitions for exceptions to, amendment of, or repeal or suspension of, the rule;

(f) Citations to data, factual information, studies, or reports on which the agency relies in the adoption of the rule, indicating where such data, factual

information, studies, or reports are available for review by the public, but this subsection (2)(f) does not require the agency to include in the rule-making file any data, factual information, studies, or reports gathered pursuant to chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

- (g) The concise explanatory statement required by RCW 34.05.325(6); and
- (h) Any other material placed in the file by the agency.

(3) Internal agency documents are exempt from inclusion in the rule-making file under subsection (2) of this section to the extent they constitute preliminary drafts, notes, recommendations, and intra-agency memoranda in which opinions are expressed or policies formulated or recommended, except that a specific document is not exempt from inclusion when it is publicly cited by an agency in connection with its decision.

(4) Upon judicial review, the file required by this section constitutes the official agency rule-making file with respect to that rule. Unless otherwise required by another provision of law, the official agency rule-making file need not be the exclusive basis for agency action on that rule.

Passed the Senate February 10, 1996.

Passed the House February 28, 1996.

Approved by the Governor March 15, 1996.

Filed in Office of Secretary of State March 15, 1996.

CHAPTER 103

[Senate Bill 6617]

MORTGAGE BROKERS—FINES AND SANCTIONS

AN ACT Relating to the powers of the director to impose fines or sanctions against mortgage brokers; amending RCW 19.146.220; and providing an effective date.

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

Sec. 1. RCW 19.146.220 and 1994 c 33 s 12 are each amended to read as follows:

(1) The director shall enforce all laws and rules relating to the licensing of mortgage brokers, grant or deny licenses to mortgage brokers, and hold hearings.

(2) The director may impose (~~any one or more of~~) the following sanctions:

(a) (~~Suspend or revoke licenses~~) Deny applications for licenses(~~or impose penalties upon violators of~~) for: (i) Violations of orders, including cease and desist orders issued under this chapter(~~The director may~~); or (ii) any violation of RCW 19.146.050 or 19.146.0201(1) through (9);

(b) Suspend or revoke licenses for:

(i) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(ii) Failure to pay a fee required by the director or maintain the required bond;

(iii) Failure to comply with any directive or order of the director; or
(iv) Any violation of RCW 19.146.050, 19.146.0201 (1) through (9) or (13), 19.146.205(3), or 19.146.265;

(c) Impose fines(~~(, as established by rule by the director,)~~) on the licensee, employee or loan originator of the licensee, or other person subject to this chapter for:

(i) Any violations of (~~(or failure to comply with)) RCW 19.146.0201 (1) through (9) or (13), 19.146.030 through 19.146.090, 19.146.200, 19.146.205(3), or 19.146.265; or~~

(ii) Failure to comply with any (~~(lawful)) directive(~~(, order, or requirement)) or order of the director(~~(, Each day's continuance of the violation or failure to comply is a separate and distinct violation or failure))~~);~~~~

(~~((b))~~) (d) Issue (~~(a))~~ orders directing a licensee, its employee or loan originator, or other person subject to this chapter to:

(i) Cease and desist from conducting business in a manner that is injurious to the public or violates any provision of this chapter(~~(r))~~; or (~~(t))~~)

(ii) Pay restitution to an injured borrower; or

(~~((e))~~) (e) Issue (~~(a))~~ orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed mortgage broker, or both, any officer, principal, employee, or loan originator(~~(, as the case may be,)) of any licensed mortgage broker or any person subject to licensing under this chapter for:~~

(i) Any violation of 19.146.0201 (1) through (9) or (13), 19.146.030 through 19.146.090, 19.146.200, 19.146.205(3), or 19.146.265; or

(ii) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(iii) Conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony after obtaining a license; or

(iv) Failure to comply with any directive or order of the director.

(~~((2))~~) The director may take those actions specified in subsection (1) of this section if the director finds any of the following:

~~— (a) The licensee has failed to pay a fee due the state of Washington under this chapter or, to maintain in effect the bond or approved alternative required under this chapter; or~~

~~— (b) The licensee, employee or loan originator of the licensee, or person subject to the license requirements or prohibited practices of this chapter has failed to comply with any specific order or demand of the director lawfully made and directed to the licensee, employee, or loan originator of the licensee in accordance with this chapter; or~~

~~— (c) The licensee, its employee or loan originator, or other person subject to this chapter has violated any provision of this chapter or a rule adopted under this chapter; or~~

~~(d) The licensee made false statements on the application or omitted material information that, if known, would have allowed the director to deny the application for the original license.)~~

(3) Each day's continuance of a violation or failure to comply with any directive or order of the director is a separate and distinct violation or failure.

(4) The director shall establish by rule standards for licensure of applicants licensed in other jurisdictions. Every licensed mortgage broker that does not maintain a physical office within the state must maintain a registered agent within the state to receive service of any lawful process in any judicial or administrative noncriminal suit, action, or proceeding, against the licensed mortgage broker which arises under this chapter or any rule or order under this chapter, with the same force and validity as if served personally on the licensed mortgage broker. Service upon the registered agent shall be effective if the plaintiff, who may be the director in a suit, action, or proceeding instituted by him or her, sends notice of the service and a copy of the process by registered mail to the defendant or respondent at the last address of the respondent or defendant on file with the director. In any judicial action, suit, or proceeding arising under this chapter or any rule or order adopted under this chapter between the department or director and a licensed mortgage broker who does not maintain a physical office in this state, venue shall be exclusively in the superior court of Thurston county.

NEW SECTION. Sec. 2. This act shall take effect July 1, 1996.

Passed the Senate February 10, 1996.

Passed the House February 29, 1996.

Approved by the Governor March 15, 1996.

Filed in Office of Secretary of State March 15, 1996.

CHAPTER 104

[Substitute Senate Bill 6673]

FUEL TAX EVASION

AN ACT Relating to fuel tax evasion; amending RCW 82.36.030, 82.36.045, 82.36.060, 82.36.070, 82.36.160, 82.36.390, 82.38.030, 82.38.110, 82.38.120, 82.38.140, 82.38.150, 82.38.170, 82.42.020, 82.42.040, 82.42.060, and 82.42.080; creating new sections; and prescribing penalties.

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

Sec. 1. RCW 82.36.030 and 1994 c 262 s 18 are each amended to read as follows:

Every distributor shall on or before the twenty-fifth day of each calendar month file, on forms furnished by the department, a statement signed by the distributor or his or her authorized agent showing the total number of gallons of motor vehicle fuel sold, distributed, or used by such distributor within this state during the preceding calendar month and, for counties within which an additional excise tax on motor vehicle fuel has been levied by that jurisdiction

under RCW 82.80.010, showing the total number of gallons of motor vehicle fuel sold, distributed, or used by the distributor within the boundaries of the county during the preceding calendar month. As directed by the department, the distributor shall periodically submit with the statement, on forms furnished by the department, updated license information.

Sec. 2. RCW 82.36.045 and 1991 c 339 s 1 are each amended to read as follows:

(1) If the department determines that the tax reported by a motor vehicle fuel distributor is deficient, the department shall assess the deficiency on the basis of information available to it, and shall add a penalty of two percent of the amount of the deficiency.

(2) If a distributor, whether licensed or not licensed as such, fails, neglects, or refuses to file a motor vehicle fuel tax report the department shall, on the basis of information available to it, determine the tax liability of the distributor for the period during which no report was filed. The department shall add the penalty provided in subsection (1) of this section to the tax. An assessment made by the department under this subsection or subsection (1) of this section is presumed to be correct. In any case, where the validity of the assessment is questioned, the burden is on the person who challenges the assessment to establish by a fair preponderance of evidence that it is erroneous or excessive, as the case may be.

(3) If a distributor files a false or fraudulent report with intent to evade the tax imposed by this chapter, the department shall add to the amount of deficiency a penalty equal to twenty-five percent of the deficiency, in addition to the penalty provided in subsections (1) and (2) of this section and all other penalties prescribed by law.

(4) Motor vehicle fuel tax, penalties, and interest payable under this chapter bears interest at the rate of one percent per month, or fraction thereof, from the first day of the calendar month after the amount or any portion of it should have been paid until the date of payment. If a distributor establishes by a fair preponderance of evidence that the failure to pay the amount of tax due was attributable to reasonable cause and was not intentional or willful, the department may waive the penalty. The department may waive the interest when it determines the cost of processing or collection of the interest exceeds the amount of interest due.

(5) Except in the case of a fraudulent report, neglect or refusal to make a report, or failure to pay or to pay the proper amount, the department shall assess the deficiency under subsection (1) or (2) of this section within ~~((three))~~ five years from the last day of the succeeding calendar month after the reporting period for which the amount is proposed to be determined or within ~~((three))~~ five years after the return is filed, whichever period expires later.

(6) Except in the case of violations of filing a false or fraudulent report, if the department deems mitigation of penalties and interest to be reasonable and in the best interest of carrying out the purpose of this chapter, it may mitigate

such assessments upon whatever terms the department deems proper, giving consideration to the degree and extent of the lack of records and reporting errors. The department may ascertain the facts regarding recordkeeping and payment penalties in lieu of more elaborate proceedings under this chapter.

(7) A distributor against whom an assessment is made under subsection (1) or (2) of this section may petition for a reassessment within thirty days after service upon the distributor of notice of the assessment. If the petition is not filed within the thirty-day period, the amount of the assessment becomes final at the expiration of that period.

If a petition for reassessment is filed within the thirty-day period, the department shall reconsider the assessment and, if the distributor has so requested in its petition, shall grant the distributor an oral hearing and give the distributor twenty days' notice of the time and place of the hearing. The department may continue the hearing from time to time. The decision of the department upon a petition for reassessment becomes final thirty days after service of notice upon the distributor.

An assessment made by the department becomes due and payable when it becomes final. If it is not paid to the department when due and payable, the department shall add a penalty of ten percent of the amount of the tax.

(8) In a suit brought to enforce the rights of the state under this chapter, the assessment showing the amount of taxes, penalties, interest, and cost unpaid to the state is prima facie evidence of the facts as shown.

(9) A notice of assessment required by this section must be served personally or by mail. If it is served by mail, service shall be made by deposit of the notice in the United States mail, postage prepaid, addressed to the distributor at the most current address furnished to the department.

(10) The tax required by this chapter, to be collected by the seller, is held in trust by the seller until paid to the department, and a seller who appropriates or converts the tax collected to his or her own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. A person, partnership, corporation, or corporate officer who fails to collect the tax imposed by this section, or who has collected the tax and fails to pay it to the department in the manner prescribed by this chapter, is personally liable to the state for the amount of the tax.

Sec. 3. RCW 82.36.060 and 1994 c 262 s 19 are each amended to read as follows:

Every person, before becoming a distributor or continuing in business as a distributor, shall make an application to the department for a license authorizing the applicant to engage in business as a distributor. Applications for such licenses shall be made to the department on forms to be furnished by the department.

Every application for a distributor's license must contain the following information to the extent it applies to the applicant:

(1) Proof as the department may require concerning the applicant's identity, including but not limited to his or her fingerprints or those of the officers of a corporation making the application;

(2) The applicant's form and place of organization including proof that the individual, partnership, or corporation is licensed to do business in this state;

(3) The qualification and business history of the applicant and any partner, officer, or director;

(4) The applicant's financial condition or history including a bank reference and whether the applicant or any partner, officer, or director has ever been adjudged bankrupt or has an unsatisfied judgment in a federal or state court;

(5) Whether the applicant has been adjudged guilty of a crime that directly relates to the business for which the license is sought and the time elapsed since the conviction is less than ten years, or has suffered a judgment within the preceding five years in a civil action involving fraud, misrepresentation, or conversion and in the case of a corporation or partnership, all directors, officers, or partners.

After receipt of an application for a license, the director may conduct an investigation to determine whether the facts set forth are true. The director may require a fingerprint record check of the applicant through the Washington state patrol criminal identification system and the federal bureau of investigation before issuance of a license. The results of the background investigation including criminal history information may be released to authorized department personnel as the director deems necessary. The department shall charge a license holder or license applicant a fee of fifty dollars for each background investigation conducted.

An applicant who makes a false statement of a material fact on the application may be prosecuted for false swearing as defined by RCW 9A.72.040.

Before granting any license authorizing any person to engage in business as a distributor, the department shall require applicant to file with the department, in such form as shall be prescribed by the department, a corporate surety bond duly executed by the applicant as principal, payable to the state and conditioned for faithful performance of all the requirements of this chapter, including the payment of all taxes, penalties, and other obligations arising out of this chapter. The total amount of the bond or bonds, required of any distributor shall be fixed by the department and may be increased or reduced by the department at any time subject to the limitations herein provided. In fixing the total amount of the bond or bonds required of any distributor, the department shall require a bond or bonds equivalent in total amount to twice the estimated monthly excise tax determined in such manner as the department may deem proper. If at any time the estimated excise tax to become due during the succeeding month amounts to more than fifty percent of the established bond, the department shall require

additional bonds or securities to maintain the marginal ratio herein specified or shall demand excise tax payments to be made weekly or semimonthly to meet the requirements hereof.

~~(In lieu of a bond in excess of five thousand dollars the distributor may file with the department a property statement setting forth a complete description of all his property and the values thereof, and showing the amount of any indebtedness or encumbrance thereon to the end that the department may ascertain whether or not the distributor can be compelled to respond in twice the amount of the taxes due or to become due hereunder. If the department determines that the distributor can be compelled to respond in twice the amount of the tax the department may accept such statement in lieu of a bond in excess of five thousand dollars. The department may at any time demand from the distributor a new property statement and may at any time if the department deems the property of the distributor insufficient to secure the payment of twice the amount of the taxes require the distributor to furnish a bond in such amount as will secure the payment of twice the amount of the taxes.)~~

The total amount of the bond or bonds required of any distributor shall never be less than five thousand dollars nor more than fifty thousand dollars.

No recoveries on any bond or the execution of any new bond shall invalidate any bond and no revocation of any license shall effect the validity of any bond but the total recoveries under any one bond shall not exceed the amount of the bond.

In lieu of any such bond or bonds in total amount as herein fixed, a distributor may deposit with the state treasurer, under such terms and conditions as the department may prescribe, a like amount of lawful money of the United States or bonds or other obligations of the United States, the state, or any county of the state, of an actual market value not less than the amount so fixed by the department.

Any surety on a bond furnished by a distributor as provided herein shall be released and discharged from any and all liability to the state accruing on such bond after the expiration of thirty days from the date upon which such surety has lodged with the department a written request to be released and discharged, but this provision shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration of the thirty day period. The department shall promptly, upon receiving any such request, notify the distributor who furnished the bond; and unless the distributor, on or before the expiration of the thirty day period, files a new bond, or makes a deposit in accordance with the requirements of this section, the department shall forthwith cancel the distributor's license. Whenever a new bond is furnished by a distributor, the department shall cancel his or her old bond as soon as the department and the attorney general are satisfied that all liability under the old bond has been fully discharged.

The department may require a distributor to give a new or additional surety bond or to deposit additional securities of the character specified in this section

if, in its opinion, the security of the surety bond theretofore filed by such distributor, or the market value of the properties deposited as security by the distributor, shall become impaired or inadequate; and upon the failure of the distributor to give such new or additional surety bond or to deposit additional securities within thirty days after being requested so to do by the department, the department shall forthwith cancel his or her license.

Sec. 4. RCW 82.36.070 and 1994 c 262 s 20 are each amended to read as follows:

The application in proper form having been accepted for filing, the filing fee paid, and the bond or other security having been accepted and approved, the department shall issue to the applicant a license to transact business as a distributor in the state, and such license shall be valid until canceled or revoked.

The license so issued by the department shall not be assignable, and shall be valid only for the distributor in whose name issued.

The department shall keep and file all applications and bonds with an alphabetical index thereof, together with a record of all licensed distributors.

Each distributor shall be assigned a license number upon qualifying for a license hereunder, and the department shall issue to each such licensee a license certificate which shall be displayed conspicuously by the distributor at his or her principal place of business. The department may refuse to issue or may revoke a motor vehicle fuel distributor license, to a person:

(1) Who formerly held a motor vehicle fuel distributor's license that, before the time of filing for application, has been revoked or canceled for cause;

(2) Who is a subterfuge for the real party in interest whose license has been revoked or canceled for cause;

(3) Who, as an individual licensee or officer, director, owner, or managing employee of a nonindividual licensee, has had a motor vehicle fuel distributor license revoked or canceled for cause;

(4) Who has an unsatisfied debt to the state assessed under either chapter 82.36, 82.37, 82.38, 82.42, or 46.87 RCW; ((or))

(5) Who formerly held as an individual, officer, director, owner, managing employee of a nonindividual licensee, or subterfuge for a real party in interest, a license issued by the federal government or a state that allowed a person to buy or sell untaxed motor vehicle or special fuel, which license, before the time of filing for application, has been revoked for cause;

(6) Who pled guilty to or was convicted as an individual, corporate officer, director, owner, or managing employee in this or any other state or in any federal jurisdiction of a gross misdemeanor or felony crime directly related to the business or has been subject to a civil judgment involving fraud, misrepresentation, conversion, or dishonesty, notwithstanding chapter 9.96A RCW;

(7) Who misrepresented or concealed a material fact in obtaining a license or in reinstatement thereof;

(8) Who violated a statute or administrative rule regulating fuel taxation or distribution;

- (9) Who failed to cooperate with the department's investigations by:
 (a) Not furnishing papers or documents;
 (b) Not furnishing in writing a full and complete explanation regarding a matter under investigation by the department; or
 (c) Not responding to subpoenas issued by the department, whether or not the recipient of the subpoena is the subject of the proceeding;
 (10) Who failed to comply with an order issued by the director; or
 (11) Upon other sufficient cause being shown.

Before such a refusal or revocation, the department shall grant the applicant a hearing and shall give the applicant at least twenty days' written notice of the time and place of the hearing.

For the purpose of considering an application for a distributor's license, the department may inspect, cause an inspection, investigate, or cause an investigation of the records of this or any other state or of the federal government to ascertain the veracity of the information on the application form and the applicant's criminal and licensing history.

The department may, in the exercise of reasonable discretion, suspend a motor vehicle distributor license at any time before and pending such a hearing for unpaid taxes or reasonable cause.

Sec. 5. RCW 82.36.160 and 1961 c 15 s 82.36.160 are each amended to read as follows:

Every distributor shall maintain in the office of his or her principal place of business in this state, for a period of ~~((three))~~ five years, records of motor vehicle fuel received, sold, distributed, or used by ~~((him))~~ the distributor, in such form as the director may prescribe, together with invoices, bills of lading, and other pertinent papers as may be required under the provisions of this chapter.

Every dealer purchasing motor vehicle fuel taxable under this chapter for the purpose of resale, shall maintain within this state, for a period of two years a record of motor vehicle fuels received, the amount of tax paid to the distributor as part of the purchase price, together with delivery tickets, invoices, and bills of lading, and such other records as the director shall require.

Sec. 6. RCW 82.36.390 and 1961 c 15 s 82.36.390 are each amended to read as follows:

Any person who, through false statement, trick, or device, or otherwise, obtains motor vehicle fuel for export and fails to export the same or any portion thereof, or causes such motor vehicle fuel or any thereof not to be exported, or who diverts said motor vehicle fuel or any thereof or who causes it to be diverted from interstate or foreign transit begun in this state, or who unlawfully returns such fuel or any thereof to this state and sells or uses it or any thereof in this state or causes it or any thereof to be used or sold in this state and fails to notify the distributor from whom such motor vehicle fuel was originally purchased of his or her act, and any distributor or other person who conspires

with any person to withhold from export, or divert from interstate or foreign transit begun in this state, or to return motor vehicle fuel to this state for sale or use with intent to avoid any of the taxes imposed by this chapter, ~~((shall be)) is guilty of a ((gross misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment))~~ felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. Each shipment illegally diverted or illegally returned shall be a separate offense, and the unit of each shipment shall be the cargo of one vessel, or one railroad carload, or one automobile truck load, or such truck and trailer load, or one drum, or one barrel, or one case or one can.

Sec. 7. RCW 82.38.030 and 1989 c 193 s 3 are each amended to read as follows:

(1) There is hereby levied and imposed upon special fuel users a tax at the rate computed in the manner provided in RCW 82.36.025 per gallon or each one hundred cubic feet of compressed natural gas measured at standard pressure and temperature on the use of special fuel in any motor vehicle operated upon the highways of this state during the fiscal year for which such rate is applicable.

(2) The tax shall be collected by the special fuel dealer and shall be paid over to the department as hereinafter provided: (a) With respect to all special fuel delivered by a special fuel dealer into supply tanks of motor vehicles or into storage facilities used for the fueling of motor vehicles at unbonded service stations in this state; or (b) in all other transactions where the purchaser is not the holder of a valid special fuel license issued pursuant to this chapter allowing the purchase of untaxed special fuel, except sales of special fuel for export. To claim an exemption on account of sales by a licensed special fuel dealer for export, the purchaser shall obtain from the selling special fuel dealer, and such selling special fuel dealer must furnish the purchaser, an invoice giving such details of the sale for export as the director may require, copies of which shall be furnished the department and the entity of the state or foreign jurisdiction of destination which is charged by the laws of that state or foreign jurisdiction with the control or monitoring or both, of the sales or movement of special fuel in that state or foreign jurisdiction.

(3) The tax shall be paid over to the department by the special fuel user as hereinafter provided with respect to the taxable use of special fuel upon which the tax has not previously been imposed.

It is expressly provided that delivery of special fuel may be made without collecting the tax otherwise imposed, when such deliveries are made by a bonded special fuel dealer to special fuel users who are authorized by the department as hereinafter provided, to purchase fuel without payment of tax to the bonded special fuel dealer.

(4) The tax required by this chapter, to be collected by the seller, is held in trust by the seller until paid to the department, and a seller who appropriates

or converts the tax collected to his or her own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. A person, partnership, corporation, or corporate officer who fails to collect the tax imposed by this section, or who has collected the tax and fails to pay it to the department in the manner prescribed by this chapter, is personally liable to the state for the amount of the tax.

Sec. 8. RCW 82.38.110 and 1988 c 122 s 2 are each amended to read as follows:

Application for a special fuel dealer's license(~~(, special fuel supplier's license,))~~ or a special fuel user's license shall be made to the department. The application shall be filed upon a form prepared and furnished by the department and shall contain such information as the department deems necessary.

Every application for a special fuel dealer's license must contain the following information to the extent it applies to the applicant:

(1) Proof as the department may require concerning the applicant's identity, including but not limited to his or her fingerprints or those of the officers of a corporation making the application;

(2) The applicant's form and place of organization including proof that the individual, partnership, or corporation is licensed to do business in this state;

(3) The qualification and business history of the applicant and any partner, officer, or director;

(4) The applicant's financial condition or history including a bank reference and whether the applicant or any partner, officer, or director has ever been adjudged bankrupt or has an unsatisfied judgment in a federal or state court;

(5) Whether the applicant has been adjudged guilty of a crime that directly relates to the business for which the license is sought and the time elapsed since the conviction is less than ten years, or has suffered a judgment within the preceding five years in a civil action involving fraud, misrepresentation, or conversion and in the case of a corporation or partnership, all directors, officers, or partners.

After receipt of an application for a license, the director may conduct an investigation to determine whether the facts set forth are true. The director may require a fingerprint record check of the applicant through the Washington state patrol criminal identification system and the federal bureau of investigation before issuance of a license. The results of the background investigation including criminal history information may be released to authorized department personnel as the director deems necessary. The department shall charge a license holder or license applicant a fee of fifty dollars for each background investigation conducted.

An applicant who makes a false statement of a material fact on the application may be prosecuted for false swearing as defined by RCW 9A.72.040.

No special fuel dealer's license may be issued to any person or continued in force unless such person has furnished bond, as defined in RCW 82.38.020, in such form as the department may require, to secure his or her compliance with this chapter, and the payment of any and all taxes, interest, and penalties due and to become due hereunder. The requirement of furnishing a bond shall be waived for special fuel dealers who only deliver special fuel into the fuel tanks of marine vessels.

The department may require a special fuel user to post a bond if the special fuel user, after having been licensed, has failed to file timely reports or has failed to remit taxes due, or when an investigation or audit indicates problems severe enough that the department, in its discretion, determines that a bond is required to protect the interests of the state. The department may also adopt rules prescribing conditions that, in the department's discretion, require a bond to protect the interests of the state.

The total amount of the bond or bonds required of any special fuel dealer or special fuel user shall be equivalent to three times the estimated monthly fuel tax, determined in such manner as the department may deem proper: PROVIDED, That those special fuel dealers having held a special fuel license for five or more years without having said license suspended or revoked by the department shall be permitted to reduce the amount of their bond to twice the estimated monthly tax liability: PROVIDED FURTHER, That the total amount of the bond or bonds shall never be less than five hundred dollars nor more than fifty thousand dollars.

Sec. 9. RCW 82.38.120 and 1995 c 274 s 21 are each amended to read as follows:

Upon receipt and approval of an application and bond, if required, the department shall issue to the applicant a license to act as a special fuel dealer or a special fuel user. However, the department may refuse to issue a special fuel dealer's license or a special fuel user's license to any person:

(1) Who formerly held either type of license which, prior to the time of filing for application, has been revoked for cause;

(2) Who is a subterfuge for the real party in interest whose license prior to the time of filing for application, has been revoked for cause;

(3) Who, as an individual licensee, or officer, director, owner, or managing employee of a nonindividual licensee, has had a special fuel license revoked for cause;

(4) Who has an unsatisfied debt to the state assessed under either chapter 82.36, 82.38, or 46.87 RCW; ~~((or))~~

(5) Who formerly held as an individual, officer, director, owner, managing employee of a nonindividual licensee, or subterfuge for a real party in interest, a license issued by the federal government or a state that allowed a person to buy or sell untaxed motor vehicle or special fuel, which license, before the time of filing for application, has been revoked for cause;

(6) Who pled guilty to or was convicted as an individual, officer, director, owner, or managing employee of a nonindividual licensee in this or any other state or in any federal jurisdiction of a gross misdemeanor or felony crime directly related to the business or has been subject to a civil judgment involving fraud, misrepresentation, conversion, or dishonesty, notwithstanding chapter 9.96A RCW;

(7) Who misrepresented or concealed a material fact in obtaining a license or in reinstatement thereof;

(8) Who violated a statute or administrative rule regulating fuel taxation or distribution;

(9) Who failed to cooperate with the department's investigations by:

(a) Not furnishing papers or documents;

(b) Not furnishing in writing a full and complete explanation regarding a matter under investigation by the department; or

(c) Not responding to subpoenas issued by the department, whether or not the recipient of the subpoena is the subject of the proceeding;

(10) Who failed to comply with an order issued by the director; or

(11) Upon other sufficient cause being shown.

Before such refusal, the department shall grant the applicant a hearing and shall grant the applicant at least ~~((five))~~ twenty days written notice of the time and place thereof.

The department shall determine from the information shown in the application or other investigation the kind and class of license to be issued. For the purpose of considering any application for a special fuel dealer's license, the department may inspect, cause an inspection, investigate, or cause an investigation of the records of this or any other state or of the federal government to ascertain the veracity of the information on the application form and the applicant's criminal and licensing history.

All licenses shall be posted in a conspicuous place or kept available for inspection at the principal place of business of the owner thereof. License holders shall reproduce the license by photostat or other method and keep a copy on display for ready inspection at each additional place of business or other place of storage from which special fuel is sold, delivered or used and in each motor vehicle used by the license holder to transport special fuel purchased by him or her for resale, delivery or use. Every licensed special fuel user operating a motor vehicle registered in a jurisdiction other than this state shall reproduce the license and carry a photocopy thereof with each motor vehicle being operated upon the highways of this state.

A special fuel dealer may use special fuel in motor vehicles owned or operated by the dealer without securing a license as a special fuel user but the dealer is subject to all other conditions, requirements, and liabilities imposed herein upon a special fuel user.

Each special fuel dealer's license and special fuel user's license shall be valid until the expiration date if shown on the license, or until suspended or revoked for cause or otherwise canceled.

No special fuel dealer's license or special fuel user's license shall be transferable.

Sec. 10. RCW 82.38.140 and 1995 c 274 s 22 are each amended to read as follows:

(1) Every special fuel dealer, special fuel user, and every person importing, manufacturing, refining, dealing in, transporting, or storing special fuel in this state shall keep for a period of not less than (~~three~~) five years open to inspection at all times during the business hours of the day to the department or its authorized representatives, a complete record of all special fuel purchased or received and all of such products sold, delivered, or used by them. Such records shall show:

- (a) The date of each receipt;
- (b) The name and address of the person from whom purchased or received;
- (c) The number of gallons received at each place of business or place of storage in the state of Washington;
- (d) The date of each sale or delivery;
- (e) The number of gallons sold, delivered, or used for taxable purposes;
- (f) The number of gallons sold, delivered, or used for any purpose not subject to the tax imposed herein;
- (g) The name, address, and special fuel license number of the purchaser if the special fuel tax is not collected on the sale or delivery;
- (h) The inventories of special fuel on hand at each place of business at the end of each month.

(2)(a) All special fuel users using special fuel in vehicles licensed for highway operation shall maintain detailed mileage records on an individual vehicle basis.

(b) Such operating records shall show both on-highway and off-highway usage of special fuel on a daily basis for each vehicle.

(3) Persons using special fuel for heating purposes only are not required to maintain records of fuel usage.

(4) Invoices shall be prepared for sales and deliveries of special fuel in the manner and containing such information as may be prescribed by the department.

Every special fuel dealer or special fuel user making such sales or deliveries of special fuel and every person so receiving and purchasing special fuel must each retain one copy of each such invoice as part of the dealer's permanent records for the time and purposes above provided.

(5) Every special fuel user shall keep, in addition to the dealer's records of deliveries into motor vehicles, a complete record as prescribed by the department of the total gallons of special fuel used for other purposes during each month and the purposes for which said special fuel was used.

(6) Subsections (1)(f), (2)(b), and (5) of this section do not apply to special fuel users when the special fuel is used off-highway in farming, construction, or logging operations. Upon filing a special fuel user tax report, every such special fuel user shall certify and bear the burden of proof as to the number of gallons of special fuel used off-highway.

Sec. 11. RCW 82.38.150 and 1995 c 274 s 23 are each amended to read as follows:

For the purpose of determining the amount of liability for the tax herein imposed, and to periodically update license information, each special fuel dealer and each special fuel user shall file tax reports with the department, on forms prescribed by the department. Special fuel dealers shall file the reports at the intervals as shown in the following schedule:

Estimated Yearly Tax Liability	Reporting Frequency
\$ 0 - \$100	Yearly
\$101 - 250	Semi-yearly
\$251 - 499	Quarterly
\$500 and over	Monthly

Special fuel users whose estimated yearly tax liability is two hundred fifty dollars or less, shall file a report yearly, and special fuel users whose estimated yearly tax liability is more than two hundred fifty dollars, shall file reports quarterly.

The department shall establish the reporting frequency for each applicant at the time the special fuel license is issued. If it becomes apparent that any special fuel licensee is not reporting in accordance with the above schedule, the department shall change the licensee's reporting frequency by giving thirty days' notice to the licensee by mail to the licensee's address of record. A report shall be filed with the department even though no special fuel was used, or tax is due, for the reporting period. Each tax report shall contain a declaration by the person making the same, to the effect that the statements contained therein are true and are made under penalties of perjury, which declaration shall have the same force and effect as a verification of the report and is in lieu of such verification. The report shall show such information as the department may reasonably require for the proper administration and enforcement of this chapter. For counties within which an additional excise tax on special fuel has been levied by that jurisdiction under RCW 82.80.010, the report must show the quantities of special fuel sold, distributed, or withdrawn from bulk storage by the reporting dealer or user within the county's boundaries and the tax liability from its levy. The special fuel dealer or special fuel user shall file the report on or before the twenty-fifth day of the next succeeding calendar month following the period to which it relates.

Subject to the written approval of the department, tax reports may cover a period ending on a day other than the last day of the calendar month. Taxpayers

granted approval to file reports in this manner will file such reports on or before the twenty-fifth day following the end of the reporting period. No change to this reporting period will be made without the written authorization of the department.

If the final filing date falls on a Saturday, Sunday, or legal holiday the next secular or business day shall be the final filing date. Such reports shall be considered filed or received on the date shown by the post office cancellation mark stamped upon an envelope containing such report properly addressed to the department, or on the date it was mailed if proof satisfactory to the department is available to establish the date it was mailed.

The department, if it deems it necessary in order to insure payment of the tax imposed by this chapter, or to facilitate the administration of this chapter, has the authority to require the filing of reports and tax remittances at shorter intervals than one month if, in its opinion, an existing bond has become insufficient.

The department may permit any special fuel user whose sole use of special fuel is in motor vehicles or equipment exempt from tax as provided in RCW 82.38.075 and 82.38.080 (1), (2), (3), (8), and (9), in lieu of the reports required in this section, to submit reports annually or as requested by the department, in such form as the department may require.

A special fuel user whose sole use of special fuel is for purposes other than the propulsion of motor vehicles upon the public highways of this state shall not be required to submit the reports required in this section.

Sec. 12. RCW 82.38.170 and 1995 c 274 s 24 are each amended to read as follows:

(1) If any special fuel dealer or special fuel user fails to pay any taxes collected or due the state of Washington by said dealer or user within the time prescribed by RCW 82.38.150 and 82.38.160, said dealer or user shall pay in addition to such tax a penalty of ten percent of the amount thereof.

(2) If it be determined by the department that the tax reported by any special fuel dealer or special fuel user is deficient it may proceed to assess the deficiency on the basis of information available to it and there shall be added to this deficiency a penalty of ten percent of the amount of the deficiency.

(3) If any special fuel dealer or special fuel user, whether or not he or she is licensed as such, fails, neglects, or refuses to file a special fuel tax report, the department may, on the basis of information available to it, determine the tax liability of the special fuel dealer or the special fuel user for the period during which no report was filed, and to the tax as thus determined, the department shall add the penalty and interest provided in subsection (2) of this section. An assessment made by the department pursuant to this subsection or to subsection (2) of this section shall be presumed to be correct, and in any case where the validity of the assessment is drawn in question, the burden shall be on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive as the case may be.

(4) If any special fuel dealer or special fuel user shall establish by a fair preponderance of evidence that his or her failure to file a report or pay the proper amount of tax within the time prescribed was due to reasonable cause and was not intentional or willful, the department may waive the penalty prescribed in subsections (1), (2), and (3) of this section.

(5) If any special fuel dealer or special fuel user shall file a false or fraudulent report with intent to evade the tax imposed by this chapter, there shall be added to the amount of deficiency determined by the department a penalty equal to twenty-five percent of the deficiency, in addition to the penalty provided in subsection (2) of this section and all other penalties prescribed by law.

(6) Any fuel tax, penalties, and interest payable under this chapter shall bear interest at the rate of one percent per month, or fraction thereof, from the first day of the calendar month after the amount or any portion thereof should have been paid until the date of payment: PROVIDED, That the department may waive the interest when it determines that the cost of processing the collection of the interest exceeds the amount of interest due.

(7) Except in the case of violations of filing a false or fraudulent report, if the department deems mitigation of penalties and interest to be reasonable and in the best interests of carrying out the purpose of this chapter, it may mitigate such assessments upon whatever terms the department deems proper, giving consideration to the degree and extent of the lack of records and reporting errors. The department may ascertain the facts regarding recordkeeping and payment penalties in lieu of more elaborate proceedings under this chapter.

(8) Except in the case of a fraudulent report or of neglect or refusal to make a report, every deficiency shall be assessed under subsection (2) of this section within ~~((three))~~ five years from the twenty-fifth day of the next succeeding calendar month following the reporting period for which the amount is proposed to be determined or within ~~((three))~~ five years after the return is filed, whichever period expires the later.

(9) Any special fuel dealer or special fuel user against whom an assessment is made under the provisions of subsections (2) or (3) of this section may petition for a reassessment thereof within thirty days after service upon the special fuel dealer or special fuel user of notice thereof. If such petition is not filed within such thirty day period, the amount of the assessment becomes final at the expiration thereof.

If a petition for reassessment is filed within the thirty day period, the department shall reconsider the assessment and, if the special fuel dealer or special fuel user has so requested in his or her petition, shall grant such special fuel dealer or special fuel user an oral hearing and give the special fuel dealer or special fuel user ten days' notice of the time and place thereof. The department may continue the hearing from time to time. The decision of the department upon a petition for reassessment shall become final thirty days after service upon the special fuel dealer or special fuel user of notice thereof.

Every assessment made by the department shall become due and payable at the time it becomes final and if not paid to the department when due and payable, there shall be added thereto a penalty of ten percent of the amount of the tax.

(10) Any notice of assessment required by this section shall be served personally or by mail; if by mail, service shall be made by depositing such notice in the United States mail, postage prepaid addressed to the special fuel dealer or special fuel user at his or her address as the same appears in the records of the department.

(11) Any licensee who has had either their special fuel user license or special fuel dealer license, or both, revoked shall pay a one hundred dollar penalty prior to the issuance of a new license.

(12) Any person who, upon audit or investigation by the department, is found to have not paid special fuel taxes as required by this chapter shall be subject to cancellation of all vehicle registrations for vehicles utilizing special fuel as a means of propulsion. Any unexpired Washington tonnage on the vehicles in question may be transferred to a purchaser of the vehicles upon application to the department who shall hold such tonnage in its custody until a sale of the vehicle is made or the tonnage has expired.

Sec. 13. RCW 82.42.020 and 1982 1st ex.s. c 25 s 2 are each amended to read as follows:

There is hereby levied, and there shall be collected by every distributor of aircraft fuel, an excise tax at the rate computed under RCW 82.42.025 on each gallon of aircraft fuel sold, delivered or used in this state: PROVIDED HOWEVER, That such aircraft fuel excise tax shall not apply to fuel for aircraft that both operate from a private, non-state-funded airfield during at least ninety-five percent of the aircraft's normal use and are used principally for the application of pesticides, herbicides, or other agricultural chemicals: PROVIDED FURTHER, That there shall be collected from every consumer or user of aircraft fuel either the use tax imposed by RCW 82.12.020, as amended, or the retail sales tax imposed by RCW 82.08.020, as amended, collection procedure to be as prescribed by law and/or rule or regulation of the department of revenue. The taxes imposed by this chapter shall be collected and paid to the state but once in respect to any aircraft fuel.

The tax required by this chapter, to be collected by the seller, is held in trust by the seller until paid to the department, and a seller who appropriates or converts the tax collected to his or her own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. A person, partnership, corporation, or corporate officer who fails to collect the tax imposed by this section, or who has collected the tax and fails to pay it to the department in the manner prescribed by this chapter, is personally liable to the state for the amount of the tax.

Sec. 14. RCW 82.42.040 and 1982 1st ex.s. c 25 s 5 are each amended to read as follows:

The director shall by rule and regulation adopted as provided in chapter 34.05 RCW (Administrative Procedure Act) set up the necessary administrative procedure for collection by the department of the aircraft fuel excise tax as provided for in RCW 82.42.020, placing the responsibility of collection of said tax upon every distributor of aircraft fuel within the state; he may require the licensing of every distributor of aircraft fuel and shall require such a corporate surety bond or security of any distributor or person not otherwise bonded under provisions of chapter 82.36 RCW as is provided for distributors of motor vehicle fuel under RCW 82.36.060; he shall provide such forms and may require such reports or statements as in his determination shall be necessary for the proper administration of this chapter. The director may require such records to be kept, and for such periods of time, as deemed necessary for the administration of this chapter, which records shall be available at all times for the director or his representative who may require a statement under oath as to the contents thereof.

Every application for a distributor's license must contain the following information to the extent it applies to the applicant:

(1) Proof as the department may require concerning the applicant's identity, including but not limited to his or her fingerprints or those of the officers of a corporation making the application;

(2) The applicant's form and place of organization including proof that the individual, partnership, or corporation is licensed to do business in this state;

(3) The qualification and business history of the applicant and any partner, officer, or director;

(4) The applicant's financial condition or history including a bank reference and whether the applicant or any partner, officer, or director has ever been adjudged bankrupt or has an unsatisfied judgment in a federal or state court;

(5) Whether the applicant has been adjudged guilty of a crime that directly relates to the business for which the license is sought and the time elapsed since the conviction is less than ten years, or has suffered a judgment within the preceding five years in a civil action involving fraud, misrepresentation, or conversion and in the case of a corporation or partnership, all directors, officers, or partners.

After receipt of an application for a license, the director may conduct an investigation to determine whether the facts set forth are true. The director may require a fingerprint record check of the applicant through the Washington state patrol criminal identification system and the federal bureau of investigation before issuance of a license. The results of the background investigation including criminal history information may be released to authorized department personnel as the director deems necessary. The department shall charge a license holder or license applicant a fee of fifty dollars for each background investigation conducted.

An applicant who makes a false statement of a material fact on the application may be prosecuted for false swearing as defined by RCW 9A.72.040.

Sec. 15. RCW 82.42.060 and 1969 ex.s. c 254 s 5 are each amended to read as follows:

The amount of aircraft fuel excise tax imposed under RCW 82.42.020 for each month shall be paid to the director on or before the twenty-fifth day of the month thereafter, and if not paid prior thereto, shall become delinquent at the close of business on that day, and a penalty of ten percent of such excise tax must be added thereto for delinquency. Any aircraft fuel tax, penalties, and interest payable under the provisions of this chapter shall bear interest at the rate of one percent per month, or fraction thereof, from the first day of the calendar month after the close of the monthly period for which the amount or any portion thereof should have been paid until the date of payment. RCW 82.36.070 applies to the issuance, refusal, or revocation of a license issued under this chapter. The provisions of RCW 82.36.110 relating to a lien for taxes, interests or penalties due, shall be applicable to the collection of the aircraft fuel excise tax provided in RCW 82.42.020, and the provisions of RCW 82.36.120, 82.36.130 and 82.36.140 shall apply to any distributor of aircraft fuel with respect to the aircraft fuel excise tax imposed under RCW 82.42.020.

Sec. 16. RCW 82.42.080 and 1982 1st ex.s. c 25 s 7 are each amended to read as follows:

Any person violating any provision of this chapter or any rule or regulation of the director promulgated hereunder, or making any false statement, or concealing any material fact in any report, statement, record or claim, or who commits any act with intent to avoid payment of the aircraft fuel excise tax imposed by this chapter, or who conspires with another person with intent to interfere with the orderly collection of such tax due and owing under this chapter, (~~shall be~~) is guilty of a gross misdemeanor.

NEW SECTION. **Sec. 17.** By December 31, 1996, the department of licensing shall implement a PC or server-based data base of fuel dealer and distributor license application information.

NEW SECTION. **Sec. 18.** By July 1, 1996, the department of licensing shall establish a fuel tax advisory group comprised of state agency and petroleum industry representatives to develop or recommend audit and investigation techniques, changes to fuel tax statutes and rules, information protocols that allow sharing of information with other states, and other tools that improve fuel tax administration or combat fuel tax evasion.

NEW SECTION. **Sec. 19.** The department of licensing, in cooperation with the code reviser, shall propose and submit to the legislative transportation committee by December 1, 1996, draft language to merge chapters 82.36, 82.38, and 82.42 RCW.

Passed the Senate February 13, 1996.
Passed the House February 29, 1996.
Approved by the Governor March 15, 1996.
Filed in Office of Secretary of State March 15, 1996.

CHAPTER 105

[Substitute Senate Bill 6694]

EQUINE MICROCHIPPING

AN ACT Relating to microchipping of equine; amending RCW 16.57.010; adding new sections to chapter 16.57 RCW; and prescribing penalties.

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

Sec. 1. RCW 16.57.010 and 1993 c 105 s 2 are each amended to read as follows:

For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or a duly appointed representative.

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent or employee thereof. This term shall import either the singular or the plural as the case may be.

(4) "Livestock" includes, but is not limited to, horses, mules, cattle, sheep, swine, goats, poultry and rabbits.

(5) "Brand" means a permanent fire brand or any artificial mark, other than an individual identification symbol, approved by the director to be used in conjunction with a brand or by itself.

(6) "Production record brand" means a number brand which shall be used for production identification purposes only.

(7) "Brand inspection" means the examination of livestock or livestock hides for brands or any means of identifying livestock or livestock hides and/or the application of any artificial identification such as back tags or ear clips necessary to preserve the identity of the livestock or livestock hides examined.

(8) "Individual identification symbol" means a permanent mark placed on a horse for the purpose of individually identifying and registering the horse and which has been approved for use as such by the director.

(9) "Registering agency" means any person issuing an individual identification symbol for the purpose of individually identifying and registering a horse.

(10) "Poultry" means chickens, turkeys, ratites, and other domesticated fowl.

(11) "Ratite" means, but is not limited to, ostrich, emu, rhea, or other flightless bird used for human consumption, whether live or slaughtered.

(12) "Ratite farming" means breeding, raising, and rearing of an ostrich, emu, or rhea in captivity or an enclosure.

(13) "Microchipping" means the implantation of an identification microchip or similar electronic identification device to establish the identity of an individual animal:

(a) In the pipping muscle of a chick ratite or the implantation of a microchip in the tail muscle of an otherwise unidentified adult ratite;

(b) In the nuchal ligament of a horse unless otherwise specified by rule of the director; and

(c) In locations of other livestock species as specified by rule of the director when requested by an association of producers of that species of livestock.

NEW SECTION. Sec. 2. A new section is added to chapter 16.57 RCW to read as follows:

A person who removes or causes to be removed a microchip implanted in a horse, or who removes or causes to be removed a microchip from one horse and implants or causes it to be implanted in another horse, with the intent to defraud a subsequent purchaser, is guilty of a gross misdemeanor.

NEW SECTION. Sec. 3. A new section is added to chapter 16.57 RCW to read as follows:

The department has the authority to conduct an investigation of an incident where scars or other marks indicate that a microchip has been removed from a horse.

Passed the Senate February 9, 1996.

Passed the House February 28, 1996.

Approved by the Governor March 15, 1996.

Filed in Office of Secretary of State March 15, 1996.

CHAPTER 106

[Substitute Senate Bill 6748]

RETAIL LIQUOR LICENSED PREMISES—MANUFACTURER INTEREST ALLOWED

AN ACT Relating to providing limited circumstances under which a qualifying manufacturer that is a public company may have an indirect interest in property on which a retail liquor licensed premises is located; and amending RCW 66.28.010.

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

Sec. 1. RCW 66.28.010 and 1994 c 63 s 1 are each amended to read as follows:

(1) No manufacturer, importer, or wholesaler, or person financially interested, directly or indirectly, in such business, whether resident or nonresident, shall have any financial interest, direct or indirect, in any licensed retail business((,)); nor shall any manufacturer, importer, or wholesaler own any of the property upon which such licensed persons conduct their business((,)); nor shall any such licensed person, under any arrangement whatsoever, conduct his or her business upon property in which any manufacturer, importer, or

wholesaler has any interest unless title to that property is owned by a corporation in which a manufacturer has no direct stock ownership and there are no interlocking officers or directors, the retail license is held by an independent concessionaire which is not owned directly or indirectly by the manufacturer or property owner, the sales of liquor are incidental to the primary activity of operating the property as an amphitheater offering live musical and similar live entertainment activities to the public, alcoholic beverages produced by the manufacturer are not sold at the licensed remises and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation of the retail licensee. Except as provided in subsection (3) of this section, no manufacturer, importer, or wholesaler shall advance moneys or moneys' worth to a licensed person under an arrangement, nor shall such licensed person receive, under an arrangement, an advance of moneys or moneys' worth: PROVIDED, That "person" as used in this section only shall not include those state or federally chartered banks, state or federally chartered savings and loan associations, state or federally chartered mutual savings banks, or institutional investors which are not controlled directly or indirectly by a manufacturer, importer, or wholesaler as long as the bank, savings and loan association, or institutional investor does not influence or attempt to influence the purchasing practices of the retailer with respect to alcoholic beverages. No manufacturer, importer, or wholesaler shall be eligible to receive or hold a retail license under this title, nor shall such manufacturer, importer, or wholesaler sell at retail any liquor as herein defined: PROVIDED, That nothing in this section shall prohibit a licensed brewer from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the brewery premises and nothing in this section shall prohibit a domestic winery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the winery premises. Such beer and wine so sold at retail shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210 and to reporting and bonding requirements as prescribed by regulations adopted by the board pursuant to chapter 34.05 RCW, and beer and wine that is not produced by the brewery or winery shall be purchased from a licensed beer or wine wholesaler: PROVIDED FURTHER, That nothing in this section shall prohibit a licensed brewer or domestic winery, or a lessee of a licensed brewer or domestic winery, from being licensed as a class H restaurant pursuant to chapter 66.24 RCW for the purpose of selling liquor at a class H premises on the property on which the primary manufacturing facility of the licensed brewer or domestic winery is located or on contiguous property owned by the licensed brewer or domestic winery as prescribed by regulations adopted by the board pursuant to chapter 34.05 RCW.

(2) Financial interest, direct or indirect, as used in this section, shall include any interest, whether by stock ownership, mortgage, lien, or through interlocking directors, or otherwise. Pursuant to rules promulgated by the board in

accordance with chapter 34.05 RCW manufacturers, wholesalers and importers may perform, and retailers may accept the service of building, rotating and restocking case displays and stock room inventories; rotating and rearranging can and bottle displays of their own products; provide point of sale material and brand signs; price case goods of their own brands; and perform such similar normal business services as the board may by regulation prescribe.

(3)(a) This section does not prohibit a manufacturer, importer, or wholesaler from providing services to a class G or J retail licensee for: (i) Installation of draft beer dispensing equipment or advertising, (ii) advertising, pouring or dispensing of beer or wine at a beer or wine tasting exhibition or judging event, or (iii) a class G or J retail licensee from receiving any such services as may be provided by a manufacturer, importer, or wholesaler: PROVIDED, That nothing in this section shall prohibit a retail licensee, or any person financially interested, directly or indirectly, in such a retail licensee from having a financial interest, direct or indirect, in a business which provides, for a compensation commensurate in value to the services provided, bottling, canning or other services to a manufacturer, so long as the retail licensee or person interested therein has no direct financial interest in or control of said manufacturer.

(b) A person holding contractual rights to payment from selling a liquor wholesaler's business and transferring the license shall not be deemed to have a financial interest under this section if the person (i) lacks any ownership in or control of the wholesaler, (ii) is not employed by the wholesaler, and (iii) does not influence or attempt to influence liquor purchases by retail liquor licensees from the wholesaler.

(c) The board shall adopt such rules as are deemed necessary to carry out the purposes and provisions of subsection (3)(a) of this section in accordance with the administrative procedure act, chapter 34.05 RCW.

(4) A license issued under RCW 66.24.395 does not constitute a retail license for the purposes of this section.

Passed the Senate February 8, 1996.

Passed the House February 28, 1996.

Approved by the Governor March 15, 1996.

Filed in Office of Secretary of State March 15, 1996.

CHAPTER 107

[Substitute House Bill 2294]

STATE EDUCATIONAL TRUST FUND

AN ACT Relating to the state educational trust fund; and amending RCW 28B.10.821 and 28B.15.762.

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

Sec. 1. RCW 28B.10.821 and 1991 sp.s. c 13 s 12 are each amended to read as follows:

The state educational (~~(grant account)~~) trust fund is hereby established in the state treasury. The primary purpose of the trust is to pledge state-wide available college student assistance to needy or disadvantaged students, especially middle and high school youth, considered at-risk of dropping out of secondary education who participate in board-approved early awareness and outreach programs and who enter any accredited Washington institution of postsecondary education within two years of high school graduation.

The (~~(commission)~~) board shall deposit refunds and recoveries of student financial aid funds expended in prior biennia in such account. The board may also deposit moneys that have been contributed from other state, federal, or private sources.

Expenditures from (~~(such account)~~) the fund shall be for financial aid to needy or disadvantaged students. The board may annually expend such sums from the fund as may be necessary to fulfill the purposes of this section, including not more than three percent for the costs to administer aid programs supported by the fund. All earnings of investments of balances in the state educational trust fund shall be credited to the trust fund. Expenditures from the fund shall not be subject to appropriation but are subject to allotment procedures under chapter 43.88 RCW.

Sec. 2. RCW 28B.15.762 and 1985 c 370 s 80 are each amended to read as follows:

(1) The board may make long-term loans to eligible students at institutions of higher education from the funds appropriated to the board for this purpose. The amount of any such loan shall not exceed the demonstrated financial need of the student or two thousand five hundred dollars for each academic year whichever is less, and the total amount of such loans to an eligible student shall not exceed ten thousand dollars. The interest rates and terms of deferral of such loans shall be consistent with the terms of the guaranteed loan program established by 20 U.S.C. Sec. 1701 et seq. The period for repaying the loan principal and interest shall be ten years with payments accruing quarterly commencing nine months from the date the borrower graduated. The entire principal and interest of each loan payment shall be forgiven for each payment period in which the borrower teaches science or mathematics in a public school in this state until the entire loan is satisfied or the borrower ceases to teach science or mathematics at a public school in this state. Should the borrower cease to teach science or mathematics at a public school in this state before the time in which the principal and interest on the loan are satisfied, payments on the unsatisfied portion of the principal and interest on the loan shall begin the next payment period and continue until the remainder of the loan is paid.

(2) The board is responsible for collection of loans made under subsection (1) of this section and shall exercise due diligence in such collection, maintaining all necessary records to insure that maximum repayments are made. Collection and servicing of loans under subsection (1) of this section shall be pursued using the full extent of the law, including wage garnishment if

necessary, and shall be performed by entities approved for such servicing by the Washington student loan guaranty association or its successor agency. The board is responsible to forgive all or parts of such loans under the criteria established in subsection (1) of this section and shall maintain all necessary records of forgiven payments.

(3) Receipts from the payment of principal or interest or any other subsidies to which the board as lender is entitled, which are paid by or on behalf of borrowers under subsection (1) of this section, shall be deposited with the higher education coordinating board and shall be used to cover the costs of making the loans under subsection (1) of this section, maintaining necessary records, and making collections under subsection (2) of this section. The board shall maintain accurate records of these costs, and all receipts beyond those necessary to pay such costs shall be used to make loans to eligible students.

(4) Any funds not used to make loans, or to cover the cost of making loans or making collections, shall be placed in the state educational trust fund for needy or disadvantaged students.

(5) The board shall adopt necessary rules to implement this section.

Passed the House February 9, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 15, 1996.

Filed in Office of Secretary of State March 15, 1996.

CHAPTER 108

[Senate Bill 6226]

MEDICAL EXAMINER APPOINTMENTS IN POPULOUS COUNTIES

AN ACT Relating to the appointment of a medical examiner in more populous counties; amending RCW 36.16.030; and adding a new section to chapter 36.24 RCW.

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

Sec. 1. RCW 36.16.030 and 1991 c 363 ss 46, 47 are each amended to read as follows:

Except as provided elsewhere in this section, in every county there shall be elected from among the qualified voters of the county a county assessor, a county auditor, a county clerk, a county coroner, three county commissioners, a county prosecuting attorney, a county sheriff and a county treasurer, except that in each county with a population of less than forty thousand no coroner shall be elected and the prosecuting attorney shall be ex officio coroner. Whenever the population of a county increases to forty thousand or more, the prosecuting attorney shall continue as ex officio coroner until a coroner is elected, at the next general election at which the office of prosecuting attorney normally would be elected, and assumes office as provided in RCW 29.04.170. In any county where the population has once attained forty thousand people and a current coroner is in office and a subsequent census indicates less than forty thousand people, the county legislative authority may maintain the office of coroner by

resolution or ordinance. If the county legislative authority has not passed a resolution or enacted an ordinance to maintain the office of coroner, the elected coroner shall remain in office for the remainder of the term for which he or she was elected, but no coroner shall be elected at the next election at which that office would otherwise be filled and the prosecuting attorney shall be the ex officio coroner. In a county with a population of two hundred fifty thousand or more, the county legislative authority may replace the office of coroner with a medical examiner system and appoint a medical examiner as specified in section 2 of this act. A noncharter county may have five county commissioners as provided in RCW 36.32.010 and 36.32.055 through 36.32.0558.

NEW SECTION. Sec. 2. A new section is added to chapter 36.24 RCW to read as follows:

In a county with a population of two hundred fifty thousand or more, the county legislative authority may, upon majority vote at an election called by the county legislative authority, adopt a system under which a medical examiner may be appointed to replace the office of the coroner. The county legislative authority must adopt a resolution or ordinance that creates the office of medical examiner at least thirty days prior to the first day of filing for the primary election for county offices. If a county adopts such a resolution or ordinance, the resolution or ordinance shall be referred to the voters for confirmation or rejection at the next date for a special election that is more than forty-five days from the date the resolution or ordinance was adopted. If the resolution or ordinance is approved by majority vote, no election shall be held for the position of coroner and the coroner's position is abolished following the expiration of the coroner's term of office or upon vacating of the office of the coroner for any reason. The county legislative authority shall appoint a medical examiner to assume the statutory duties performed by the county coroner and the appointment shall become effective following the expiration of the coroner's term of office or upon the vacating of the office of the coroner. To be appointed as a medical examiner pursuant to this section, a person must either be: (1) Certified as a forensic pathologist by the American board of pathology; or (2) a qualified physician eligible to take the American board of pathology exam in forensic pathology within one year of being appointed. A physician specializing in pathology who is appointed to the position of medical examiner and who is not certified as a forensic pathologist must pass the pathology exam within three years of the appointment.

Passed the Senate February 7, 1996.

Passed the House February 28, 1996.

Approved by the Governor March 19, 1996.

Filed in Office of Secretary of State March 19, 1996.

CHAPTER 109

[Senate Bill 6441]

PRESCRIPTION EXPIRATION DATES FOR NONRESIDENT PHARMACIES

AN ACT Relating to expiration dates on prescriptions dispensed by nonresident pharmacies; and amending RCW 18.64.360.

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

Sec. 1. RCW 18.64.360 and 1991 c 87 s 2 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 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 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 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.

Passed the Senate February 7, 1996.

Passed the House February 28, 1996.

Approved by the Governor March 19, 1996.

Filed in Office of Secretary of State March 19, 1996.

CHAPTER 110

[Engrossed Substitute House Bill 2637]

JOINT CENTER FOR HIGHER EDUCATION

AN ACT Relating to the joint center for higher education; amending RCW 28B.25.020, 28B.25.030, 28B.10.029, and 28B.25.033; adding new sections to chapter 28B.25 RCW; and repealing RCW 28B.25.080.

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

Sec. 1. RCW 28B.25.020 and 1991 c 205 s 3 are each amended to read as follows:

(1) The joint center shall have authority over all fiscal activities related to the land and facilities known as the ((Spokane)) Riverpoint higher education park subject to the approval of the higher education coordinating board pursuant to RCW 28B.80.330 through 28B.80.350.

(2) The joint center for higher education shall coordinate all baccalaureate and graduate degree programs, and all other courses and programs offered in the Spokane area by Washington State University and by Eastern Washington University outside of its Cheney campus. The joint center for higher education shall not coordinate the intercollegiate center for nursing. The joint center for higher education may mediate disagreements among institutions about degree programs or courses.

(3) The joint center for higher education shall coordinate the following higher education activities in the Spokane area outside of the Eastern Washington University Cheney campus:

- (a) Articulation between lower division and upper division programs;
- (b) The participation of Washington State University and Eastern Washington University in joint academic degree programs with Gonzaga University and Whitworth College and in joint academic degree programs with each other;
- (c) All contractual negotiations between public and independent colleges and universities; and
- (d) Programs offered through the intercollegiate research and technology institute created by RCW 28B.10.060.

(4) The participating institutions in the joint center for higher education shall maintain jurisdiction over the content of the course offerings and the entitlement to degrees. However, before any degree program is authorized under this section, it shall be subject to review and approval of the higher education coordinating board.

(5) The joint center shall develop a master plan for the ~~((Spokane))~~ Riverpoint higher education park. The plan shall be developed in cooperation with the participating institutions and submitted to the higher education coordinating board, legislature, and office of financial management.

(6) The joint center shall adopt rules as necessary to implement this chapter.

(7) Title to or all interest in real estate and other assets, including but not limited to assignable contracts, cash, equipment, buildings, facilities, and appurtenances thereto held as of July 1, 1991, shall vest in the joint center for higher education.

Sec. 2. RCW 28B.25.030 and 1991 c 205 s 4 are each amended to read as follows:

(1) The joint center for higher education shall be governed by a board consisting of the following ~~((twelve))~~ fourteen voting members:

- (a) One member of the Eastern Washington University board of trustees;
- (b) One member of the Washington State University board of regents;
- (c) One member of the board of trustees of the Spokane community college district;
- (d) Six citizens residing in Spokane county. Of the six citizen members, no more than two may be regents or trustees of Eastern Washington University, Washington State University, or the Spokane community college district; ~~((and))~~
- (e) One member from an independent nonprofit university located in the Spokane area and one member from a separate independent, nonprofit, baccalaureate degree-granting institution of higher education located in the Spokane area; and

(f) The presidents of Washington State University and Eastern Washington University, and the chief executive officer of the Spokane community college district shall serve as ex officio members of the board. Either the provost or the

vice-president for research and dean of the graduate school may act as designee for the president of Washington State University.

(2) The executive director of the higher education coordinating board(~~(the president of Gonzaga University, and the president of Whitworth College)~~) shall serve as a nonvoting ex officio member(s) of the board. Pending appointment of the two members under subsection (1)(e) of this section, the president or chancellor of Gonzaga University and the president of Whitworth College shall continue to serve as nonvoting ex officio members of the board.

(3) Each of the (~~twelve~~) fourteen voting members shall have one vote. The voting members shall select a chairperson from among the (~~nine~~) eleven appointed members. A majority of the (~~twelve~~) fourteen voting members shall constitute a quorum for conducting business.

NEW SECTION. Sec. 3. The board of the joint center for higher education may hire a director of the institute who may hire other staff under chapter 41.06 RCW as necessary to carry out the institute's duties. The director shall exercise such additional powers, other than rule making, as may be delegated by the board by resolution.

NEW SECTION. Sec. 4. The joint center for higher education established under this chapter shall provide central administration services for the institute, including, but not limited to, accounting, budgeting, financial reporting, facilities management, personnel, and purchasing services.

Sec. 5. RCW 28B.10.029 and 1993 c 379 s 101 are each amended to read as follows:

(1) An institution of higher education may exercise independently those powers otherwise granted to the director of general administration in chapter 43.19 RCW in connection with the purchase and disposition of all material, supplies, services, and equipment needed for the support, maintenance, and use of the respective institution of higher education. Property disposition policies followed by institutions of higher education shall be consistent with policies followed by the department of general administration. Purchasing policies and procedures followed by institutions of higher education shall be in compliance with chapters 39.19, 39.29, and 43.03 RCW, and RCW 43.19.1901, 43.19.1906, 43.19.1911, 43.19.1917, 43.19.1937, 43.19.534, 43.19.685, 43.19.700 through 43.19.704, and 43.19.550 through 43.19.637. The community and technical colleges shall comply with RCW 43.19.450. Except for the University of Washington, institutions of higher education shall comply with RCW 43.19.1935, 43.19.19363, and 43.19.19368. If an institution of higher education can satisfactorily demonstrate to the director of the office of financial management that the cost of compliance is greater than the value of benefits from any of the following statutes, then it shall be exempt from them: RCW 43.19.685; 43.19.534; and 43.19.637. Any institution of higher education that chooses to exercise independent purchasing authority for a commodity or group of commodities shall notify the director of general administration.

Thereafter the director of general administration shall not be required to provide those services for that institution for the duration of the general administration contract term for that commodity or group of commodities.

(2) An institution of higher education may exercise independently those powers otherwise granted to the public printer in chapter 43.78 RCW in connection with the production or purchase of any printing and binding needed by the respective institution of higher education. Purchasing policies and procedures followed by institutions of higher education shall be in compliance with chapter 39.19 RCW. Any institution of higher education that chooses to exercise independent printing production or purchasing authority shall notify the public printer. Thereafter the public printer shall not be required to provide those services for that institution.

(3) For the purposes of this section, an "institution of higher education" shall include the joint center for higher education created in chapter 28B.25 RCW when the joint center for higher education is contracting with another institution of higher education that is acting as the sole agent for purchasing and disposing of material, supplies, services, and equipment, and for procuring printing or binding services.

Sec. 6. RCW 28B.25.033 and 1991 c 205 s 5 are each amended to read as follows:

(~~Nine~~) Eleven members of the board shall be appointed by the governor and approved by the senate. The appointed members of the board shall serve for terms of four years, the terms expiring on September 30th of the fourth year except that, in the case of initial members, three shall be appointed to two-year terms, three shall be appointed to three-year terms, and three shall be appointed to four-year terms. The term of any board member who is a trustee or regent shall automatically expire when the member's term as trustee or regent expires.

NEW SECTION. Sec. 7. RCW 28B.25.080 and 1991 c 205 s 10 are each repealed.

NEW SECTION. Sec. 8. Sections 3 and 4 of this act are each added to chapter 28B.25 RCW.

Passed the House February 7, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 19, 1996.

Filed in Office of Secretary of State March 19, 1996.

CHAPTER 111

[House Bill 2789]

SMALL BUSINESS TAX REPORTING AND REGISTRATION REQUIREMENTS

AN ACT Relating to tax reporting and registration requirements of small businesses with no tax liability; amending RCW 82.32.045 and 82.16.040; reenacting and amending RCW 82.32.030; 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 small businesses play a vital role in the state's current and future economic health. The legislature also finds that the state's excise tax reporting and registration requirements are unduly burdensome for small businesses incurring little or no tax liability. The legislature recognizes the costs associated in complying with the reporting and registration requirements that are hindering the further development of those businesses. For these reasons the legislature with this act simplifies the tax reporting and registration requirements for certain small businesses.

Sec. 2. RCW 82.32.030 and 1994 sp.s. c 7 s 446 and 1994 sp.s. c 2 s 2 are each reenacted and amended to read as follows:

(1) Except as provided in subsection (2) of this section, if any person engages in any business or performs any act upon which a tax is imposed by the preceding chapters, he or she shall, under such rules as the department of revenue shall prescribe, apply for and obtain from the department a registration certificate. Such registration certificate shall be personal and nontransferable and shall be valid as long as the taxpayer continues in business and pays the tax accrued to the state. In case business is transacted at two or more separate places by one taxpayer, a separate registration certificate for each place at which business is transacted with the public shall be required. Each certificate shall be numbered and shall show the name, residence, and place and character of business of the taxpayer and such other information as the department of revenue deems necessary and shall be posted in a conspicuous place at the place of business for which it is issued. Where a place of business of the taxpayer is changed, the taxpayer must return to the department the existing certificate, and a new certificate will be issued for the new place of business. No person required to be registered under this section shall engage in any business taxable hereunder without first being so registered. The department, by rule, may provide for the issuance of certificates of registration to temporary places of business.

(2) Unless the person is a dealer as defined in RCW 9.41.010, registration under this section is not required if the following conditions are met:

(a) A person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW, is less than twelve thousand dollars per year;

(b) The person's gross income of the business from all activities taxable under chapter 82.16 RCW is less than twelve thousand dollars per year;

(c) The person is not required to collect or pay to the department of revenue any other tax or fee which the department is authorized to collect; and

((e)) (d) The person is not otherwise required to obtain a license subject to the master application procedure provided in chapter 19.02 RCW.

Sec. 3. RCW 82.32.045 and 1983 2nd ex.s. c 3 s 63 are each amended to read as follows:

(1) Except as otherwise provided in this chapter, payments of the taxes imposed under chapters 82.04, 82.08, 82.12, 82.14, and 82.16 RCW, along with reports and returns on forms prescribed by the department, are due monthly within twenty-five days after the end of the month in which the taxable activities occur.

(2) The department of revenue may relieve any taxpayer or class of taxpayers from the obligation of remitting monthly and may require the return to cover other longer reporting periods, but in no event may returns be filed for a period greater than one year. For these taxpayers, tax payments are due on or before the last day of the month next succeeding the end of the period covered by the return.

(3) The department of revenue may also require verified annual returns from any taxpayer, setting forth such additional information as it may deem necessary to correctly determine tax liability.

(4) Notwithstanding subsections (1) and (2) of this section, the department may relieve any person of the requirement to file returns if the following conditions are met:

(a) The person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW, is less than twenty-four thousand dollars per year;

(b) The person's gross income of the business from all activities taxable under chapter 82.16 RCW is less than twenty-four thousand dollars per year; and

(c) The person is not required to collect or pay to the department of revenue any other tax or fee which the department is authorized to collect.

Sec. 4. RCW 82.16.040 and 1961 c 15 s 82.16.040 are each amended to read as follows:

The provisions of this chapter shall not apply to persons engaging in one or more businesses taxable under this chapter whose total gross income is less than ~~((five hundred))~~ two thousand dollars for a monthly period or portion thereof. Any person claiming exemption under this section may be required to file returns even though no tax may be due. If the total gross income for a taxable monthly period is ~~((five hundred))~~ two thousand dollars, or more, no exemption or deductions from the gross operating revenue is allowed by this provision.

NEW SECTION. Sec. 5. This act shall take effect July 1, 1996.

Passed the House February 12, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 19, 1996.

Filed in Office of Secretary of State March 19, 1996.

CHAPTER 112

[Substitute Senate Bill 6510]

TAXATION OF CLEAN-UP OF RADIOACTIVE WASTE AND OTHER BYPRODUCTS OF WEAPONS PRODUCTION AND NUCLEAR RESEARCH AND DEVELOPMENT

AN ACT Relating to taxation of persons engaged in the business of cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development; amending RCW 82.04.050, 82.04.190, and 82.04.2201; adding a new section to chapter 82.04 RCW; and providing an effective date.

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

Sec. 1. RCW 82.04.050 and 1995 1st sp.s. c 12 s 2 are each amended to read as follows:

(1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7) and 82.04.290.

(2) The term "sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imp:inting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding sales of laundry service to members by nonprofit associations composed exclusively of nonprofit hospitals, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The sale of and charge made for the furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same;

(g) The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), and (f) of this subsection when such sales or charges are for property, labor and services which are used

or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, and others;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events;

(g) Guided tours and guided charters; and

(h) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4) The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

(5) The term shall also include the providing of telephone service, as defined in RCW 82.04.065, to consumers.

(6) The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(7) The term shall also not include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to persons who participate in the federal conservation reserve program or its successor administered by the United States department of agriculture, or to farmers for the purpose of producing for sale any agricultural product, nor shall it include sales of chemical sprays or washes to persons for the purpose of

post-harvest treatment of fruit for the prevention of scald, fungus, mold, or decay.

(8) The term shall not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor shall the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development.

Sec. 2. RCW 82.04.190 and 1995 1st sp.s. c 3 s 4 arc each amended to read as follows:

"Consumer" means the following:

(1) Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than for the purpose (a) of resale as tangible personal property in the regular course of business or (b) of incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers or (c) of consuming such property in producing for sale a new article of tangible personal property or a new substance, of which such property becomes an ingredient or component or as a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale or (d) purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon;

(2) Any person engaged in any business activity taxable under RCW 82.04.290 and any person who purchases, acquires, or uses any telephone service as defined in RCW 82.04.065, other than for resale in the regular course of business;

(3) Any person engaged in the business of contracting for the building, repairing or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the

state of Washington or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind as defined in RCW 82.04.280, in respect to tangible personal property when such person incorporates such property as an ingredient or component of such publicly owned street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right of way of such street, place, road, highway, easement, bridge, tunnel, or trestle or in or upon the site of such mass public transportation terminal or parking facility;

(4) Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business, excluding only (a) municipal corporations or political subdivisions of the state in respect to labor and services rendered to their real property which is used or held for public road purposes, and (b) the United States, instrumentalities thereof, and county and city housing authorities created pursuant to chapter 35.82 RCW in respect to labor and services rendered to their real property. Nothing contained in this or any other subsection of this definition shall be construed to modify any other definition of "consumer";

(5) Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

(6) Any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation; also, any person engaged in the business of clearing land and moving earth of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW. Any such person shall be a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person; ((and))

(7) Any person who is a lessor of machinery and equipment, the rental of which is exempt from the tax imposed by RCW 82.08.020 under RCW 82.08.02565, with respect to the sale of or charge made for tangible personal property consumed and for labor and services rendered in respect to repairing the machinery and equipment; and

(8) Any person engaged in the business of cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development.

Nothing contained in this or any other subsection of this definition shall be construed to modify any other definition of "consumer."

NEW SECTION. Sec. 3. A new section is added to chapter 82.04 RCW, to be codified between RCW 82.04.220 and 82.04.290, to read as follows:

Upon every person engaging within this state in the business of cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development; as to such persons the amount of the tax with respect to such business shall be equal to the value of the gross income of the business multiplied by the rate of 0.471 percent.

For the purposes of this chapter, "cleaning up radioactive waste and other byproducts of weapons production and nuclear research and development" means the activities of handling, storing, treating, immobilizing, stabilizing, or disposing of radioactive waste, radioactive tank waste and capsules, nonradioactive hazardous solid and liquid wastes, or spent nuclear fuel; spent nuclear fuel conditioning; removal of contamination in soils and ground water; decontamination and decommissioning of facilities; and activities integral and necessary to the direct performance of cleanup.

Sec. 4. RCW 82.04.2201 and 1995 c 229 s 2 are each amended to read as follows:

There is levied and shall be collected for the period July 1, 1993, through June 30, 1997, from every person for the act or privilege of engaging in business activities, as a part of the tax imposed under RCW 82.04.220 through 82.04.280 and 82.04.290 (3) and (4), except RCW 82.04.250(1) (~~and~~), 82.04.260(15), and section 3 of this act, an additional tax equal to 4.5 percent multiplied by the tax payable under those sections.

To facilitate collection of these additional taxes, the department of revenue is authorized to adjust the basic rates of persons to which this section applies in such manner as to reflect the amount to the nearest one-thousandth of one percent of the additional tax hereby imposed, adjusting ten-thousandths equal to or greater than five ten-thousandths to the greater thousandth.

NEW SECTION. Sec. 5. This act shall take effect July 1, 1996.

Passed the Senate March 7, 1996.

Passed the House March 7, 1996.

Approved by the Governor March 20, 1996.

Filed in Office of Secretary of State March 20, 1996.

CHAPTER 113

[Senate Bill 6511]

**LASER INTERFEROMETER GRAVITATIONAL WAVE OBSERVATORY—
SALES AND USE TAX EXEMPTIONS FOR CONSTRUCTION MATERIALS**

AN ACT Relating to sales and use tax exemptions for materials used in the construction of a laser interferometer gravitational wave observatory; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 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 82.08 RCW to read as follows:

The tax levied by RCW 82.08.020 shall not apply to sales of tangible personal property to a consumer as defined in RCW 82.04.190(6) if the tangible personal property is incorporated into, installed in, or attached to a building or other structure that is an integral part of a laser interferometer gravitational wave observatory on which construction is commenced before December 1, 1996.

NEW SECTION. Sec. 2. A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter shall not apply in respect to the use of tangible personal property by a consumer as defined in RCW 82.04.190(6) if the tangible personal property is incorporated into, installed in, or attached to a building or other structure that is an integral part of a laser interferometer gravitational wave observatory on which construction is commenced before December 1, 1996.

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 shall take effect immediately.

Passed the Senate March 7, 1996.

Passed the House March 7, 1996.

Approved by the Governor March 20, 1996.

Filed in Office of Secretary of State March 20, 1996.

CHAPTER 114

[Substitute House Bill 2518]

**SPEED INFRACTIONS IN SCHOOL OR PLAYGROUND ZONES—
INCREASING PENALTIES**

AN ACT Relating to penalties for speed infractions in school or playground zones; amending RCW 46.61.440; and declaring an emergency.

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

Sec. 1. RCW 46.61.440 and 1975 c 62 s 34 are each amended to read as follows:

(1) Subject to RCW 46.61.400(1), and except in those instances where a lower maximum lawful speed is provided by this chapter or otherwise, it shall be unlawful for the operator of any vehicle to operate the same at a speed in excess of twenty miles per hour when operating any vehicle upon a highway either inside or outside an incorporated city or town when passing any marked school or playground crosswalk when such marked crosswalk is fully posted with standard school speed limit signs or standard playground speed limit signs. The speed zone at the crosswalk shall extend three hundred feet in either direction from the marked crosswalk.

(2) A person found to have committed any infraction relating to speed restrictions within a school or playground speed zone shall be assessed a monetary penalty equal to twice the penalty assessed under RCW 46.63.110. This penalty may not be waived, reduced, or suspended.

(3) The school zone safety account is created in the custody of the state treasurer. Fifty percent of the moneys collected under subsection (2) of this section shall be deposited into the account. Expenditures from the account may be used only by the Washington traffic safety commission solely to fund projects in local communities to improve school zone safety. Only the director of the traffic safety commission or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures until July 1, 1999, after which date moneys in the account may be spent only after appropriation.

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 the House March 4, 1996.

Passed the Senate February 29, 1996.

Approved by the Governor March 20, 1996.

Filed in Office of Secretary of State March 20, 1996.

CHAPTER 115

[Substitute House Bill 2119]

PRESERVED FRUITS AND VEGETABLES—EXCISE TAXATION REVISED

AN ACT Relating to excise taxation of fruit and vegetables preserved by canning or other means; reenacting and amending RCW 82.04.260; and providing an effective date.

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

Sec. 1. RCW 82.04.260 and 1995 2nd sp.s. c 12 s 1 and 1995 2nd sp.s. c 6 s 1 are each reenacted and amended to read as follows:

(1) Upon every person engaging within this state in the business of buying wheat, oats, dry peas, dry beans, lentils, triticale, canola, corn, rye and barley, but not including any manufactured or processed products thereof, and selling

the same at wholesale; the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of 0.011 percent.

(2) Upon every person engaging within this state in the business of manufacturing wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola byproducts, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business shall be equal to the value of the flour, pearl barley, oil, canola meal, or canola byproduct manufactured, multiplied by the rate of 0.138 percent.

(3) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business shall be equal to the value of the peas split or processed, multiplied by the rate of 0.275 percent.

(4) Upon every person engaging within this state in the business of manufacturing seafood products which remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured, multiplied by the rate of 0.138 percent.

(5) Upon every person engaging within this state in the business of manufacturing by canning, preserving, freezing, processing, or dehydrating fresh fruits and vegetables, or selling at wholesale fresh fruits and vegetables canned, preserved, frozen, processed, or dehydrated by the seller and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business shall be equal to the value of the products canned, preserved, frozen, processed, or dehydrated multiplied by the rate of 0.33 percent. As proof of sale to a person who transports in the ordinary course of business goods out of this state, the seller shall annually provide a statement in a form prescribed by the department and retain the statement as a business record.

(6) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(7) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(8) Upon every person engaging within this state in the business of making salts, at retail or wholesale, of nuclear fuel assemblies manufactured by that person, as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the assemblies multiplied by the rate of 0.275 percent.

(9) Upon every person engaging within this state in the business of manufacturing nuclear fuel assemblies, as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured multiplied by the rate of 0.275 percent.

(10) Upon every person engaging within this state in the business of acting as a travel agent; as to such persons the amount of the tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(11) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.363 percent.

(12) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds derived from such activities multiplied by the rate of 0.363 percent. Persons subject to taxation under this subsection shall be exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containcrized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(13) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business shall be equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state shall be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(14) Upon every person engaging within this state as an insurance agent, insurance broker, or insurance solicitor licensed under chapter 48.17 RCW; as to such persons, the amount of the tax with respect to such licensed activities shall be equal to the gross income of such business multiplied by the rate of 0.55 percent.

(15) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities shall be equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter. The moneys collected under this subsection shall be deposited in the health services account created under RCW 43.72.900.

NEW SECTION. Sec. 2. This act shall take effect July 1, 1996.

Passed the House February 5, 1996.

Passed the Senate March 7, 1996.

Approved by the Governor March 20, 1996.

Filed in Office of Secretary of State March 20, 1996.

CHAPTER 116

[House Bill 2459]

VEHICLE MAXIMUM GROSS WEIGHTS—TIRE FACTORS ADJUSTED

AN ACT Relating to tire factors in maximum gross weights; and amending RCW 46.44.042.

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

Sec. 1. RCW 46.44.042 and 1993 c 103 s 1 are each amended to read as follows:

Subject to the maximum gross weights specified in RCW 46.44.041, it is unlawful to operate any vehicle upon the public highways with a gross weight, including load, upon any tire concentrated upon the surface of the highway in excess of six hundred pounds per inch width of such tire. ~~((Other than the nonliftable steering axle on the power unit or tiller axle on fire fighting apparatus;))~~ An axle manufactured after July 31, 1993, carrying more than ten thousand pounds gross weight must be equipped with four or more tires. Effective January 1, 1997, an axle ~~((, excluding the nonliftable steering axle on the power unit or tiller axle on fire fighting apparatus;))~~ carrying more than ten thousand pounds gross weight must have four or more tires, regardless of date of manufacture. Instead of the four or more tires per axle requirements of this section ~~((;-(1)))~~, an axle may be equipped with two tires limited to five hundred pounds per inch width of tire ~~((;-(2) in the case of a ready mix concrete transit~~

~~truck, the rear booster trailing axle may be equipped with two tires limited to six hundred pounds per inch width of tire)). This section does not apply to vehicles operating under oversize ((and)) or overweight permits, or both, issued under RCW 46.44.090, while carrying a nonreducible load.~~

The following equipment may operate at six hundred pounds per inch width of tire: (1) A nonliftable steering axle or axles on the power unit; (2) a tiller axle on fire fighting apparatus; (3) a rear booster trailing axle equipped with two tires on a ready-mix concrete transit truck; and (4) a straddle trailer manufactured before January 1, 1996, equipped with single-tire axles or a single axle using a walking beam supported by two in-line single tires and used exclusively for the transport of fruit bins between field, storage, and processing. A straddle trailer manufactured after January 1, 1996, meeting this use criteria may carry five hundred fifteen pounds per inch width of tire on sixteen and one-half inch wide tires.

For the purpose of this section, the width of tire in case of solid rubber or hollow center cushion tires, so long as the use thereof may be permitted by the law, shall be measured between the flanges of the rim. For the purpose of this section, the width of tires in case of pneumatic tires shall be the maximum overall normal inflated width as stipulated by the manufacturer when inflated to the pressure specified and without load thereon.

The department of transportation, under rules adopted by the transportation commission with respect to state highways, and a local authority, with respect to a public highway under its jurisdiction, may extend the weight table in RCW 46.44.041 to one hundred fifteen thousand pounds. However, the extension must be in compliance with federal law, and vehicles operating under the extension must be in full compliance with the 1997 axle and tire requirements under this section.

Passed the House February 5, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 20, 1996.

Filed in Office of Secretary of State March 20, 1996.

CHAPTER 117

[Substitute House Bill 2778]

FARMWORKER HOUSING—SALES AND USE TAX EXEMPTIONS

AN ACT Relating to sales and use tax exemptions for farmworker housing; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 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 82.08 RCW to read as follows:

(1) The tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered by any person in respect to the constructing,

repairing, decorating, or improving of new or existing buildings or other structures used as agricultural employee housing, or to sales of tangible personal property that becomes an ingredient or component of the buildings or other structures during the course of the constructing, repairing, decorating, or improving the buildings or other structures, but only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department by rule.

(2) The exemption provided in this section for agricultural employee housing provided to year-round employees of the agricultural employer, only applies if that housing is built to the current building code for single-family or multifamily dwellings according to the state building code, chapter 19.27 RCW.

(3) Any agricultural employee housing built under this section shall be used according to this section for at least five years from the date the housing is approved for occupation.

(4) The exemption provided in this section shall not apply to housing built for the occupancy of an employer, family members of an employer, or persons owning stock or shares in a farm partnership or corporation business.

(5) For purposes of this section and section 2 of this act:

(a) "Agricultural employee" or "employee" has the same meaning as given in RCW 19.30.010;

(b) "Agricultural employer" or "employer" has the same meaning as given in RCW 19.30.010; and

(c) "Agricultural employee housing" means all facilities provided by the employer for housing the employer's agricultural employees on a year-round or seasonal basis, including bathing, food handling, hand washing, laundry, and toilet facilities, single-family and multifamily dwelling units and dormitories, and includes labor camps under RCW 70.54.110. "Agricultural employee housing" does not include housing regularly provided on a commercial basis to the general public that is provided to agricultural employees on the same terms and conditions as it is provided to the general public.

NEW SECTION. Sec. 2. A new section is added to chapter 82.12 RCW to read as follows:

(1) The provisions of this chapter shall not apply in respect to the use of tangible personal property that becomes an ingredient or component of buildings or other structures used as agricultural employee housing during the course of constructing, repairing, decorating, or improving the buildings or other structures by any person.

(2) The exemption provided in this section for agricultural employee housing provided to year-round employees of the agricultural employer, only applies if that housing is built to the current building code for single-family or multifamily dwellings according to the state building code, chapter 19.27 RCW.

(3) Any agricultural employee housing built under this section shall be used according to this section for at least five years from the date the housing is approved for occupation.

(4) The exemption provided in this section shall not apply to housing built for the occupancy of an employer, family members of an employer, or persons owning stock or shares in a farm partnership or corporation business.

(5) The definitions in section 1(5) of this act apply to this section.

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 shall take effect immediately.

Passed the House February 12, 1996.

Passed the Senate March 7, 1996.

Approved by the Governor March 20, 1996.

Filed in Office of Secretary of State March 20, 1996.

CHAPTER 118

[Substitute Senate Bill 6279]

FERMENTED APPLE AND PEAR CIDER—TAXATION

AN ACT Relating to fermented apple and pear cider; amending RCW 66.24.210; and providing an effective date.

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

Sec. 1. RCW 66.24.210 and 1995 c 232 s 3 are each amended to read as follows:

(1) There is hereby imposed upon all wines except cider sold to wine wholesalers and the Washington state liquor control board, within the state a tax at the rate of twenty and one-fourth cents per liter and there is hereby imposed on all cider sold to wine wholesalers and the Washington state liquor control board within the state a tax at the rate of three and fifty-nine one-hundredths cents per liter: PROVIDED, HOWEVER, That wine sold or shipped in bulk from one winery to another winery shall not be subject to such tax. The tax provided for in this section shall be collected by direct payments based on wine purchased by wine wholesalers. Every person purchasing wine under the provisions of this section shall on or before the twentieth day of each month report to the board all purchases during the preceding calendar month in such manner and upon such forms as may be prescribed by the board, and with such report shall pay the tax due from the purchases covered by such report unless the same has previously been paid. Any such purchaser of wine whose applicable tax payment is not postmarked by the twentieth day following the month of purchase will be assessed a penalty at the rate of two percent a month or fraction thereof. The board may require that every such person shall execute to and file with the board a bond to be approved by the board, in such amount as the board may fix, securing the payment of the tax. If any such person fails to pay the tax when due, the board may forthwith suspend or cancel the license until all taxes are paid.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. All

revenues collected during any month from this additional tax shall be transferred to the state general fund by the twenty-fifth day of the following month.

(3) An additional tax is imposed on wines subject to tax under subsection (1) of this section, at the rate of one-fourth of one cent per liter for wine sold after June 30, 1987. ~~((Such))~~ After June 30, 1996, such additional tax does not apply to cider. An additional tax of five one-hundredths of one cent per liter is imposed on cider sold after June 30, 1996. The additional ~~((tax))~~ taxes imposed by this subsection (3) shall cease to be imposed on July 1, 2001. All revenues collected under this subsection (3) shall be disbursed quarterly to the Washington wine commission for use in carrying out the purposes of chapter 15.88 RCW.

(4) An additional tax is imposed on all wine subject to tax under subsection (1) of this section. The additional tax is equal to twenty-three and forty-four one-hundredths cents per liter on fortified wine as defined in RCW 66.04.010(34) when bottled or packaged by the manufacturer ~~((and))~~, one cent per liter on all other wine except cider, and eightcen one-hundredths of one cent per liter on cider. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(5)(a) An additional tax is imposed on all cider subject to tax under subsection (1) of this section. The additional tax is equal to two and four one-hundredths cents per liter of cider sold after June 30, 1996, and before July 1, 1997, and is equal to four and seven one-hundredths cents per liter of cider sold after June 30, 1997.

(b) All revenues collected from the additional tax imposed under this subsection (5) shall be deposited in the health services account under RCW 43.72.900.

(6) For the purposes of this section, "cider" means table wine that contains not less than one-half of one percent of alcohol by volume and not more than seven percent of alcohol by volume and is made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears. "Cider" includes, but is not limited to, flavored, sparkling, or carbonated cider and cider made from condensed apple or pear must.

NEW SECTION. Sec. 2. This act shall take effect July 1, 1996.

Passed the Senate February 7, 1996.

Passed the House February 28, 1996.

Approved by the Governor March 20, 1996.

Filed in Office of Secretary of State March 20, 1996.

CHAPTER 119

[Substitute House Bill 2256]

PROJECTS RECOMMENDED BY THE PUBLIC WORKS BOARD—AUTHORIZATION

AN ACT Relating to appropriations 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 previously appropriated from the public works assistance account:

- (1) City of Albion—domestic water project—replace 3,200 lineal feet of water mains, install service connections, fire hydrants, valves and fittings, complete road and surface restoration \$200,000
- (2) City of Arlington—domestic water project—replace 71-year-old water filtration plant including emergency standby power, telemetry, connecting pipes, office, and laboratory space \$1,535,000
- (3) City of Bonney Lake—domestic water project—replace 17,000 lineal feet of pipe with 12-inch water main, install fire hydrants, and street overlay \$1,298,700
- (4) City of Bremerton—sanitary sewer project—install 4,000 lineal feet of storm sewer lines, and relocate 2,400 lineal feet of combined sewer lines and water main in the Callow Avenue basin \$2,844,000
- (5) Bryn Mawr-Lakcridge Water and Sewer District—domestic water project—rehabilitate two 250,000 gallon storage reservoirs to meet current safety standards \$148,500
- (6) Town of Cathlamet—domestic water project—rehabilitation of water treatment plant, construction of 500,000 gallon reservoir, and install 18,000 lineal feet of 8 to 12-inch water mains \$1,990,800
- (7) Cedar River Water and Sewer District—domestic water project—replace 34,000 lineal feet of 30-year-old substandard water mains, install pressure control stations and restore 34,000 lineal feet of asphalt road \$1,715,029
- (8) Chelan County PUD No. 1—domestic water project—replace 44-year-old reservoir with 500,000 gallon reservoir, replace deteriorating booster station, and install 1,200 lineal feet of 12-inch water main \$790,824
- (9) Clark Public Utilities—domestic water project—upgrade 109,000 lineal feet of water lines, install fire hydrants and convert 27 well-disinfection systems from gas chlorine to sodium hypochlorite \$3,709,090
- (10) Clinton Water District—domestic water project—install source transmission line and controls, replace 2 existing wood stove storage tanks, replace old distribution line with adequate new distribution line \$545,400

- (11) City of Colville—domestic water project—install transmission mains and hydrants and replace undersized distribution lines \$882,300
- (12) City of Colville—sanitary sewer project—reconstruct wastewater collection system including the rehabilitation of 30,000 lineal feet of major trunk lines, and construct 4,300 lineal feet of storm water collection lines to meet DOE compliance order \$6,117,700
- (13) Covington Water District—domestic water project—replace 17,050 lineal feet of undersized, leaking steel pipes with 8 and 12-inch ductile iron pipes near and around Lake Morton \$1,325,542
- (14) Douglas County Sewer District No. 1—sanitary sewer project—a wastewater treatment plant improvement project including upgrade of the headworks, conversion of the final clarifier to provide redundancy, installation of UV disinfection to replace chlorine disinfection, remodel the lab building, construct anoxic portion of additional aeration basins, construct three anaerobic digester reactors and construct new sludge dewatering and handling equipment \$3,500,000
- (15) City of Enumclaw—road project—construction of a 36-foot wide pavement section with new sidewalk, curb and gutter, and associated utility improvements along Roosevelt Avenue from Semanski Street to Cole Street \$584,850
- (16) City of Everett—road project—construct 3,700 lineal feet of street widening; curbs, gutters, and sidewalks; vertical realignment of the street, lighting, storm drainage, asphalt overlay, and restorative work . . \$1,034,310
- (17) City of Grandview—sanitary sewer—increase the hydraulic and storage capacity at the city’s wastewater treatment plant, meet the biochemical oxygen demand requirements, and construct biosolids treatment facilities and pumping station to meet DOE compliance order \$5,014,000
- (18) Hangman Hills Water District No. 15—domestic water project—construction and installation of new well, pump house, and transmission mains . . \$78,600
- (19) Hazel Dell Water District—sanitary sewer project—installation of a pump station, pump chamber, storage tank, and 22,500 lineal feet of pressure main \$502,670
- (20) Highline Water District—domestic water project—construction of a six million gallon reservoir, and installation of separate inlet and outlet pipes in four of the district’s existing reservoirs \$1,792,350
- (21) Highline Water District—domestic water project—installation of 2,350 lineal feet of 12-inch supply/transmission main and replacement of 8,150 lineal feet of undersized mains in the Three Tree Point area \$588,000
- (22) City of Kelso—storm sewer project—installation of a new 42-inch storm drain to divert flows from an existing storm drain to prevent flooding \$155,400

- (23) City of Kennewick—domestic water project—installation of 39,500 lineal feet of 8-inch water main including connections, valves, and fire hydrants; filter plant operational repairs; well repairs; installation of recirculating system; installation of pumps; modification of existing pumping station; replacement of 1,300 lineal feet of 16-inch main; backup pump installation; pumping improvements; increased storage capacity; installation of 3,000 lineal feet of 16-inch main; and other water system upgrades \$7,000,000
- (24) King County Water District No. 20—domestic water project—upgrade approximately 39,300 lineal feet of water mains on Chelsea Park/4th Avenue and Roseburg/Rainier Gold Club \$1,890,000
- (25) King County Water District No. 90—domestic water project—design and install a 500 GPM water treatment facility, and replace 2,000 lineal feet of old steel water mains \$654,500
- (26) King County Water District No. 107—domestic water project—replace approximately 11,000 lineal feet of 35-year-old, undersized, asbestos (AC) distribution pipelines \$685,713
- (27) King County Water District No. 107—sanitary sewer project—installation of 1,990 lineal feet of interceptor lines, and upgrade the wet well capacity in the district’s Olympus lift station \$336,000
- (28) King County Water District No. 111—domestic water project—installation of filtration treatment for ground water wells Nos. 1, 3, and 4 of the district’s supply \$945,000
- (29) King County Water District No. 111—domestic water project—replacement of 4,000 lineal feet of old, deteriorated, and undersized water pipes with 8 and 12-inch ductile iron pipe \$151,900
- (30) King County Water District No. 123—domestic water project—replacement of aging, substandard water lines with 6 and 8-inch ductile iron water mains \$148,399
- (31) City of Langley—domestic water project—replace existing tank with new 600,000 gallon tank, stall and replace transmission mains, and replace undersized water lines \$630,454
- (32) City of Lynden—sanitary sewer project—build an on-site composting facility at sewer treatment plant to comply with NPDES and Federal 503 regulations \$1,674,280
- (33) Mason County PUD No. 1—domestic water project—repair and replace severely deteriorated and undersized pipe, make improvements to Well No. 1 and Well No. 2 booster station bypass, install a reservoir lower level alarm and pressure reducing devices, and install water meters in the Highland Park water system \$159,030

- (34) Medical Lake—domestic water project—installation of a water pump station and appurtenances, construction of a 1.5 million gallon water reservoir, and installation of 18,500 lineal feet of 16-inch transmission main . . \$2,380,000
- (35) Midway Sewer District—sanitary sewer project—replace existing sewer with 6,600 lineal feet of 30-inch gravity trunk sewer line, and replace existing on-shore portion of outfall with 4,600 lineal feet of 36-inch or larger pipe from treatment plant to Puget Sound \$2,472,960
- (36) City of Mill Creek—storm sewer project—modify existing storm system and install an overflow bypass system \$547,500
- (37) City of Mount Vernon—sanitary sewer project—construct 6,400 linear feet of 54 to 60 inch pipeline to transport combined sewer flows during storm events \$400,000
- (38) City of Mount Vernon—storm sewer project—construct a new stormwater pump station to handle peak stormwater flow from Kulshan Creek basin \$3,100,000
- (39) Northshore Utility District—sanitary sewer project—construct sewer collectors in previously unserved areas with known on-site system failures to eliminate public health threat \$1,896,300
- (40) City of Ocean Shores—road project—reconstruction of Point Brown Avenue \$1,000,000
- (41) City of Othello—domestic water project—drill a new well, construct a steel reservoir, and install a transmission main \$2,756,466
- (42) City of Pacific—domestic water project—construction of a new 1.5 million gallon reservoir, installation of 1,200 lineal feet of 12-inch water main, and installation of a new 8-inch 1,000 lineal foot intertie with Lakehaven Utility District \$1,756,000
- (43) Penn Cove Park Water District—domestic water project—replacement and installation of 9,500 lineal feet of 6-inch water mains and appurtenances, new services, valves, and hydrants \$427,500
- (44) City of Pullman—sanitary sewer project—replacement of the existing secondary clarifier at the city’s wastewater treatment plant that has been out of service for six years due to NPDES permit violations \$777,000
- (45) City of Renton—sanitary sewer project—construction of a new interceptor to replace an existing lift station constructed in 1963, and is prone to overflows into Honey Creek \$2,466,717
- (46) City of Renton—sanitary sewer project—reconstruction of the Devil’s Elbow Lift Station, connecting existing residential areas currently on septic systems to the public sewer system, and preventing potential aquifer contamination \$2,125,740

- (47) Rhodena Beach Water District—domestic water project—construction of a pressurized water distribution system to replace current inadequate gravity system \$73,736
- (48) Scatchet Head Water District—domestic water project—drilling of a new well, construction of a 35,000 gallon storage tank, replacement of water lines, and installation of pressure reducing valves \$248,500
- (49) City of Seattle—bridge project—design and construction of retrofit improvements to the University Bridge approaches and the Fremont Bridge Bascule as part of the Bridge Seismic Retrofit program \$4,000,000
- (50) City of Seattle—road project—reconstruction of Harbor Avenue including new pavement, sidewalks, a multi-use trail, storm drain and lighting improvements \$1,000,000
- (51) Silverdale Water District No. 16—domestic water project—construction of four interties linking four satellite systems including: Installation of 11,900 lineal feet of 4 and 8-inch water main, 14 fire hydrants, pressure-reducing valves, 3,330 lineal feet of street restoration, service connections, 1,500 lineal feet of 2-inch pipe, and 800 lineal feet of security fencing \$623,780
- (52) Skyway Water and Sewer District—domestic water project—construction of a 1.3 million gallon reservoir, a new pump station, the upgrade of an existing booster pump station, and installation of 2,500 lineal feet of transmission main \$1,250,000
- (53) Snohomish County—road project—structural overlays and reconstruction of 40 miles of county roads including rural and urban major and minor collector arterials, and local access roads \$3,703,529
- (54) City of Stanwood—sanitary sewer project—wastewater system improvements, including: Renovation of the main pump station, addition of standby power, upgrades to systems at the disinfection building, installation of bar screen and compactor at the headworks, provide dechlorination of effluent at the wastewater treatment facility, and install approximately 3,500 lineal feet of 12-inch gravity sewer line \$1,156,000
- (55) Town of Steilacoom—domestic water project—construction of a 500,000 gallon water reservoir with connections to the existing water system, rehabilitate and improve the existing booster pump station, and install 1,000 lineal feet of 12-inch transmission main \$835,200
- (56) Town of Steilacoom—road project—reconstruction of Union Avenue from Cormorant Drive to Rainier Street, including: 4,400 lineal feet of asphalt concrete road, curb, gutter, sidewalk, bicycle lanes, street lighting, installation of underground storm drainage systems and 2,800 lineal feet of water main upgrades \$1,866,600
- (57) City of Sultan—sanitary sewer project—design and construction of an oxidation ditch wastewater treatment facility, and repair and replace the existing

plant, including: A headworks structure, an influent chamber, and oxidation ditch equipped with aeration rotors and mixers, two clarifiers, a disinfection system, digester, composting facilities, and a control building to house a laboratory, office space, telemetry, an auxiliary generator, and other equipment \$2,022,050

(58) City of Tacoma—neighborhood reinvestment/enterprise zone demonstration project—road project to install approximately one hundred streetlight standards, including poles and underground connections to light three miles of city streets \$440,000

(59) City of Toledo—domestic water project—replacement of 2,800 lineal feet of water main, 1,000 lineal feet of 8-inch sewer pipe, street widening, sidewalks and storm drains \$769,816

(60) Valley Water District—domestic water project—installation of a telemetry system between a water tank, well site, and Tacoma intertie; replacement of a water pump and pump house, meter replacement, installation of 6,350 lineal feet of 4, 6, and 10-inch distribution mains, installation of chlorination facilities, and a standby generator for the Alderwood Estates water system \$496,800

(61) Valley Water District—domestic water project—provide water source, reservoirs, distribution lines, transmission lines, meters, water treatment, intertie upgrade, installation of 1,900 lineal feet of 6-inch pipe, and 25 valves to the Eldorado Estates water system \$509,400

(62) Valley Water District—domestic water project—construction of a new pump house, chlorination treatment facilities, a storage reservoir, installation of 3,520 lineal feet of transmission main, 4,000 lineal feet of distribution main and telemetry, and replacement of vaults and meters for the Valley Water system \$518,400

(63) Vashon Sewer District—sanitary sewer project—rehabilitate and construction of improvements to the wastewater treatment facility \$922,000

(64) City of Wapato—domestic water project—refurbish a 40-year-old elevated water tank, and rehabilitation of wells No. 3 and 4 \$392,280

(65) City of Wapato—sanitary sewer project—improvements to the wastewater treatment facility \$1,158,300

(66) Whitworth Water District No. 2—domestic water project—installation of 3,800 lineal feet of 20-inch waterline, 2,700 lineal feet of 18-inch waterline, 7,000 lineal feet of 24-inch ductile iron pipe, 2,300 lineal feet of water main, air release and pressure-reducing stations, a creek crossing, eleven fire hydrants, a water pump, and 300 square yards of pavement \$1,300,000

(67) Town of Wilbur—sanitary sewer project—rehabilitation of 3,600 lineal feet of existing sewer line, replacement of manholes, sump pumps, storm drain connections, and surface restoration \$765,000

Total Approved List \$96,785,915

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 shall take effect immediately.

Passed the House February 6, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 21, 1996.

Filed in Office of Secretary of State March 21, 1996.

CHAPTER 120

[Substitute Senate Bill 6583]

BENEFITS FOR PART-TIME ACADEMIC EMPLOYEES OF COMMUNITY AND TECHNICAL COLLEGES—CLARIFICATION

AN ACT Relating to higher education; adding new sections to chapter 28B.50 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 28B.50 RCW to read as follows:

For the purposes of determining eligibility of state-mandated insurance and retirement benefits under RCW 28B.10.400 for part-time academic employees in community and technical colleges, the following definitions shall be used:

(1) "Full-time academic workload" means the number of in-class teaching hours that a full-time instructor must teach to fulfill his or her employment obligations in a given discipline in a given college. If full-time academic workload is defined in a contract adopted through the collective bargaining process, that definition shall prevail. If the full-time workload bargained in a contract includes more than in-class teaching hours, only that portion that is in-class teaching hours may be considered academic workload.

(2) "In-class teaching hours" means contact classroom and lab hours in which full or part-time academic employees are performing contractually assigned teaching duties. The in-class teaching hours shall not include any duties performed in support of, or in addition to, those contractually assigned in-class teaching hours.

(3) "Academic employee" in a community or technical college means any teacher, counselor, librarian, or department head who is employed by a college district, whether full or part-time, with the exception of the chief administrative officer of, and any administrator in, each college district.

(4) "Part-time academic workload" means any percentage of a full-time academic workload for which the part-time academic employee is not paid on the full-time academic salary schedule.

NEW SECTION. Sec. 2. A new section is added to chapter 28B.50 RCW to read as follows:

For the purposes of determining eligibility for receipt of state-mandated benefits for part-time academic employees at community and technical colleges, each institution shall report to the appropriate agencies the names of eligible part-time academic employees who qualify for benefits based on calculating the hours worked by part-time academic employees as a percentage of the part-time academic workload to the full-time academic workload in a given discipline in a given institution.

NEW SECTION. Sec. 3. A new section is added to chapter 28B.50 RCW 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 best practices audit of compensation packages and conditions of employment for part-time faculty in the community and technical college system. The task force shall include but need not be limited to part-time faculty, full-time faculty, members of the state board, and members of community college and technical college governing boards. In performing 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. The report shall include recommendations on a set of best practices principles for the colleges to follow in their employment of part-time faculty. 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 biennial operating budget request. The board shall encourage and, to the extent possible, require each local governing board to adopt and implement the principles.

***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 shall take effect immediately.*

*Sec. 4 was vetoed. See message at end of chapter.

Passed the Senate March 4, 1996.

Passed the House February 29, 1996.

Approved by the Governor March 21, 1996, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 21, 1996.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 4, Substitute Senate Bill No. 6583 entitled:

"AN ACT Relating to higher education;"

Substitute Senate Bill No. 6583 establishes definitions for full and part-time academic employees in the community and technical college system for the purpose of standardizing medical and retirement benefits and requires a task force to study, provide recommendations on, and implement best practices regarding academic employee benefits.

This legislation includes an emergency clause in section 4. Funding to implement the provisions of this bill is included in the supplemental budget and cannot be expended until fiscal year 1997. Since the bill without section 4 is otherwise effective 90 days following the close of the legislative session, which is before the start of fiscal year 1997, the emergency clause is without moment.

Moreover, the inclusion of an emergency clause prevents this bill from being subject to a referendum under Article II, section 1 (b) of the state Constitution and unnecessarily denies the people of this state their power, at their own option, to approve or reject this bill at the polls.

For these reasons, I have vetoed section 4 of Substitute Senate Bill No. 6583.

With the exception of section 4, Substitute Senate Bill No. 6583 is approved."

CHAPTER 121

[Substitute House Bill 2075]

VIOLENT OFFENSES AGAINST PREGNANT WOMEN— CHARACTERIZATION AS AGGRAVATING CIRCUMSTANCES

AN ACT Relating to the finding of aggravating circumstances for the commission of violent offenses against pregnant women; amending RCW 9.94A.390; and declaring an emergency.

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

Sec. 1. RCW 9.94A.390 and 1995 c 316 s 2 are each amended to read as follows:

If the sentencing court finds that an exceptional sentence outside the standard range should be imposed in accordance with RCW 9.94A.120(2), the sentence is subject to review only as provided for in RCW 9.94A.210(4).

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

(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.400 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

(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.

~~((d))~~ (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 or 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).

~~((e))~~ (f) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.127.

~~((f))~~ (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.

~~((g))~~ (h) The operation of the multiple offense policy of RCW 9.94A.400 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.

~~((h))~~ (i) 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.

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 shall take effect immediately.

Passed the House March 4, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 21, 1996.

Filed in Office of Secretary of State March 21, 1996.

CHAPTER 122

[Substitute House Bill 2358]

INCREASING PENALTY ASSESSMENTS FOR SUPPORT OF CRIME VICTIM AND WITNESS PROGRAMS

AN ACT Relating to penalty assessments for support of crime victim and witness programs; amending RCW 7.68.035, 7.68.060, and 7.68.070; creating new sections; and prescribing penalties.

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

NEW SECTION. Sec. 1. The legislature finds that current funding for county victim-witness advocacy programs is inadequate. Also, the state crime victims compensation program should be enhanced to provide for increased benefits to families of victims who are killed as a result of a criminal act. It is the intent of the legislature to provide increased financial support for the county and state crime victim and witness programs by requiring offenders to pay

increased penalty assessments upon conviction of a gross misdemeanor or felony crime. The increased financial support is intended to allow county victim/witness programs to more fully assist victims and witnesses through the criminal justice processes. On the state level, the increased funds will allow the remedial intent of the crime victims compensation program to be more fully served. Specifically, the increased funds from offender penalty assessments will allow more appropriate compensation for families of victims who are killed as a result of a criminal act, including reasonable burial benefits.

Sec. 2. RCW 7.68.035 and 1991 c 293 s 1 are each amended to read as follows:

(1)(a) Whenever any person is found guilty in any superior court of having committed a crime, except as provided in subsection (2) of this section, there shall be imposed by the court upon such convicted person a penalty assessment. The assessment shall be in addition to any other penalty or fine imposed by law and shall be ~~((one))~~ five hundred dollars for each case or cause of action that includes one or more convictions of a felony or gross misdemeanor and ~~((seventy-five))~~ two hundred fifty dollars for any case or cause of action that includes convictions of only one or more misdemeanors.

(b) Whenever any juvenile is adjudicated of any offense in any juvenile offense disposition under Title 13 RCW, except as provided in subsection (2) of this section, there shall be imposed upon the juvenile offender a penalty assessment. The assessment shall be in addition to any other penalty or fine imposed by law and shall be one hundred dollars for each case or cause of action that includes one or more adjudications for a felony or gross misdemeanor and seventy-five dollars for each case or cause of action that includes adjudications of only one or more misdemeanors.

(2) The assessment imposed by subsection (1) of this section shall not apply to motor vehicle crimes defined in Title 46 RCW except those defined in the following sections: RCW 46.61.520, 46.61.522, 46.61.024, 46.52.090, 46.70.140, 46.61.502, 46.61.504, 46.52.100, 46.20.410, 46.52.020, 46.10.130, 46.09.130, 46.61.525, 46.61.685, 46.61.530, 46.61.500, 46.61.015, 46.52.010, 46.44.180, 46.10.090(2), and 46.09.120(2).

(3) Whenever any person accused of having committed a crime posts bail in superior court pursuant to the provisions of chapter 10.19 RCW and such bail is forfeited, there shall be deducted from the proceeds of such forfeited bail a penalty assessment, in addition to any other penalty or fine imposed by law, equal to the assessment which would be applicable under subsection (1) of this section if the person had been convicted of the crime.

(4) Such penalty assessments shall be paid by the clerk of the superior court to the county treasurer who shall monthly transmit the money as provided in RCW 10.82.070. Each county shall deposit fifty percent of the money it receives per case or cause of action under subsection (1) of this section and retains under RCW 10.82.070, not less than one and seventy-five one-hundredths percent of the remaining money it retains under RCW 10.82.070 and the money it retains

under chapter 3.62 RCW, and all money it receives under subsection (~~((8))~~) (7) of this section into a fund maintained exclusively for the support of comprehensive programs to encourage and facilitate testimony by the victims of crimes and witnesses to crimes. A program shall be considered "comprehensive" only after approval of the department upon application by the county prosecuting attorney. The department shall approve as comprehensive only programs which:

(a) Provide comprehensive services to victims and witnesses of all types of crime with particular emphasis on serious crimes against persons and property. It is the intent of the legislature to make funds available only to programs which do not restrict services to victims or witnesses of a particular type or types of crime and that such funds supplement, not supplant, existing local funding levels;

(b) Are administered by the county prosecuting attorney either directly through the prosecuting attorney's office or by contract between the county and agencies providing services to victims of crime;

(c) Make a reasonable effort to inform the known victim or his surviving dependents of the existence of this chapter and the procedure for making application for benefits;

(d) Assist victims in the restitution and adjudication process; and

(e) Assist victims of violent crimes in the preparation and presentation of their claims to the department of labor and industries under this chapter.

Before a program in any county west of the Cascade mountains is submitted to the department for approval, it shall be submitted for review and comment to each city within the county with a population of more than one hundred fifty thousand. The department will consider if the county's proposed comprehensive plan meets the needs of crime victims in cases adjudicated in municipal, district or superior courts and of crime victims located within the city and county.

(5) Upon submission to the department of a letter of intent to adopt a comprehensive program, the prosecuting attorney shall retain the money deposited by the county under subsection (4) of this section until such time as the county prosecuting attorney has obtained approval of a program from the department. Approval of the comprehensive plan by the department must be obtained within one year of the date of the letter of intent to adopt a comprehensive program. The county prosecuting attorney shall not make any expenditures from the money deposited under subsection (4) of this section until approval of a comprehensive plan by the department. If a county prosecuting attorney has failed to obtain approval of a program from the department under subsection (4) of this section or failed to obtain approval of a comprehensive program within one year after submission of a letter of intent under this section, the county treasurer shall monthly transmit one hundred percent of the money deposited by the county under subsection (4) of this section to the state treasurer for deposit in the public safety and education account established under RCW 43.08.250.

(6) County prosecuting attorneys are responsible to make every reasonable effort to insure that the penalty assessments of this chapter are imposed and collected.

~~(7) ((Penalty assessments under this section shall also be imposed in juvenile offense dispositions under Title 13 RCW. Upon motion of a party and a showing of good cause, the court may modify the penalty assessment in the disposition of juvenile offenses under Title 13 RCW.~~

~~—(8))~~ Every city and town shall transmit monthly one and seventy-five one-hundredths percent of all money, other than money received for parking infractions, retained under RCW 3.46.120, 3.50.100, and 35.20.220 to the county treasurer for deposit as provided in subsection (4) of this section.

NEW SECTION. Sec. 3. The office of crime victims advocacy shall report to the legislature on December 31, 1999, December 31, 2002, and December 31, 2005, regarding the collection of penalty assessments under this act and the use of collected funds to provide assistance to victims and witnesses of crime.

Sec. 4. RCW 7.68.060 and 1990 c 3 s 501 are each amended to read as follows:

(1) For the purposes of applying for benefits under this chapter, the rights, privileges, responsibilities, duties, limitations and procedures contained in RCW 51.28.020, 51.28.030, 51.28.040 and 51.28.060 ~~((as now or hereafter amended))~~ shall apply: PROVIDED, That no compensation of any kind shall be available under this chapter if:

(a) An application for benefits is not received by the department within ~~((one year))~~ two years after the date the criminal act was reported to a local police department or sheriff's office or the date the rights of dependents or beneficiaries accrued, unless the director has determined that "good cause" exists to expand the time permitted to receive the application. "Good cause" shall be determined by the department on a case-by-case basis and may extend the period of time in which an application can be received for up to five years after the date the criminal act was reported to a local police department or sheriff's office or the date the rights of dependents or beneficiaries accrued; or

(b) The criminal act is not reported by the victim or someone on his or her behalf to a local police department or sheriff's office within twelve months of its occurrence or, if it could not reasonably have been reported within that period, within twelve months of the time when a report could reasonably have been made. In making determinations as to reasonable time limits, the department shall give greatest weight to the needs of the victims.

(2) This section shall apply only to criminal acts reported after December 31, 1985.

(3) Because victims of childhood criminal acts may repress conscious memory of such criminal acts far beyond the age of eighteen, the rights of adult victims of childhood criminal acts shall accrue at the time the victim discovers or reasonably should have discovered the elements of the crime. In making determinations as to reasonable time limits, the department shall give greatest weight to the needs of the victim.

Sec. 5. RCW 7.68.070 and 1993 sp.s. c 24 s 912 are each amended to read as follows:

The right to benefits under this chapter and the amount thereof will be governed insofar as is applicable by the provisions contained in chapter 51.32 RCW ~~((as now or hereafter amended))~~ except as provided in this section:

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

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

(3) The limitations contained in RCW 51.32.020 ~~((as now or hereafter amended))~~ are applicable to claims under this chapter. In addition thereto, no person or spouse, child, or dependent of such person is entitled to benefits under this chapter when the injury for which benefits are sought, was:

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

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

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

(4) The benefits established upon the death of a worker and contained in RCW 51.32.050 ~~((as now or hereafter amended))~~ shall be the benefits obtainable under this chapter and provisions relating to payment contained in that section shall equally apply under this chapter: PROVIDED, That benefits for burial expenses shall not exceed the ~~((maximum cost used by the department of social and health services for the funeral and burial of a deceased indigent person under chapter 74.08 RCW))~~ amount paid by the department in case of the death of a worker as provided in chapter 51.32 RCW in any claim: PROVIDED FURTHER, That if the criminal act results in the death of a victim who was not gainfully employed at the time of the criminal act, and who was not so employed for at least three consecutive months of the twelve months immediately preceding the criminal act;

(a) Benefits payable to an eligible surviving spouse, where there are no children of the victim at the time of the criminal act who have survived the victim or where such spouse has legal custody of all of his or her children, shall

be limited to burial expenses and a lump sum payment of seven thousand five hundred dollars without reference to number of children, if any;

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

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

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

No other benefits may be paid or payable under these circumstances.

(5) The benefits established in RCW 51.32.060 (~~as now or hereafter amended~~) for permanent total disability proximately caused by the criminal act shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter: PROVIDED, That if a victim becomes permanently and totally disabled as a proximate result of the criminal act and was not gainfully employed at the time of the criminal act, the victim shall receive monthly during the period of the disability the following percentages, where applicable, of the average monthly wage determined as of the date of the criminal act pursuant to RCW 51.08.018 (~~as now or hereafter amended~~):

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

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

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

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

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

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

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

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

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

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

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

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

(6) The benefits established in RCW 51.32.080 (~~as now or hereafter amended~~) for permanent partial disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section equally apply under this chapter.

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

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

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

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

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

(12) In addition to other benefits provided under this chapter, victims of sexual assault are entitled to receive appropriate counseling. Fees for such counseling shall be determined by the department in accordance with RCW

51.04.030, subject to the limitations of RCW 7.68.080. Counseling services may include, if determined appropriate by the department, counseling of members of the victim's immediate family, other than the perpetrator of the assault.

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

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

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

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

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

Passed the House March 4, 1996.

Passed the Senate February 29, 1996.

Approved by the Governor March 21, 1996.

Filed in Office of Secretary of State March 21, 1996.

CHAPTER 123

[Substitute House Bill 2579]

SERVICES FOR VICTIMS OF SEXUAL ABUSE—CONSOLIDATION AND ENHANCEMENT

AN ACT Relating to services for victims of sexual abuse; amending RCW 43.280.010, 43.280.020, 43.280.050, 43.280.060, 70.125.030, 70.125.080, and 74.14B.060; adding a new section to chapter 70.125 RCW; adding a new section to chapter 70.14B RCW; 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 Washington state sexual assault services advisory committee issued a report to the department of community, trade, and economic development and the department of social and health services in June

of 1995. The committee made several recommendations to improve the delivery of services to victims of sexual abuse and assault: (1) Consolidate the administration and funding of sexual assault and abuse services in one agency instead of splitting those functions between the department of social and health services and the department of community, trade, and economic development; (2) adopt a funding allocation plan to pool all funds for sexual assault services and to distribute them across the state to ensure the delivery of core and specialized services; (3) establish service, data collection, and management standards and outcome measurements for recipients of grants; and (4) create a data collection system to gather pertinent data concerning the delivery of sexual assault services to victims.

The legislature approves the recommendations of the advisory committee and consolidates the functions and funding for sexual assault services in the department of community, trade, and economic development to implement the advisory committee's recommendations.

The legislature does not intend to effect a reduction in service levels within available funding by transferring department of social and health services' powers and duties to the department of community, trade, and economic development. At a minimum, the department of community, trade, and economic development shall distribute the same percentage of the services it provides victims of sexual assault and abuse, pursuant to RCW 43.280.020, 70.125.080, and 74.14B.060, to children as were distributed to children through these programs in fiscal year 1996.

Sec. 2. RCW 43.280.010 and 1990 c 3 s 1201 are each amended to read as follows:

The legislature recognizes the need to increase the services available to the victims of sex offenders. The legislature also recognizes that these services are most effectively planned and provided at the local level through the combined efforts of concerned community and citizens groups, treatment providers, and local government officials. The legislature further recognizes that adequate treatment for victims is not only a matter of justice for the victim, but also a method by which additional abuse can be prevented.

The legislature intends to enhance the community-based treatment services available to the victims of sex offenders by:

(1) Providing consolidated funding support for local treatment programs which provide services to victims of sex offenders;

(2) Providing technical assistance and support to help communities plan for and provide treatment services; ~~((and))~~

(3) Providing sexual assault services with a victim-focused mission, and consistent standards, policies, and contracting and reporting requirements; and

(4) Providing communities and local treatment providers with opportunities to share information about successful prevention and treatment programs.

Sec. 3. RCW 43.280.020 and 1995 c 399 s 113 are each amended to read as follows:

There is established in the department of community, trade, and economic development a grant program to enhance the funding for treating the victims of sex offenders. Activities that can be funded through this grant program are limited to those that:

- (1) Provide effective treatment to victims of sex offenders;
- (2) Increase access to and availability of treatment for victims of sex offenders, particularly if from underserved populations; and
- (3) Create or build on efforts by existing community programs, coordinate those efforts, or develop cooperative efforts or other initiatives to make the most effective use of resources to provide treatment services to these victims.

Funding ~~((priority))~~ shall be given to those applicants that ~~((represent well-established existing programs and applicants that represent new programs that are being created in geographic areas where no programs presently exist))~~ emphasize providing stable, victim-focused sexual abuse services and possess the qualifications to provide core services, as defined in RCW 70.125.030. Funds for specialized services, as defined in RCW 70.125.030, shall be disbursed through the request for proposal or request for qualifications process.

Sec. 4. RCW 43.280.050 and 1990 c 3 s 1206 are each amended to read as follows:

At a minimum, grant applications must include the following:

- (1) The geographic area from which the victims to be served are expected to come;
- (2) A description of the extent and effect of the needs of these victims within the relevant geographic area;
- (3) An explanation of how the funds will be used, their relationship to existing services available within the community, and the need that they will fulfill;
- (4) An explanation of what organizations were involved in the development of the proposal; ~~((and))~~
- (5) Documentation of capacity to provide core and specialized services, as defined in RCW 70.125.030, provided by the applicant, how the applicant intends to comply with service, data collection, and management standards established by the department; and
- (6) An evaluation methodology.

Sec. 5. RCW 43.280.060 and 1995 c 399 s 114 are each amended to read as follows:

(1) Subject to funds appropriated by the legislature, the department of community, trade, and economic development shall make awards under the grant program established by RCW 43.280.020.

(2) ~~((Awards shall be made competitively based on the purposes of and criteria in this chapter.~~

~~(3))~~ To aid the department of community, trade, and economic development in making its funding determinations, the department shall form a peer review committee comprised of ~~((the executive administrator for the crime victims' advocacy office and))~~ individuals who ~~((have experience in the treatment of victims of predatory violent sex offenders))~~ are knowledgeable or experienced in the management or delivery of treatment services to victims of sex offenders. The peer review committee shall advise the department on the extent to which each eligible applicant meets the ~~((purposes and criteria of this chapter))~~ treatment and management standards, as developed by the department. The department shall consider this advice in making awards.

~~((4))~~ (3) Activities funded under this section may be considered for funding in future years, but shall be considered under the same terms and criteria as new activities. Funding under this chapter shall not constitute an obligation by the state of Washington to provide ongoing funding.

Sec. 6. RCW 70.125.030 and 1988 c 145 s 19 are each amended to read as follows:

As used in this chapter and unless the context indicates otherwise:

(1) "Core services" means treatment services for victims of sexual assault including information and referral, crisis intervention, medical advocacy, legal advocacy, support, and system coordination.

(2) "Department" means the department of ~~((social and health services))~~ community, trade, and economic development.

~~((2))~~ (3) "Law enforcement agencies" means police and sheriff's departments of this state.

~~((2))~~ (4) "Personal representative" means a friend, relative, attorney, or employee or volunteer from a ~~((rape crisis center))~~ community sexual assault program or specialized treatment service provider.

~~((4))~~ (5) "Rape crisis center" means a community-based social service agency which provides services to victims of sexual assault.

~~((5) "Secretary" means the secretary of the department of social and health services.))~~

(6) "Community sexual assault program" means a community-based social service agency that is qualified to provide and provides core services to victims of sexual assault.

(7) "Sexual assault" means one or more of the following:

(a) Rape or rape of a child;

(b) Assault with intent to commit rape or rape of a child;

(c) Incest or indecent liberties; ~~((or))~~

(d) Child molestation;

(e) Sexual misconduct with a minor;

(f) Crimes with a sexual motivation; or

(g) An attempt to commit any of the aforementioned offenses.

~~((7))~~ (8) "Specialized services" means treatment services for victims of sexual assault including support groups, therapy, specialized sexual assault

medical examination, and prevention education to potential victims of sexual assault.

(9) "Victim" means any person who suffers physical and/or mental anguish as a proximate result of a sexual assault.

Sec. 7. RCW 70.125.080 and 1991 c 267 s 3 are each amended to read as follows:

(1) ~~((Rape crisis centers which))~~ Community sexual assault programs that are eligible for funding from the department ~~((of social and health services))~~ under this chapter ((70.125 RCW)) may apply for grants for the purpose of hiring ~~((and)),~~ training, and supervising victim advocates to provide core services to assist victims and their families through the investigation ~~((and)),~~ prosecution ~~((of)),~~ and treatment process that resulted from a sexual assault ((cases. The victim advocates shall complete a training program either through the criminal justice training program under RCW 43.101.270 or, at the election of the rape crisis center, a training program to be designed and administered by the Washington association of prosecuting attorneys and the Washington coalition of sexual assault programs.

~~—(2) Twenty five percent of the funding for the victim advocate grants under this section must be provided by one or more local, municipal, or county source, either public or private)).~~ The department shall seek, receive, and make use of any funds which may be available from federal or other sources to augment state funds appropriated for the purpose of this section, and shall make every effort to qualify for federal funding.

Sec. 8. RCW 74.14B.060 and 1990 c 3 s 1402 are each amended to read as follows:

(1) Treatment services for children who have been sexually assaulted must be designed and delivered in a manner that accommodates their unique developmental needs and also considers the impact of family dynamics on treatment issues. In addition, the complexity of the civil and criminal justice systems requires that children who are involved receive appropriate consideration and attention that recognizes their unique vulnerability in a system designed primarily for adults.

(2) The department of ~~((social and health services through its division of children and family services))~~ community, trade, and economic development shall provide, subject to available funds, comprehensive sexual assault services to sexually abused children and their families. The department shall provide treatment services by qualified, registered, certified, or licensed professionals on a one-to-one or group basis as may be deemed appropriate.

~~((2))~~ (3) Funds appropriated under this section shall be provided solely for contracts or direct purchase of specific treatment services from community organizations and private service providers for child victims of sexual assault and sexual abuse. Funds shall be disbursed through the request for proposal or request for qualifications process.

~~((3))~~ (4) As part of the request for proposal or request for qualifications process the department of ~~((social and health services))~~ community, trade, and economic development shall ensure that there be no duplication of services with existing programs including the crime victims' compensation program as provided in chapter 7.68 RCW. The department shall also ensure that victims exhaust private insurance benefits available to the child victim before providing services to the child victim under this section.

NEW SECTION. Sec. 9. A new section is added to chapter 70.125 RCW to read as follows:

The powers and duties of the department of social and health services under this chapter shall be transferred to the department of community, trade, and economic development on the effective date of this act. The department of social and health services shall transfer all unspent appropriated funds, records, and documents necessary to facilitate a successful transfer.

NEW SECTION. Sec. 10. A new section is added to chapter 70.14B RCW to read as follows:

The powers and duties of the department of social and health services to provide services and funding for services to sexually abused children under RCW 74.14B.060 shall be transferred to the department of community, trade, and economic development on the effective date of this act. The department of social and health services shall transfer all unspent appropriated funds, records, and documents necessary to facilitate a successful transfer.

NEW SECTION. Sec. 11. This act shall take effect July 1, 1996.

Passed the House February 8, 1996.

Passed the Senate February 29, 1996.

Approved by the Governor March 21, 1996.

Filed in Office of Secretary of State March 21, 1996.

CHAPTER 124

[Substitute House Bill 2580]

RESTITUTION—JUVENILE PROVISIONS REVISED

AN ACT Relating to restitution; and amending RCW 13.40.080 and 13.40.190.

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

Sec. 1. RCW 13.40.080 and 1994 sp.s. c 7 s 544 are each amended to read as follows:

(1) A diversion agreement shall be a contract between a juvenile accused of an offense and a diversionary unit whereby the juvenile agrees to fulfill certain conditions in lieu of prosecution. Such agreements may be entered into only after the prosecutor, or probation counselor pursuant to this chapter, has determined that probable cause exists to believe that a crime has been committed and that the juvenile committed it. Such agreements shall be entered into as expeditiously as possible.

(2) A diversion agreement shall be limited to one or more of the following:

(a) Community service not to exceed one hundred fifty hours, not to be performed during school hours if the juvenile is attending school;

(b) Restitution limited to the amount of actual loss incurred by the victim ~~((, and to an amount the juvenile has the means or potential means to pay))~~;

(c) Attendance at up to ten hours of counseling and/or up to twenty hours of educational or informational sessions at a community agency. The educational or informational sessions may include sessions relating to respect for self, others, and authority; victim awareness; accountability; self-worth; responsibility; work ethics; good citizenship; and life skills. For purposes of this section, "community agency" may also mean a community-based nonprofit organization, if approved by the diversion unit. The state shall not be liable for costs resulting from the diversionary unit exercising the option to permit diversion agreements to mandate attendance at up to ten hours of counseling and/or up to twenty hours of educational or informational sessions;

(d) A fine, not to exceed one hundred dollars. In determining the amount of the fine, the diversion unit shall consider only the juvenile's financial resources and whether the juvenile has the means to pay the fine. The diversion unit shall not consider the financial resources of the juvenile's parents, guardian, or custodian in determining the fine to be imposed; and

(e) Requirements to remain during specified hours at home, school, or work, and restrictions on leaving or entering specified geographical areas.

(3) In assessing periods of community service to be performed and restitution to be paid by a juvenile who has entered into a diversion agreement, the court officer to whom this task is assigned shall consult with the juvenile's custodial parent or parents or guardian and victims who have contacted the diversionary unit and, to the extent possible, involve members of the community. Such members of the community shall meet with the juvenile and advise the court officer as to the terms of the diversion agreement and shall supervise the juvenile in carrying out its terms.

~~(4)(a) A diversion agreement may not exceed a period of six months and may include a period extending beyond the eighteenth birthday of the divertee. ((Any restitution assessed during its term may not exceed an amount which the juvenile could be reasonably expected to pay during this period.))~~

(b) If additional time is necessary for the juvenile to complete restitution to the victim, the time period limitations of this subsection may be extended by an additional six months.

(c) If the juvenile has not paid the full amount of restitution by the end of the additional six-month period, then the juvenile shall be referred to the juvenile court for entry of an order establishing the amount of restitution still owed to the victim. In this order, the court shall also determine the terms and conditions of the restitution, including a payment plan extending up to ten years if the court determines that the juvenile does not have the means to make full restitution over a shorter period. For the purposes of this subsection (4)(c), the juvenile shall

remain under the court's jurisdiction for a maximum term of ten years after the juvenile's eighteenth birthday. The court may not require the juvenile to pay full or partial restitution if the juvenile reasonably satisfies the court that he or she does not have the means to make full or partial restitution and could not reasonably acquire the means to pay the restitution over a ten-year period. The county clerk shall make disbursements to victims named in the order. The restitution to victims named in the order shall be paid prior to any payment for other penalties or monetary assessments. A juvenile under obligation to pay restitution may petition the court for modification of the restitution order.

(5) The juvenile shall retain the right to be referred to the court at any time prior to the signing of the diversion agreement.

(6) Divertees and potential divertees shall be afforded due process in all contacts with a diversionary unit regardless of whether the juveniles are accepted for diversion or whether the diversion program is successfully completed. Such due process shall include, but not be limited to, the following:

(a) A written diversion agreement shall be executed stating all conditions in clearly understandable language;

(b) Violation of the terms of the agreement shall be the only grounds for termination;

(c) No divertee may be terminated from a diversion program without being given a court hearing, which hearing shall be preceded by:

(i) Written notice of alleged violations of the conditions of the diversion program; and

(ii) Disclosure of all evidence to be offered against the divertee;

(d) The hearing shall be conducted by the juvenile court and shall include:

(i) Opportunity to be heard in person and to present evidence;

(ii) The right to confront and cross-examine all adverse witnesses;

(iii) A written statement by the court as to the evidence relied on and the reasons for termination, should that be the decision; and

(iv) Demonstration by evidence that the divertee has substantially violated the terms of his or her diversion agreement.

(e) The prosecutor may file an information on the offense for which the divertee was diverted:

(i) In juvenile court if the divertee is under eighteen years of age; or

(ii) In superior court or the appropriate court of limited jurisdiction if the divertee is eighteen years of age or older.

(7) The diversion unit shall, subject to available funds, be responsible for providing interpreters when juveniles need interpreters to effectively communicate during diversion unit hearings or negotiations.

(8) The diversion unit shall be responsible for advising a divertee of his or her rights as provided in this chapter.

(9) The diversion unit may refer a juvenile to community-based counseling or treatment programs.

(10) The right to counsel shall inure prior to the initial interview for purposes of advising the juvenile as to whether he or she desires to participate in the diversion process or to appear in the juvenile court. The juvenile may be represented by counsel at any critical stage of the diversion process, including intake interviews and termination hearings. The juvenile shall be fully advised at the intake of his or her right to an attorney and of the relevant services an attorney can provide. For the purpose of this section, intake interviews mean all interviews regarding the diversion agreement process.

The juvenile shall be advised that a diversion agreement shall constitute a part of the juvenile's criminal history as defined by RCW 13.40.020(9). A signed acknowledgment of such advisement shall be obtained from the juvenile, and the document shall be maintained by the diversionary unit together with the diversion agreement, and a copy of both documents shall be delivered to the prosecutor if requested by the prosecutor. The supreme court shall promulgate rules setting forth the content of such advisement in simple language.

(11) When a juvenile enters into a diversion agreement, the juvenile court may receive only the following information for dispositional purposes:

- (a) The fact that a charge or charges were made;
- (b) The fact that a diversion agreement was entered into;
- (c) The juvenile's obligations under such agreement;
- (d) Whether the alleged offender performed his or her obligations under such agreement; and
- (e) The facts of the alleged offense.

(12) A diversionary unit may refuse to enter into a diversion agreement with a juvenile. When a diversionary unit refuses to enter a diversion agreement with a juvenile, it shall immediately refer such juvenile to the court for action and shall forward to the court the criminal complaint and a detailed statement of its reasons for refusing to enter into a diversion agreement. The diversionary unit shall also immediately refer the case to the prosecuting attorney for action if such juvenile violates the terms of the diversion agreement.

(13) A diversionary unit may, in instances where it determines that the act or omission of an act for which a juvenile has been referred to it involved no victim, or where it determines that the juvenile referred to it has no prior criminal history and is alleged to have committed an illegal act involving no threat of or instance of actual physical harm and involving not more than fifty dollars in property loss or damage and that there is no loss outstanding to the person or firm suffering such damage or loss, counsel and release or release such a juvenile without entering into a diversion agreement. A diversion unit's authority to counsel and release a juvenile under this subsection shall include the authority to refer the juvenile to community-based counseling or treatment programs. Any juvenile released under this subsection shall be advised that the act or omission of any act for which he or she had been referred shall constitute a part of the juvenile's criminal history as defined by RCW 13.40.020(9). A signed acknowledgment of such advisement shall be obtained from the juvenile,

and the document shall be maintained by the unit, and a copy of the document shall be delivered to the prosecutor if requested by the prosecutor. The supreme court shall promulgate rules setting forth the content of such advisement in simple language. A juvenile determined to be eligible by a diversionary unit for release as provided in this subsection shall retain the same right to counsel and right to have his or her case referred to the court for formal action as any other juvenile referred to the unit.

(14) A diversion unit may supervise the fulfillment of a diversion agreement entered into before the juvenile's eighteenth birthday and which includes a period extending beyond the divertee's eighteenth birthday.

(15) If a fine required by a diversion agreement cannot reasonably be paid due to a change of circumstance, the diversion agreement may be modified at the request of the divertee and with the concurrence of the diversion unit to convert an unpaid fine into community service. The modification of the diversion agreement shall be in writing and signed by the divertee and the diversion unit. The number of hours of community service in lieu of a monetary penalty shall be converted at the rate of the prevailing state minimum wage per hour.

(16) Fines imposed under this section shall be collected and paid into the county general fund in accordance with procedures established by the juvenile court administrator under RCW 13.04.040 and may be used only for juvenile services. In the expenditure of funds for juvenile services, there shall be a maintenance of effort whereby counties exhaust existing resources before using amounts collected under this section.

Sec. 2. RCW 13.40.190 and 1995 c 33 s 5 are each amended to read as follows:

(1) In its dispositional order, the court shall require the respondent to make restitution to any persons who have suffered loss or damage as a result of the offense committed by the respondent. In addition, restitution may be ordered for loss or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which, pursuant to a plea agreement, are not prosecuted. The payment of restitution shall be in addition to any punishment which is imposed pursuant to the other provisions of this chapter. The court may determine the amount, terms, and conditions of the restitution including a payment plan extending up to ten years if the court determines that the respondent does not have the means to make full restitution over a shorter period. Restitution may include the costs of counseling reasonably related to the offense. If the respondent participated in the crime with another person or other persons, all such participants shall be jointly and severally responsible for the payment of restitution. For the purposes of this section, the respondent shall remain under the court's jurisdiction for a maximum term of ten years after the respondent's eighteenth birthday. The court may not require the respondent to pay full or partial restitution if the respondent reasonably satisfies the court that he or she does not have the means to make full or partial

restitution and could not reasonably acquire the means to pay such restitution over a ten-year period. (~~In cases where an offender has been committed to the department for a period of confinement exceeding fifteen weeks, restitution may be waived.~~)

(2) Regardless of the provisions of subsection (1) of this section, the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the court within one year of entry of the disposition order for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the court shall hold a restitution hearing and shall enter a restitution order.

(3) If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order. The restitution to victims named in the order shall be paid prior to any payment for other penalties or monetary assessments.

(4) A respondent under obligation to pay restitution may petition the court for modification of the restitution order.

Passed the House March 4, 1996.

Passed the Senate February 29, 1996.

Approved by the Governor March 21, 1996.

Filed in Office of Secretary of State March 21, 1996.

CHAPTER 125

[House Bill 2652]

COSTS OF HOSPITALIZING CRIMINALLY INSANE PATIENTS—CLARIFICATION

AN ACT Relating to the costs of hospitalizing criminally insane patients; amending RCW 43.20B.335 and 43.20B.345; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that laws and regulations relating to the rights of the state to collection from criminally insane patients for cost of their hospitalization are in need of clarification. The legislature previously directed the department of social and health services to set standards regarding ability of such patients to pay that would include pertinent factors, as well as unusual and exceptional circumstances. The legislature finds that the regulations established by the department fail to take into account a factor and circumstance that should be paramount: Compensation owed by the patient to victims of his or her criminally insane conduct. The state public policy recognizes the due dignity and respect to be accorded victims of crime and the need for victims to be compensated, as set forth in Article I, section 35 of the state Constitution and in chapter 7.68 RCW. The legislature did not intend, in

enacting RCW 43.20B.320, that the department attempt to obtain funds for hospitalization of criminally insane patients that would otherwise have compensated the victims of the patient. The purpose of this act is to clarify legislative intent and existing law.

Sec. 2. RCW 43.20B.335 and 1987 c 75 s 14 are each amended to read as follows:

The department is authorized to investigate the financial condition of each person liable under the provisions of RCW 43.20B.355 and 43.20B.325 through 43.20B.350, and is further authorized to make determinations of the ability of each such person to pay hospitalization charges and/or charges for outpatient services, in accordance with the provisions of RCW 43.20B.355 and 43.20B.325 through 43.20B.350, and, for such purposes, to set a standard as a basis of judgment of ability to pay, which standard shall be recomputed periodically to reflect changes in the costs of living, and other pertinent factors, and to make provisions for unusual and exceptional circumstances in the application of such standard. Such factors and circumstances shall include judgments owed by the person to any victim of an act that would have resulted in criminal conviction of the patient but for a finding of criminal insanity. A victim shall include a personal representative of an estate who has obtained judgment for wrongful death against the criminally insane patient.

In accordance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW, the department shall adopt appropriate rules and regulations relating to the standards to be applied in determining ability to pay such charges, the schedule of charges pursuant to RCW 43.20B.325, and such other rules and regulations as are deemed necessary to administer the provisions of RCW 43.20B.355 and 43.20B.325 through 43.20B.350.

Sec. 3. RCW 43.20B.345 and 1987 c 75 s 16 are each amended to read as follows:

Whenever any notice and finding of responsibility, or appeal therefrom, shall have become final, the superior court, wherein such person or persons reside or have property either real or personal, shall, upon application of the secretary enter a judgment in the amount of the accrued monthly charges for the costs of hospitalization, and/or the costs of outpatient services, and such judgment shall have and be given the same effect as if entered pursuant to civil action instituted in said court; except, such judgment shall not be the subject of collection by the department unless and until any outstanding judgment for a victim referenced in RCW 43.20B.335 has been fully satisfied.

Passed the House February 5, 1996.

Passed the Senate February 29, 1996.

Approved by the Governor March 21, 1996.

Filed in Office of Secretary of State March 21, 1996.

CHAPTER 126

[Second Substitute Senate Bill 6272]

RECORD CHECKS OF EDUCATIONAL EMPLOYEES—REQUIREMENTS

AN ACT Relating to record checks of educational employees; amending RCW 28A.410.090; adding new sections to chapter 28A.400 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. (1) By June 30, 1997, school districts, educational service districts, and their contractors shall require that all employees who have regularly scheduled unsupervised access to children and were hired before June 11, 1992, undergo a record check through the Washington state patrol criminal identification system under RCW 43.43.830 through 43.43.838, 10.97.030, and 10.97.050 and through the federal bureau of investigation. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card. The superintendent of public instruction shall provide a copy of the record report to the employee. Once an employee has a record check as required under this section, additional record checks shall not be required of the employee unless required by other provisions of law.

(2) Employees, school districts, and educational service districts shall not be required by the state patrol or superintendent of public instruction to pay for the record check required in subsection (1) of this section.

(3) The record checks required in this section shall be in process no later than June 30, 1997.

(4) This section expires March 31, 1998.

Sec. 2. RCW 28A.410.090 and 1992 c 159 s 4 are each amended to read as follows:

(1) Any certificate or permit authorized under the provisions of this chapter, chapter 28A.405 RCW, or rules (~~and regulations~~) promulgated thereunder may be revoked or suspended by the authority authorized to grant the same based upon a criminal records report authorized by law, or upon the complaint of any school district superintendent, educational service district superintendent, or private school administrator for immorality, violation of written contract, unprofessional conduct, intemperance, or crime against the law of the state.

If the superintendent of public instruction has reasonable cause to believe that an alleged violation of this chapter or rules adopted under it has occurred, but no complaint has been filed pursuant to this chapter, and that a school district superintendent, educational service district superintendent, or private school administrator has sufficient notice of the alleged violation and opportunity to file a complaint, the superintendent of public instruction may cause an investigation to be made of the alleged violation, together with such other matters that may be disclosed in the course of the investigation related to certificated personnel.

(2) Any such certificate or permit authorized under this chapter or chapter 28A.405 RCW shall be revoked by the authority authorized to grant the

certificate upon a guilty plea or the conviction of any felony crime involving the physical neglect of a child under chapter 9A.42 RCW, the physical injury or death of a child under chapter 9A.32 or 9A.36 RCW (excepting motor vehicle violations under chapter 46.61 RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, the sale or purchase of a minor child under RCW 9A.64.030, or violation of similar laws of another jurisdiction. The person whose certificate is in question shall be given an opportunity to be heard. Mandatory permanent revocation upon a guilty plea or the conviction of felony crimes specified under this subsection shall apply to such convictions or guilty pleas which occur after July 23, 1989. Revocation of any certificate or permit authorized under this chapter or chapter 28A.405 RCW for a guilty plea or criminal conviction occurring prior to July 23, 1989, shall be subject to the provisions of subsection (1) of this section.

NEW SECTION. Sec. 3. A new section is added to chapter 28A.400 RCW to read as follows:

(1) When a record check required under section 1 of this act indicates that a classified employee has been convicted of a crime, the employer shall consider the following when making employment decisions pertaining to the individual:

(a) The age and maturity of the individual at the time the crime was committed;

(b) The seriousness of the crime and any mitigating factors;

(c) The likelihood that the crime will be repeated;

(d) The proximity in time of the crime;

(e) Evidence that would support good moral character and personal fitness; and

(f) Other appropriate factors.

(2) This section expires March 31, 1998.

NEW SECTION. Sec. 4. (1) Any classified employee or certificated employee dismissed or otherwise adversely affected as a result of a conviction identified in the record check required under section 1 of this act shall be allowed to appeal under the appropriate statutes, including, but not limited to, RCW 28A.400.320 and 28A.400.340 and chapters 28A.645 and 28A.405 RCW.

(2) This section expires March 31, 1998.

NEW SECTION. Sec. 5. A new section is added to chapter 28A.400 RCW to read as follows:

The superintendent of public instruction shall adopt rules as necessary under chapter 34.05 RCW on record check information. The rules shall include, but not be limited to the following:

(1) Written procedures providing a school district employee or applicant for certification or employment access to and review of information obtained based on the record check required under RCW 28A.400.303 and section 1 of this act; and

(2) Written procedures limiting access to the superintendent of public instruction record check data base to only those individuals processing record check information at the office of the superintendent of public instruction, the appropriate school district or districts, and the appropriate educational service district or districts.

NEW SECTION. Sec. 6. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1996, in the omnibus appropriations act, this act is null and void.

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 shall take effect immediately.

Passed the Senate February 12, 1996.

Passed the House March 5, 1996.

Approved by the Governor March 21, 1996.

Filed in Office of Secretary of State March 21, 1996.

CHAPTER 127

[Second Substitute Senate Bill 5516]

DRUG-FREE WORKPLACES PROGRAMS—IMPLEMENTATION

AN ACT Relating to providing for drug-free workplaces; adding a new chapter to Title 49 RCW; and providing an expiration date.

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

NEW SECTION. Sec. 1. It is the intent of the legislature to promote drug-free workplaces to improve the safety of the workplace, protect the health of workers, and afford employers in this state the opportunity to maximize their levels of productivity, enhance their competitive positions in the marketplace, and reach their desired levels of success without experiencing the costs, delays, and tragedies associated with work-related accidents resulting from substance abuse by employees.

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

(1) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

(2) "Alcohol test" means a chemical, biological, or physical instrumental analysis administered for the purpose of determining the presence or absence of alcohol within an individual's body systems.

(3) "Chain of custody" means the methodology of tracking specimens for the purpose of maintaining control and accountability from initial collection to final disposition for all specimens and providing for accountability at each stage in handling, testing, and storing specimens and reporting test results.

(4) "Collection site" means a place where individuals present themselves for the purpose of providing a urine, breath, or other specimen to be analyzed for the presence of drugs or alcohol.

(5) "Confirmation test" or "confirmed test" means a second analytical procedure used to identify the presence of a specific drug or metabolic in a specimen. Drug tests must be confirmed as specified in section 6(5) of this act. Alcohol tests must be confirmed by a second breath test or as specified for drug tests.

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

(7) "Drug" means amphetamines, cannabinoids, cocaine, phencyclidine (PCP), methadone, methaqualone, opiates, barbiturates, benzodiazepines, propoxyphene, or a metabolite of any such substances.

(8) "Drug test" means a chemical, biological, or physical instrumental analysis administered on a specimen sample for the purpose of determining the presence or absence of a drug or its metabolites within the sample.

(9) "Employee" means a person who is employed for salary, wages, or other remuneration by an employer.

(10) "Employee assistance program" means a program designed to assist in the identification and resolution of job performance problems associated with employees impaired by personal concerns. A minimum level of core services must include: Consultation and professional, confidential, appropriate, and timely problem assessment services; short-term problem resolution; referrals for appropriate diagnosis, treatment, and assistance; follow-up and monitoring; employee education; and supervisory training.

(11) "Employer" means an employer subject to Title 51 RCW but does not include the state or any department, agency, or instrumentality of the state; any county; any city; any school district or educational service district; or any municipal corporation.

(12) "Initial test" means a sensitive, rapid, and reliable procedure to identify negative and presumptive positive specimens. An initial drug test must use an immunoassay procedure or an equivalent procedure or must use a more accurate scientifically accepted method approved by the national institute on drug abuse as more accurate technology becomes available in a cost-effective form.

(13) "Injury" means a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result and occurring from without, and such physical conditions as result therefrom.

(14) "Job applicant" means a person who has applied for employment with an employer and has been offered employment conditioned upon successfully passing a drug test and may have begun work pending the results of the drug test.

(15) "Last-chance agreement" means a notice to an employee who is referred to the employee assistance program due to a verified positive alcohol or drug test or for violating an alcohol or drug-related employer rule that states the terms and conditions of continued employment with which the employee must comply.

(16) "Medical review officer" means a licensed physician trained in the field of drug testing who provides medical assessment of positive test results, requests reanalysis if necessary, and makes a determination whether or not drug misuse has occurred.

(17) "Nonprescription medication" means a drug or medication authorized under federal or state law for general distribution and use without a prescription in the treatment of human disease, ailments, or injuries.

(18) "Prescription medication" means a drug or medication lawfully prescribed by a physician, or other health care provider licensed to prescribe medication, for an individual and taken in accordance with the prescription.

(19) "Rehabilitation program" means a program approved by the department that is capable of providing expert identification, assessment, and resolution of employee drug or alcohol abuse in a confidential and timely service. Any rehabilitation program under this chapter must contain a two-year continuing care component.

(20) "Specimen" means breath or urine. "Specimen" may include other products of the human body capable of revealing the presence of drugs or their metabolites or of alcohol, if approved by the United States department of health and human services and permitted by rules adopted under section 13 of this act.

(21) "Substance" means drugs or alcohol.

(22) "Substance abuse test" or "test" means a chemical, biological, or physical instrumental analysis administered on a specimen sample for the purpose of determining the presence or absence of a drug or its metabolites or of alcohol within the sample.

(23) "Threshold detection level" means the level at which the presence of a drug or alcohol can be reasonably expected to be detected by an initial and confirmation test performed by a laboratory meeting the standards specified in this chapter. The threshold detection level indicates the level at which a valid conclusion can be drawn that the drug or alcohol is present in the employee's specimen.

(24) "Verified positive test result" means a confirmed positive test result obtained by a laboratory meeting the standards specified in this chapter that has been reviewed and verified by a medical review officer in accordance with medical review officer guidelines promulgated by the United States department of health and human services.

(25) "Workers' compensation premium" means the medical aid fund premium and the accident fund premium under Title 51 RCW.

NEW SECTION: Sec. 3. (1) An employer, except an employer that is self-insured for the purposes of Title 51 RCW, implementing a drug-free workplace program in accordance with section 4 of this act shall qualify for a five percent workers' compensation premium discount under Title 51 RCW if the employer:

(a) Is certified by the division of alcohol and substance abuse of the department as provided in section 13 of this act. The employer must maintain an alcohol and drug-free workplace program in accordance with the standards,

procedures, and rules established in or under this chapter. If the employer fails to maintain the program as required, the employer shall not qualify for the premium discount provided under this section;

(b) Is in good standing and remains in good standing with the department of labor and industries with respect to the employer's workers' compensation premium obligations and any other premiums and assessments under Title 51 RCW; and

(c) Has medical insurance available to its full-time employees through an employer, union, or jointly sponsored medical plan.

(2) The premium discount must remain in effect as long as the employer is certified under section 13 of this act, up to a maximum of three years from the date of initial certification.

(3) A certified employer may discontinue operating a drug-free workplace program at any time. The qualification for a premium discount shall expire in accordance with decertification rules adopted by the department under section 13 of this act.

(4) An employer whose substance abuse testing program reasonably meets, as of July 1, 1996, the requirements for the premium discount provided in this section is not eligible for certification.

(5) Nothing in this chapter creates or alters an obligation on the part of an employer seeking to participate in this program to bargain with a collective bargaining representative of its employees.

(6) An employer may not receive premium discounts from the department of labor and industries under more than one premium discount program. An employer participating in and meeting all of the requirements for the discount provided in this section and also participating in another premium discount program offered by the department of labor and industries is only entitled to the premium discount that is the highest.

(7) The department of labor and industries will notify self-insured employers of the value of drug-free workplace programs and encourage them to implement programs that are in accord with section 4 of this act.

NEW SECTION. Sec. 4. (1) A drug-free workplace program established under this chapter must contain all of the following elements:

- (a) A written policy statement in compliance with section 5 of this act;
- (b) Substance abuse testing in compliance with section 6 of this act;
- (c) An employee assistance program in compliance with section 7 of this act;
- (d) Employee education in compliance with section 9 of this act; and
- (e) Supervisor training in compliance with section 10 of this act.

(2) In addition to the requirements of subsection (1) of this section, a drug-free workplace program established under this chapter must be implemented in compliance with the confidentiality standards provided in section 12 of this act.

NEW SECTION. Sec. 5. (1) An alcohol and drug-free workplace program established under this chapter must contain a written substance abuse policy

statement in order to qualify for the premium discount provided under section 3 of this act. The policy must:

(a) Notify employees that the use or being under any influence of alcohol during working hours is prohibited;

(b) Notify employees that the use, purchase, possession, or transfer of drugs or having illegal drugs in their system is prohibited and that prescription or nonprescription medications are not prohibited when taken in accordance with a lawful prescription or consistent with standard dosage recommendations;

(c) Identify the types of testing an employee or job applicant may be required to submit to or other basis used to determine when such a test will be required;

(d) Identify the actions the employer may take against an employee or job applicant on the basis of a verified positive test result;

(e) Contain a statement advising an employee or job applicant of the existence of this chapter;

(f) Contain a general statement concerning confidentiality;

(g) Identify the consequences of refusing to submit to a drug test;

(h) Contain a statement advising an employee of the employee assistance program;

(i) Contain a statement that an employee or job applicant who receives a verified positive test result may contest or explain the result to the employer within five working days after receiving written notification of the positive test result;

(j) Contain a statement informing an employee of the provisions of the federal drug-free workplace act, if applicable to the employer; and

(k) Notify employees that the employer may discipline an employee for failure to report an injury in the workplace.

(2) An employer not having a substance abuse testing program in effect on July 1, 1996, shall ensure that at least sixty days elapse between a general one-time notice to all employees that a substance abuse testing program is being implemented and the beginning of the actual testing. An employer having a substance abuse testing program in place before July 1, 1996, is not required to provide a sixty-day notice period.

(3) An employer shall include notice of substance abuse testing to all job applicants. A notice of the employer's substance abuse testing policy must also be posted in an appropriate and conspicuous location on the employer's premises, and copies of the policy must be made available for inspection by the employees or job applicants of the employer during regular business hours in the employer's personnel office or other suitable locations. An employer with employees or job applicants who have trouble communicating in English shall make reasonable efforts to help the employees understand the policy statement.

NEW SECTION. Sec. 6. (1) In conducting substance abuse testing under this chapter, the employer must comply with the standards and procedures

established in this chapter and all applicable rules adopted by the department under this chapter and must:

(a) Require job applicants to submit to a drug test after extending an offer of employment. The employer may use a refusal to submit to a drug test or a verified positive test as a basis for not hiring the job applicant;

(b) Investigate each workplace injury that results in a worker needing off-site medical attention and require an employee to submit to drug and alcohol tests if the employer reasonably believes the employee has caused or contributed to an injury which resulted in the need for off-site medical attention. An employer need not require that an employee submit to drug and alcohol tests if a supervisor, trained in accordance with section 10 of this act, reasonably believes that the injury was due to the inexperience of the employee or due to a defective or unsafe product or working condition, or other circumstances beyond the control of the employee. Under this chapter, a first-time verified positive test result may not be used as a basis to terminate an employee's employment. However, nothing in this section prohibits an employee from being terminated for reasons other than the positive test result;

(c) If the employee in the course of employment is referred to the employee assistance program by the employer as a result of a verified positive drug or alcohol test or an alcohol or drug-related incident in violation of employer rules, require the employee to submit to drug and alcohol testing in conjunction with any recommended rehabilitation program. If the employee assistance program determines that the employee does not require treatment services, the employee must still be required to participate in follow-up testing. However, if an employee voluntarily enters an employee assistance program, without a verified positive drug or alcohol test or a violation of any drug or alcohol related employer rule, follow-up testing is not required. If follow-up testing is conducted, the frequency of the testing shall be at least four times a year for a two-year period after completion of the rehabilitation program and advance notice of the testing date may not be given. A verified positive follow-up test result shall normally require termination of employment.

(2) This section does not prohibit an employer from conducting other drug or alcohol testing, such as upon reasonable suspicion or a random basis.

(3) Specimen collection and substance abuse testing under this section must be performed in accordance with regulations and procedures approved by the United States department of health and human services and the United States department of transportation regulations for alcohol and drug testing and must include testing for marijuana, cocaine, amphetamines, opiates, and phencyclidine. Employers may test for any drug listed in section 2(7) of this act.

(a) A specimen must be collected with due regard to the privacy of the individual providing the specimen and in a manner reasonably calculated to prevent substitution or contamination of the specimen.

(b) Specimen collection and analysis must be documented. The documentation procedures must include:

(i) Labeling of specimen containers so as to reasonably preclude the likelihood of erroneous identification of test results; and

(ii) An opportunity for the employee or job applicant to provide to a medical review officer information the employee or applicant considers relevant to the drug test, including identification of currently or recently used prescription or nonprescription medication or other relevant medical information.

(c) Specimen collection, storage, and transportation to the testing site must be performed in a manner that reasonably precludes specimen contamination or adulteration.

(d) An initial and confirmation test conducted under this section, not including the taking or collecting of a specimen to be tested, must be conducted by a laboratory as described in subsection (4) of this section.

(e) A specimen for a test may be taken or collected by any of the following persons:

(i) A physician, a physician's assistant, a registered professional nurse, a licensed practical nurse, a nurse practitioner, or a certified paramedic who is present at the scene of an accident for the purpose of rendering emergency medical service or treatment;

(ii) A qualified person certified or employed by a laboratory certified by the substance abuse and mental health administration or the college of American pathologists; or

(iii) A qualified person certified or employed by a collection company using collection procedures adopted by the United States department of health and human services and the United States department of transportation for alcohol collection.

(f) Within five working days after receipt of a verified positive test result from the laboratory, an employer shall inform an employee or job applicant in writing of the positive test result, the consequences of the result, and the options available to the employee or job applicant.

(g) The employer shall provide to the employee or job applicant, upon request, a copy of the test results.

(h) An initial test having a positive result must be verified by a confirmation test.

(i) An employer who performs drug testing or specimen collection shall use chain of custody procedures to ensure proper recordkeeping, handling, labeling, and identification of all specimens to be tested.

(j) An employer shall pay the cost of all drug or alcohol tests, initial and confirmation, that the employer requires of employees.

(k) An employee or job applicant shall pay the cost of additional tests not required by the employer.

(4)(a) A laboratory may not analyze initial or confirmation drug specimens unless:

(i) The laboratory is approved by the substance abuse and mental health administration or the college of American pathologists;

(ii) The laboratory has written procedures to ensure the chain of custody; and

(iii) The laboratory follows proper quality control procedures including, but not limited to:

(A) The use of internal quality controls including the use of samples of known concentrations that are used to check the performance and calibration of testing equipment, and periodic use of blind samples for overall accuracy;

(B) An internal review and certification process for test results, conducted by a person qualified to perform that function in the testing laboratory;

(C) Security measures implemented by the testing laboratory to preclude adulteration of specimens and test results; and

(D) Other necessary and proper actions taken to ensure reliable and accurate drug test results.

(b) A laboratory shall disclose to the employer a written test result report within seven working days after receipt of the sample. A laboratory report of a substance abuse test result must, at a minimum, state:

(i) The name and address of the laboratory that performed the test and the positive identification of the person tested;

(ii) Positive results on confirmation tests only, or negative results, as applicable;

(iii) A list of the drugs for which the drug analyses were conducted; and

(iv) The type of tests conducted for both initial and confirmation tests and the threshold detection levels of the tests.

A report may not disclose the presence or absence of a drug other than a specific drug and its metabolites listed under this chapter.

(c) A laboratory shall provide technical assistance through the use of a medical review officer to the employer, employee, or job applicant for the purpose of interpreting a positive confirmed drug test result that could have been caused by prescription or nonprescription medication taken by the employee or job applicant. The medical review officer shall interpret and evaluate the laboratory's positive drug test result and eliminate test results that could have been caused by prescription medication or other medically documented sources in accordance with the United States department of health and human services medical review officer manual.

(5) A positive initial drug test must be confirmed using the gas chromatography/mass spectrometry method or an equivalent or more accurate scientifically accepted method approved by the substance abuse and mental health administration as the technology becomes available in a cost-effective form.

NEW SECTION. Sec. 7. (1) The employee assistance program required under this chapter shall provide the employer with a system for dealing with employees whose job performances are declining due to unresolved problems, including alcohol or other drug-related problems, marital problems, or legal or financial problems.

(2) To ensure appropriate assessment and referral to treatment:

(a) The employer must notify the employees of the benefits and services of the employee assistance program;

(b) The employer shall publish notice of the employee assistance program in conspicuous places and explore alternative routine and reinforcing means of publicizing the services; and

(c) The employer shall provide the employee with notice of the policies and procedures regarding access to and use of the employee assistance program.

(3) A list of approved employee assistance programs must be provided by the department according to recognized program standards.

NEW SECTION. Sec. 8. (1)(a) Rehabilitation of employees suffering from either or both alcohol or drug addiction shall be a primary focus of an employee assistance program.

(b) Under any program under this chapter, the employer may not use a first-time verified positive drug or alcohol test as the basis for termination of an employee. After a first-time verified positive test result, the employee must be given an opportunity to keep his or her job through the use of a last-chance agreement. The last-chance agreement shall require an employee to:

(i) Submit to an employee assistance program evaluation for chemical dependency;

(ii) Comply with any treatment recommendations;

(iii) Be subject to follow-up drug and alcohol testing for two years;

(iv) Meet the same standards of performance and conduct that are set for other employees; and

(v) Authorize the employer to receive all relevant information regarding the employee's progress in treatment, if applicable.

Failure to comply with all the terms of this agreement normally will result in termination of employment.

(2) When substance abuse treatment is necessary, employees must use treatment services approved by the department, which include a continuing care component lasting for two years.

(a) The employee assistance program shall monitor the employee's progress while in treatment, including the two-year continuing care component, and notify the employer when an employee is not complying with the programs's treatment recommendations.

(b) The employer shall monitor job performance and conduct follow-up testing.

(3) An employer may terminate an employee for the following reasons:

(a) Refusal to submit to a drug or alcohol test;

(b) Refusal to agree to or failure to comply with the conditions of a last-chance agreement;

(c) A second verified positive drug or alcohol test result; or

(d) After the first verified positive drug or alcohol test, any violation of employer rules pertaining to alcohol and drugs.

(4) Nothing in this chapter limits the right of any employer who participates in the worker's compensation premium discount program under this chapter to terminate employment for any other reason.

NEW SECTION. Sec. 9. As part of a program established under this chapter, an employer shall provide all employees with an annual education program on substance abuse, in general, and its effects on the workplace, specifically. An employer with employees who have difficulty communicating in English shall make reasonable efforts to help the employees understand the substance of the education program. An education program for a minimum of one hour should include but is not limited to the following information:

- (1) The explanation of the disease model of addiction for alcohol and drugs;
- (2) The effects and dangers of the commonly abused substances in the workplace; and
- (3) The employer's policies and procedures regarding substance abuse in the workplace and how employees who wish to obtain substance abuse treatment can do so.

NEW SECTION. Sec. 10. In addition to the education program provided in section 9 of this act, an employer shall provide all supervisory personnel with a minimum of two hours of supervisor training, that should include but is not limited to the following information:

- (1) How to recognize signs of employee substance abuse;
- (2) How to document and collaborate signs of employee substance abuse;
- (3) How to refer employees to the employee assistance program or proper treatment providers; and
- (4) Circumstances and procedures for postinjury testing.

NEW SECTION. Sec. 11. (1) A physician-patient relationship is not created between an employee or job applicant and an employer, medical review officer, or person performing or evaluating a drug or alcohol test solely by the establishment, implementation, or administration of a drug or alcohol testing program.

(2) This chapter may not be construed to prevent an employer from establishing reasonable work rules related to employee possession, use, sale, or solicitation of drugs, including convictions for drug-related offenses, and taking action based upon a violation of any of those rules.

(3) This chapter may not be construed to operate retroactively. This chapter does not abrogate the right of an employer under state or federal law to conduct drug or alcohol tests or implement employee drug or alcohol testing programs. However, only those programs that meet the criteria outlined in this chapter qualify for workers' compensation insurance premiums discounts.

(4) This chapter may not be construed to prohibit an employer from conducting medical screening or other tests required, permitted, or not disallowed by a statute or rule for the purpose of monitoring exposure of employees to toxic or other unhealthy materials in the workplace or in the performance of job

responsibilities. The screening or tests must be limited to testing for the specific material expressly identified in the statute or rule, unless prior written consent of the employee is obtained for other tests.

(5) This chapter does not establish a legal duty for employers to conduct alcohol or drug tests of employees or job applicants. A cause of action may not arise in favor of a person based upon the failure of an employer to establish or conduct a program or policy for substance abuse testing or to conduct a program or policy in conformance with the standards and procedures established in this chapter. This chapter does not create individual rights of action and may be enforced only by the department by denial of the workers' compensation premium discount provided in section 3 of this act.

NEW SECTION. Sec. 12. Confidentiality standards that apply to substance abuse testing programs implemented under this chapter include the following:

(1) Information, interviews, reports, statements, memoranda, and test results, written or otherwise, received through a substance abuse testing program are confidential communications, and may not be used or received in evidence, obtained in discovery, or disclosed in a civil or administrative proceeding, except as provided in subsection (5) of this section.

(2) An employer, laboratory, medical review officer, employee assistance program, drug or alcohol rehabilitation program, and their agents who receive or have access to information concerning test results shall keep the information confidential, except as provided in subsection (5) of this section.

(3) Any release of the information must be pursuant to a written consent form that complies with RCW 70.02.030 and is signed voluntarily by the person tested, unless the release is compelled by the division of alcohol and substance abuse of the department or a court of competent jurisdiction in accordance with state and federal confidentiality laws, or unless required by a professional or occupational licensing board in a related disciplinary proceeding. Any disclosure by any agency approved by the department must be in accordance with RCW 70.96A.150. The consent form must contain at a minimum:

- (a) The name of the person who is authorized to obtain the information;
- (b) The purpose of the disclosure;
- (c) The precise information to be disclosed;
- (d) The duration of the consent; and
- (e) The signature of the person authorizing release of the information.

(4) Information on test results may not be released or used in a criminal proceeding against the employee or job applicant. Information released contrary to this subsection is inadmissible as evidence in a criminal proceeding.

(5) Nothing in this chapter prohibits:

(a) An employer from using information concerning an employee or job applicant's substance abuse test results in a lawful manner with respect to that employee or applicant; or

(b) An entity that obtains the information from disclosing or using the information in a lawful manner as part of a matter relating to the substance abuse

test, the test result, or an employer action with respect to the job applicant or employee.

NEW SECTION. Sec. 13. The department shall adopt by rule procedures and forms for the certification of employers who establish and maintain a drug-free workplace that complies with this chapter. The department shall adopt by rule procedures for the decertification of employers formally certified for the workers' compensation premium discount provided under this chapter. The department may charge a fee for the certification of a drug-free workplace program in an amount that must approximate its administrative costs related to the certification. Certification of an employer is required for each year in which a premium discount is granted. The department may adopt any other rules necessary for the implementation of this chapter.

NEW SECTION. Sec. 14. (1) The department of labor and industries may adopt rules necessary for the implementation of this chapter including but not limited to provisions for penalties and repayment of premium discounts by employers that are decertified by the department of social and health services under section 13 of this act.

(2) The department of labor and industries shall conduct an evaluation of the effect of the premium discount provided for under section 3 of this act on workplace safety and the state of Washington industrial insurance fund. The department of labor and industries shall report its preliminary findings to the appropriate committees of the legislature on September 1 of 1997 and 1998 and shall issue a comprehensive final report on December 1, 1999.

NEW SECTION. Sec. 15. The department shall conduct an evaluation to determine the costs and benefits of the program under this chapter. If the department contracts for the performance of any or all of the evaluation, no more than ten percent of the contract amount may be used to cover indirect expenses. The department shall report its preliminary findings to the legislature on September 1 of 1997 and 1998 and shall issue a comprehensive final report on December 1, 1999.

NEW SECTION. Sec. 16. Notwithstanding any other provisions of this chapter, the total premium discounts available under section 3 of this act shall not exceed five million dollars during any fiscal year.

NEW SECTION. Sec. 17. Sections 1 through 16 of this act shall constitute a new chapter in Title 49 RCW.

NEW SECTION. Sec. 18. Sections 1 through 16 of this act shall expire January 1, 2001.

Passed the Senate March 4, 1996.

Passed the House February 29, 1996.

Approved by the Governor March 21, 1996.

Filed in Office of Secretary of State March 21, 1996.

CHAPTER 128

[Second Substitute Senate Bill 6260]

RIDE SHARING TAX CREDIT—REVISION

AN ACT Relating to revising the state ride sharing tax credit; amending RCW 82.04.4453, 82.04.4454, 82.16.048, and 82.16.049; amending 1994 c 270 s 6 (uncodified); adding a new section to chapter 82.04 RCW; providing an effective date; and providing an expiration date.

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

Sec. 1. RCW 82.04.4453 and 1994 c 270 s 2 are each amended to read as follows:

(1) ~~((Major))~~ Employers in ((the state's eight largest counties affected by the commute trip reduction programs required under RCW 70.94.521 through 70.94.551)) this state who are taxable under this chapter and provide financial incentives to their employees for ride sharing, for using public transportation, or for using nonmotorized commuting before June 30, ~~((1996))~~ 2000, shall be allowed a credit for amounts paid to or on behalf of employees for ride sharing in vehicles carrying ~~((four))~~ two or more persons, for using public transportation, or for using nonmotorized commuting, not to exceed sixty dollars per employee per year. The credit shall be equal to the amount paid to or on behalf of each employee multiplied by fifty percent, but may not exceed sixty dollars per employee per year. For ride sharing in vehicles carrying two persons, the credit shall be equal to the amount paid to or on behalf of each employee multiplied by thirty percent, but may not exceed sixty dollars per employee per year. The credit may not exceed the amount of tax that would otherwise be due under this chapter.

(2) Application for tax credit under this chapter may only be made ~~((by major employers as defined by RCW 70.94.524 and))~~ in the form and manner prescribed in rules adopted by the department ~~((and in consultation with the commute trip reduction task force))~~.

(3) The credit shall be taken not more than once quarterly and not less than once annually against taxes due for the same calendar year in which the amounts for which credit is claimed were paid to or on behalf of employees for ride sharing, for using public transportation, or for using nonmotorized commuting and must be claimed by the due date of the last tax return for the calendar year in which the payment is made.

(4) The director shall on the 25th of February, May, August, and November of each year advise the state treasurer of the amount of credit taken during the preceding calendar quarter ending on the last day of December, March, June, and September, respectively.

(5) On the first of April, July, October, and January of each year, the state treasurer based upon information provided by the department shall deposit a sum equal to the dollar amount of the credit provided under subsection (1) of this section from the air pollution control account to the general fund.

(6) The commute trip reduction task force shall determine the effectiveness of this tax credit as part of its ongoing evaluation of the commute trip reduction law and report no later than December 1, ~~((1996))~~ 1997, to the legislative transportation committee and to the fiscal committees of the house of representatives and the senate. The report shall include information on the amount of tax credits claimed to date and recommendations on future funding for the tax credit program.

(7) Any person who knowingly makes a false statement of a material fact in the application for a credit under subsection (1) of this section is guilty of a gross misdemeanor.

(8) A person may not receive credit for amounts paid to or on behalf of the same employee under both this section and RCW 82.16.048.

Sec. 2. RCW 82.04.4454 and 1994 c 270 s 3 are each amended to read as follows:

(1) The department shall keep a running total of all credits granted under ~~((this chapter))~~ RCW 82.04.4453 and 82.16.048 during each calendar year, and shall disallow any credits that would cause the tabulation for any calendar year to exceed ~~((two))~~ one million five hundred thousand dollars.

(2) No employer shall be eligible for tax credits under RCW 82.04.4453 and 82.16.048 in excess of ~~((two))~~ one hundred thousand dollars in any calendar year.

(3) No employer shall be eligible for tax credits under RCW 82.04.4453 in excess of the amount of tax that would otherwise be due under this chapter.

(4) No portion of an application for credit disallowed under this section may be carried back or carried forward.

Sec. 3. RCW 82.16.048 and 1994 c 270 s 4 are each amended to read as follows:

(1) ~~((Major))~~ Employers in ((the state's eight largest counties affected by the commute trip reduction programs required under RCW 70.94.521 through 70.94.554)) this state who are taxable under this chapter and provide financial incentives to their employees for ride sharing, for using public transportation, or for using nonmotorized commuting before June 30, ~~((1996))~~ 2000, shall be allowed a credit for amounts paid to or on behalf of employees for ride sharing in vehicles carrying ~~((four))~~ two or more persons, for using public transportation, or for using nonmotorized commuting, not to exceed sixty dollars per employee per year. The credit shall be equal to the amount paid to or on behalf of each employee multiplied by fifty percent, but may not exceed sixty dollars per employee per year. For ride sharing in vehicles carrying two persons, the credit shall be equal to the amount paid to or on behalf of each employee multiplied by thirty percent, but may not exceed sixty dollars per employee per year. The credit may not exceed the amount of tax that would otherwise be due under this chapter.

(2) Application for tax credit under this chapter may only be made ~~((by major employers as defined by RCW 70.94.524 and))~~ in the form and manner

prescribed in rules adopted by the department (~~and in consultation with the commute trip reduction task force~~).

(3) The credit shall be taken not more than once quarterly and not less than once annually against taxes due for the same calendar year in which the amounts for which credit is claimed were paid to or on behalf of employees for ride sharing, for using public transportation, or for using nonmotorized commuting and must be claimed by the due date of the last tax return for the calendar year in which the payment is made.

(4) The director shall on the 25th of February, May, August, and November of each year advise the state treasurer of the amount of credit taken during the preceding calendar quarter ending on the last day of December, March, June, and September, respectively.

(5) On the first of April, July, October, and January of each year, the state treasurer based upon information provided by the department shall deposit a sum equal to the dollar amount of the credit provided under subsection (1) of this section from the air pollution control account to the general fund.

(6) The commute trip reduction task force shall determine the effectiveness of this tax credit as part of its ongoing evaluation of the commute trip reduction law and report no later than December 1, ~~((1996))~~ 1997, to the legislative transportation committee and to the fiscal committees of the house of representatives and the senate. The report shall include information on the amount of tax credits claimed to date and recommendations on future funding for the tax credit program.

(7) Any person who knowingly makes a false statement of a material fact in the application for a credit under subsection (1) of this section is guilty of a gross misdemeanor.

(8) A person may not receive credit for amounts paid to or on behalf of the same employee under both this section and RCW 82.04.4453.

Sec. 4. RCW 82.16.049 and 1994 c 270 s 5 are each amended to read as follows:

(1) The department shall keep a running total of all credits granted under ~~((this chapter))~~ RCW 82.04.4453 and 82.16.048 during each calendar year, and shall disallow any credits that would cause the tabulation for any calendar year to exceed ~~((two))~~ one million five hundred thousand dollars.

(2) No employer shall be eligible for tax credits under RCW 82.04.4453 and 82.16.048 in excess of ~~((two))~~ one hundred thousand dollars in any calendar year.

(3) No employer shall be eligible for tax credits under RCW 82.16.048 in excess of the amount of tax that would otherwise be due under this chapter.

(4) No portion of an application for credit disallowed under this section may be carried back or carried forward.

NEW SECTION. Sec. 5. A new section is added to chapter 82.04 RCW to read as follows:

The definitions set forth in this section apply to RCW 82.04.4453, 82.04.4454, 82.16.048, and 82.16.049 unless the context clearly requires otherwise.

(1) "Public agency" means any county, city, or other local government agency or any state government agency, board, or commission.

(2) "Public transportation" means the same as "public transportation service" as defined in RCW 36.57A.010 and includes passenger services of the Washington state ferries.

(3) "Nonmotorized commuting" means commuting to and from the workplace by an employee by walking or running or by riding a bicycle or other device not powered by a motor.

(4) "Ride sharing" means the same as "commuter ride sharing" as defined in RCW 46.74.010, including ride sharing on Washington state ferries.

Sec. 6. 1994 c 270 s 6 (uncodified) is amended to read as follows:

This act shall expire December 31, (~~1996~~) 2000.

NEW SECTION. Sec. 7. (1) This act takes effect July 1, 1996.

(2) This act expires December 31, 2000.

Passed the Senate March 4, 1996.

Passed the House February 29, 1996.

Approved by the Governor March 21, 1996.

Filed in Office of Secretary of State March 21, 1996.

CHAPTER 129

[Engrossed Substitute House Bill 2832]

RAIL TRANSPORTATION—CREATING A TRANSPORTATION CORRIDOR AND REINSTITUTING RAIL SERVICE OVER FORMER RIGHTS OF WAY

AN ACT Relating to authorizing the department of transportation to manage and control a rail transportation corridor and to enter into agreements for the purpose of reinstituting rail service over state-owned former railroad rights of way; amending RCW 43.51.405, 79.08.275, and 44.40.020; adding new sections to chapter 43.51 RCW; creating new sections; providing an effective date; and providing contingent expiration dates.

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

NEW SECTION. Sec. 1. The legislature intends to complete a cross-state trail system while maintaining long-term ownership of the Milwaukee Road corridor. In order to accomplish this, it will be beneficial to change the management and control of certain portions of the Milwaukee Road corridor currently managed and controlled by several state agencies and to provide a franchise to establish and maintain a rail line. It is the intent of the legislature that if a franchise is not agreed upon, no changes in the current management and control shall occur.

NEW SECTION. Sec. 2. A new section is added to chapter 43.51 RCW to read as follows:

(1) The commission shall develop and maintain a cross-state trail facility with appropriate appurtenances.

(2) This section expires July 1, 1999, if the department of transportation does not enter into a franchise agreement for a rail line over portions of the Milwaukee Road corridor by July 1, 1999.

NEW SECTION. Sec. 3. (1) To facilitate completion of a cross-state trail under the management of the parks and recreation commission, management and control of lands known as the Milwaukee Road corridor shall be transferred between state agencies as follows on the date a franchise agreement is entered into for a rail line over portions of the Milwaukee Road corridor:

(a) Portions owned by the state between Ellensburg and the Columbia River that are managed by the parks and recreation commission are transferred to the department of transportation;

(b) Portions owned by the state between the west side of the Columbia River and Royal City Junction and between Warden and Lind that are managed by the department of natural resources are transferred to the department of transportation; and

(c) Portions owned by the state between Lind and the Idaho border that are managed by the department of natural resources are transferred to the parks and recreation commission.

(2) The department of natural resources and the parks and recreation commission may by mutual agreement transfer the management authority over portions of the Milwaukee Road corridor between their two respective agencies without legislative approval if the portion transferred does not exceed ten miles in length.

(3) This section expires July 1, 1999, and no transfers shall occur if the department of transportation does not enter into a franchise agreement for a rail line over portions of the Milwaukee Road corridor by July 1, 1999.

NEW SECTION. Sec. 4. (1) The department of transportation shall negotiate a franchise with a rail carrier to establish and maintain a rail line over portions of the Milwaukee Road corridor owned by the state between Ellensburg and Lind. The department of transportation may negotiate such a franchise with any qualified rail carrier. Criteria for negotiating the franchise and establishing the right of way include:

(a) Assurances that resources from the franchise will be sufficient to compensate the state for use of the property, including completion of a cross-state trail between Easton and the Idaho border;

(b) Types of payment for use of the franchise, including payment for the use of federally granted trust lands in the transportation corridor;

(c) Standards for maintenance of the line;

(d) Provisions ensuring that both the conventional and intermodal rail service needs of local shippers are met. Such accommodations may comprise agreements

with the franchisee to offer or maintain adequate service or to provide service by other carriers at commercially reasonable rates;

(e) Provisions requiring the franchisee, upon reasonable request of any other rail operator, to provide rail service and interchange freight over what is commonly known as the Stampede Pass rail line from Cle Elum to Auburn at commercially reasonable rates;

(f) If any part of the franchise agreement is invalidated by actions or rulings of the federal surface transportation board or a court of competent jurisdiction, the remaining portions of the franchise agreement are not affected;

(g) Compliance with environmental standards; and

(h) Provisions for insurance and the coverage of liability.

(2) The franchise may provide for periodic review of financial arrangements under the franchise.

(3) The department of transportation, in consultation with the parks and recreation commission and the legislative transportation committee, shall negotiate the terms of the franchise, and shall present the agreement to the parks and recreation commission for approval of as to terms and provisions affecting the cross-state trail or affecting the commission.

(4) This section expires July 1, 1999, if the department of transportation does not enter into a franchise agreement for a rail line over portions of the Milwaukee Road corridor by July 1, 1999.

NEW SECTION. Sec. 5. A new section is added to chapter 43.51 RCW to read as follows:

(1) The cross-state trail account is created in the custody of the state treasurer. Eleven million five hundred thousand dollars is provided to the state parks and recreation commission to acquire, construct, and maintain a cross-state trail. This amount may consist of: (a) Legislative appropriations intended for trail development; (b) payments for the purchase of federally-granted trust lands; and (c) franchise fees derived from use of the rail corridor. The legislature intends that any amounts provided from the transportation fund are to be repaid to the transportation fund from franchise fees.

(2) The department shall deposit franchise fees from use of the rail corridor according to the following priority: (a) To the department of transportation for actual costs incurred in administering the franchise; (b) to the department of natural resources as compensation for use of federally granted trust lands in the rail corridor; (c) to the transportation fund to reimburse any amounts transferred or appropriated from that fund by the legislature for trail development; (d) to the cross-state trail account, not to exceed eleven million five hundred thousand dollars, provided that this amount shall be reduced proportionate with any funds transferred or appropriated by the 1996 legislature or paid from franchise fees for the purchase of federally-granted trust lands or for trail development; and (e) the remainder to the essential rail assistance account, created under RCW 47.76.250. Expenditures from the cross-state trail account may be used only for the acquisition, development, operation, and maintenance of the cross-state trail.

Only the director of the state parks and recreation commission or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(3) The commission may acquire land from willing sellers for the cross-state trail, but not by eminent domain.

(4) The commission shall adopt rules describing the cross-state trail.

(5) This section expires July 1, 1999, if the department of transportation does not enter into a franchise agreement for a rail line over portions of the Milwaukee Road corridor by July 1, 1999.

NEW SECTION. Sec. 6. (1) Before entering into a final agreement to issue a franchise negotiated in accordance with section 4 of this act, the department of transportation shall submit the franchise to the legislative transportation committee for review and approval.

(2) If the department of transportation has not entered into a final agreement to franchise a rail line over portions of the Milwaukee Road corridor by December 1, 1998, a report of the progress and obstacles to such an agreement shall be made. The report shall be submitted by December 15, 1998, to appropriate committees of the legislature.

Sec. 7. RCW 43.51.405 and 1989 c 129 s 1 are each amended to read as follows:

Except as provided in sections 3 and 4 of this act, management control of the portion of the Milwaukee Road corridor, beginning at the western terminus near Easton and concluding at the west end of the bridge structure over the Columbia river, which point is located in section 34, township 16 north, range 23 east, W.M., inclusive of the northerly spur line therefrom, shall be transferred by the department of natural resources to the state parks and recreation commission at no cost to the commission.

Sec. 8. RCW 79.08.275 and 1989 c 129 s 2 are each amended to read as follows:

Except as provided in sections 3 and 4 of this act, the portion of the Milwaukee Road corridor from the west end of the bridge structure over the Columbia river, which point is located in section 34, township 16 north, range 23 east, W.M., to the Idaho border purchased by the state shall be under the management and control of the department of natural resources.

Sec. 9. RCW 44.40.020 and 1977 ex.s. c 235 s 5 are each amended to read as follows:

(1) The committee is authorized and directed to continue its studies and for that purpose shall have the powers set forth in chapter 111, Laws of 1947. The committee is further authorized to make studies related to bills assigned to the house and senate transportation committees and such other studies as provided by law. The executive committee of the committee may assign responsibility for

all or part of the conduct of studies to the house and/or senate transportation committees.

(2) The committee may review and approve franchise agreements entered into by the department of transportation under section 4 of this act.

NEW SECTION. Sec. 10. This act takes effect July 1, 1996.

NEW SECTION. Sec. 11. Sections 7 and 8, chapter . . ., Laws of 1996 (sections 7 and 8 of this act) expire July 1, 1999, if the department of transportation does not enter into a franchise agreement for a rail line over portions of the Milwaukee Road corridor by July 1, 1999.

NEW SECTION. Sec. 12. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House March 4, 1996.

Passed the Senate March 1, 1996.

Approved by the Governor March 21, 1996.

Filed in Office of Secretary of State March 21, 1996.

CHAPTER 130

[Substitute House Bill 2487]

ADOPTION SUPPORT PAYMENTS—CONTINUATION

AN ACT Relating to continuing adoption support payments; amending RCW 74.13.112 and 74.13.115; and adding a new section to chapter 74.13 RCW.

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

Sec. 1. RCW 74.13.112 and 1985 c 7 s 136 are each amended to read as follows:

The factors to be considered by the secretary in setting the amount of any payment or payments to be made pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 and in adjusting standards hereunder shall include: The size of the family including the adoptive child, the usual living expenses of the family, the special needs of any family member including education needs, the family income, the family resources and plan for savings, the medical and hospitalization needs of the family, the family's means of purchasing or otherwise receiving such care, and any other expenses likely to be needed by the child to be adopted. In setting the amount of any initial payment made pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145, the secretary is authorized to establish maximum payment amounts that are reasonable and allow permanency planning goals related to adoption of children under RCW 13.34.145 to be achieved at the earliest possible date.

The amounts paid for the support of a child pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 may vary from family to family and from year to year. Due to changes in economic circumstances or the needs of the child such payments may be discontinued and later resumed.

Payments under RCW 26.33.320 and 74.13.100 through 74.13.145 may be continued by the secretary subject to review as provided for herein, if such parent or parents having such child in their custody establish their residence in another state or a foreign jurisdiction.

In fixing the standards to govern the amount and character of payments to be made for the support of adopted children pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 and before issuing rules and regulations to carry out the provisions of RCW 26.33.320 and 74.13.100 through 74.13.145, the secretary shall consider the comments and recommendations of the committee designated by the secretary to advise him with respect to child welfare.

Sec. 2. RCW 74.13.115 and 1985 c 7 s 137 are each amended to read as follows:

To carry out the program authorized by RCW 26.33.320 and 74.13.100 through 74.13.145, the secretary may make continuing payments or lump sum payments of adoption support. In lieu of continuing payments, or in addition to them, the secretary may make one or more specific lump sum payments for or on behalf of a hard to place child either to the adoptive parents or directly to other persons to assist in correcting any condition causing such child to be hard to place for adoption.

Consistent with a particular child's needs, continuing adoption support payments shall include, if necessary to facilitate or support the adoption of a special needs child, an amount sufficient to remove any reasonable financial barrier to adoption as determined by the secretary under RCW 74.13.112.

After determination by the secretary of the amount of a payment or the initial amount of continuing payments, the prospective parent or parents who desire such support shall sign an agreement with the secretary providing for the payment, in the manner and at the time or times prescribed in regulations to be issued by ~~((him))~~ the secretary subject to the provisions of RCW 26.33.320 and 74.13.100 through 74.13.145, of the amount or amounts of support so determined.

Payments shall be subject to review as provided in RCW 26.33.320 and 74.13.100 through 74.13.145.

NEW SECTION. **Sec. 3.** A new section is added to chapter 74.13 RCW to read as follows:

This act applies to adoption support payments for eligible children whose eligibility is determined on or after July 1, 1996. This act does not apply retroactively to current recipients of adoption support payments.

Passed the House February 8, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 21, 1996.

Filed in Office of Secretary of State March 21, 1996.

CHAPTER 131

[Second Substitute House Bill 2856]

OFFICE OF THE CHILD, YOUTH, AND FAMILY OMBUDSMAN—ESTABLISHMENT

AN ACT Relating to establishing the office of the child, youth, and family ombudsman; creating new sections; and declaring an emergency.

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

NEW SECTION. Sec. 1. (1) There is created the legislative children's oversight committee for the purpose of monitoring and ensuring compliance with administrative acts, relevant statutes, rules, and policies pertaining to family and children services and the placement, supervision, and treatment of children in the state's care or in state-licensed facilities or residences. The committee shall consist of three senators and three representatives from the legislature. The senate members of the committee shall be appointed by the president of the senate. The house members of the committee shall be appointed by the speaker of the house. Not more than two members from each chamber shall be from the same political party. Members shall be appointed before the close of each regular session of the legislature during an odd-numbered year.

(2) The committee shall have the following powers:

- (a) Selection of its officers and adopt rules for orderly procedure;
- (b) Request investigations by the ombudsman of administrative acts;
- (c) Receive reports of the ombudsman;

(d)(i) Obtain access to all relevant records in the possession of the ombudsman, except as prohibited by law; and (ii) make recommendations to all branches of government;

(e) Request legislation;

(f) Conduct hearings into such matters as it deems necessary.

(3) Upon receipt of records from the ombudsman, the committee is subject to the same confidentiality restrictions as the ombudsman under section 6 of this act.

NEW SECTION. Sec. 2. There is hereby created an office of the family and children's ombudsman within the office of the governor for the purpose of promoting public awareness and understanding of family and children services, identifying system issues and responses for the governor and the legislature to act upon, and monitoring and ensuring compliance with administrative acts, relevant statutes, rules, and policies pertaining to family and children's services and the placement, supervision, and treatment of children in the state's care or in state-licensed facilities or residences. The ombudsman shall report directly to the governor and shall exercise his or her powers and duties independently of the secretary.

NEW SECTION. Sec. 3. (1) The governor shall appoint an ombudsman who shall be a person of recognized judgment, independence, objectivity, and integrity, and shall be qualified by training or experience, or both, in family and children's services law and policy. Prior to the appointment, the governor shall

consult with, and may receive recommendations from the committee, regarding the selection of the ombudsman.

(2) The person appointed ombudsman shall hold office for a term of three years and shall continue to hold office until reappointed or until his or her successor is appointed. The governor may remove the ombudsman only for neglect of duty, misconduct, or inability to perform duties. Any vacancy shall be filled by similar appointment for the remainder of the unexpired term.

NEW SECTION. Sec. 4. The ombudsman shall perform the following duties:

(1) Provide information as appropriate on the rights and responsibilities of individuals receiving family and children's services, and on the procedures for providing these services;

(2) Investigate, upon his or her own initiative or upon receipt of a complaint, an administrative act alleged to be contrary to law, rule, or policy, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds; however, the ombudsman may decline to investigate any complaint as provided by rules adopted under this chapter;

(3) Monitor the procedures as established, implemented, and practiced by the department to carry out its responsibilities in delivering family and children's services with a view toward appropriate preservation of families and ensuring children's health and safety;

(4) Review periodically the facilities and procedures of state institutions serving children, and state-licensed facilities or residences;

(5) Recommend changes in the procedures for addressing the needs of families and children;

(6) Submit annually to the committee and to the governor by November 1 a report analyzing the work of the office including recommendations;

(7) Grant the committee access to all relevant records in the possession of the ombudsman unless prohibited by law; and

(8) Adopt rules necessary to implement this chapter.

NEW SECTION. Sec. 5. The office of family and children's ombudsman shall be a juvenile justice or care agency for the purposes of chapter 13.50 RCW.

NEW SECTION. Sec. 6. 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.

NEW SECTION. Sec. 7. Sections 1 through 3 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 shall take effect immediately.

Passed the House March 7, 1996.

Passed the Senate March 7, 1996.

Approved by the Governor March 21, 1996.

Filed in Office of Secretary of State March 21, 1996.

CHAPTER 132

[Second Substitute Senate Bill 5258]

COMMUNITY PUBLIC HEALTH AND SAFETY NETWORKS— CLARIFYING, TECHNICAL, AND ADMINISTRATIVE MODIFICATIONS

AN ACT Relating to clarifying, technical, and administrative revisions to community public health and safety networks; amending RCW 70.190.010, 70.190.060, 70.190.080, 70.190.090, and 70.190.130; adding new sections to chapter 70.190 RCW; creating new sections; providing an effective date; and declaring an emergency.

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

NEW SECTION. Sec. 1. It is the intent of this act only to make minimal clarifying, technical, and administrative revisions to the laws concerning community public health and safety networks and to the related agencies responsible for implementation of the networks. This act is not intended to change the scope of the duties or responsibilities, nor to undermine the underlying policies, set forth in chapter 7, Laws of 1994 sp. sess.

Sec. 2. RCW 70.190.010 and 1995 c 399 s 200 are each amended to read as follows:

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

(1) "Administrative costs" means the costs associated with procurement; payroll processing; personnel functions; management; maintenance and operation of space and property; data processing and computer services; accounting; budgeting; auditing; indirect costs; and organizational planning, consultation, coordination, and training.

(2) "Assessment" has the same meaning as provided in RCW 43.70.010.

(3) "At-risk" children are children who engage in or are victims of at-risk behaviors.

(4) "At-risk behaviors" means violent delinquent acts, teen substance abuse, teen pregnancy and male parentage, teen suicide attempts, dropping out of school, child abuse or neglect, and domestic violence.

(5) "Community public health and safety networks" or "networks" means the organizations authorized under RCW 70.190.060.

(6) "Comprehensive plan" means a two-year plan that examines available resources and unmet needs for a county or multicounty area, barriers that limit

the effective use of resources, and a plan to address these issues that is broadly supported by local residents.

~~((2))~~ (7) "Participating state agencies" means the office of the superintendent of public instruction, the department of social and health services, the department of health, the employment security department, the department of community, trade, and economic development, and such other departments as may be specifically designated by the governor.

~~((3))~~ (8) "Family policy council" or "council" means the superintendent of public instruction, the secretary of social and health services, the secretary of health, the commissioner of the employment security department, and the director of the department of community, trade, and economic development or their designees, one legislator from each caucus of the senate and house of representatives, and one representative of the governor.

~~((4))~~ (9) "Fiduciary interest" means (a) the right to compensation from a health, educational, social service, or justice system organization that receives public funds, or (b) budgetary or policy-making authority for an organization listed in (a) of this subsection. A person who acts solely in an advisory capacity and receives no compensation from a health, educational, social service, or justice system organization, and who has no budgetary or policy-making authority is deemed to have no fiduciary interest in the organization.

(10) "Outcome" or "outcome based" means defined and measurable outcomes ~~((and indicators that make it possible for communities))~~ used to evaluate progress in ((meeting their goals and whether systems are fulfilling their responsibilities)) reducing the rate of at-risk children and youth through reducing risk factors and increasing protective factors.

~~((5))~~ (11) "Matching funds" means an amount no less than twenty-five percent of the amount budgeted for a ~~((consortium's project))~~ network. ((Up to half of)) The ((consortium's)) network's matching funds may be in-kind goods and services. Funding sources allowable for match include appropriate federal or local levy funds, private charitable funding, and other charitable giving. Basic education funds shall not be used as a match. State general funds shall not be used as a match for violence reduction and drug enforcement account funds created under RCW 69.50.520.

~~((6))~~ "Consortium" means ~~a diverse group of individuals that includes at least representatives of local service providers, service recipients, local government administering or funding children or family service programs, participating state agencies, school districts, existing children's commissions, ethnic and racial minority populations, and other interested persons organized for the purpose of designing and providing collaborative and coordinated services under this chapter. Consortia shall represent a county, multicounty, or municipal service area. In addition, consortia may represent Indian tribes applying either individually or collectively.)~~

(12) "Policy development" has the same meaning as provided in RCW 43.70.010.

(13) "Protective factors" means those factors determined by the department of health to be empirically associated with behaviors that contribute to socially acceptable and healthy nonviolent behaviors. Protective factors include promulgation, identification, and acceptance of community norms regarding appropriate behaviors in the area of delinquency, early sexual activity, alcohol and substance abuse, educational opportunities, employment opportunities, and absence of crime.

(14) "Risk factors" means those factors determined by the department of health to be empirically associated with at-risk behaviors that contribute to violence.

Sec. 3. RCW 70.190.060 and 1994 sp.s. c 7 s 303 are each amended to read as follows:

(1) The legislature ~~((intends to create))~~ 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 ~~((by December 1, 1994,))~~ 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 ~~((direct))~~ fiduciary interest ~~((in health, education, social service, or justice system organizations operating within the network area))~~. 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 ~~((which may exist within the network))~~. The thirteen persons shall be selected as follows: Three by ~~((the))~~ chambers of commerce ~~((located in the network))~~, three by school board members ~~((of the school districts within the network boundary))~~, three by ~~((the))~~ county legislative authorities ~~((of the counties within the network boundary))~~, three by ~~((the))~~ city legislative authorities ~~((of the cities~~

~~within the network boundary~~), and one high school student, selected by student organizations (~~within the network boundary~~). The remaining ten members shall live or work within the network boundary and shall include local representation (~~from~~) selected by the following groups and entities: Cities((~~τ~~)); counties((~~τ~~)); federally recognized Indian tribes((~~τ~~)); parks and recreation programs((~~τ~~)); law enforcement agencies(~~(~~τ~~ superior court judges~~)); state children's service workers (~~from within the network area~~); employment assistance workers (~~from within the network area~~); private social(~~(~~τ~~ educational~~)) service providers, broad-based nonsecular organizations, or health service providers (~~from within the network area, and broad-based nonsecular organizations~~); and public education.

(4) (~~A list of the network members shall be submitted to the council by December 1, 1994, by the network chair who shall be selected by network members at their first meeting. The list shall become final unless the council chooses other members within twenty days after the list is submitted. The council shall accept the list unless he or she believes the proposed list does not adequately represent all parties identified in subsection (3) of this section or a member has a conflict of interest between his or her membership and his or her livelihood.~~) Members of the (~~community~~) 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. (~~The same process shall be used in the selection of the chair and members for subsequent terms.~~) Any vacancy occurring during the term may be filled by the chair for the balance of the unexpired term.

(5) (~~The network shall select a public entity as the lead fiscal agency for the network. The lead agency may contract with a public or private entity to perform other administrative duties required by the state. In making the selection, the network shall consider: (a) Experience in administering prevention and intervention programs; (b) the relative geographical size of the network and its members; (c) budgeting and fiscal capacity; and (d) how diverse a population each entity represents.~~) 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.

(6) Networks (~~meetings~~) 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.

NEW SECTION. Sec. 4. A new section is added to chapter 70.190 RCW to read as follows:

(1) Each network shall contract with a public entity as its lead fiscal agent. The contract shall grant the agent authority to perform fiscal, accounting, contract administration, legal, and other administrative duties, including the

provision of liability insurance. Any contract under this subsection shall be submitted to the council by the network for approval prior to its execution. The council shall review the contract to determine whether the administrative costs will be held to no more than ten percent.

(2) The lead agent shall maintain a system of accounting for network funds consistent with the budgeting, accounting, and reporting systems and standards adopted or approved by the state auditor.

(3) The lead agent may contract with another public or private entity to perform duties other than fiscal or accounting duties.

NEW SECTION. Sec. 5. A new section is added to chapter 70.190 RCW to read as follows:

No network member may vote to authorize, or attempt to influence the authorization of, any expenditure in which the member's immediate family has a fiduciary interest. For the purpose of this section "immediate family" means a spouse, parent, grandparent, adult child, brother, or sister.

Sec. 6. RCW 70.190.080 and 1994 sp.s. c 7 s 305 are each amended to read as follows:

(1) The community network's plan may include a program to provide postsecondary scholarships to at-risk students who: (a) Are community role models under criteria established by the community network; (b) successfully complete high school; and (c) maintain at least a 2.5 grade point average throughout high school. Funding for the scholarships may include public and private sources.

(2) The community network's plan may also include funding of community-based home visitor programs which are designed to reduce the incidence of child abuse and neglect (~~((with {within}))~~) within the network. Parents shall sign a voluntary authorization for services, which may be withdrawn at any time. The program may provide parents with education and support either in parents' homes or in other locations comfortable for parents, beginning with the birth of their first baby. The program may make the following services available to the families:

(a) Visits for all expectant or new parents, either at the parent's home or another location with which the parent is comfortable;

(b) Screening before or soon after the birth of a child to assess the family's strengths and goals and define areas of concern in consultation with the family;

(c) Parenting education and skills development;

(d) Parenting and family support information and referral;

(e) Parent support groups; and

(f) Service coordination for individual families, and assistance with accessing services, provided in a manner that ensures that individual families have only one individual or agency to which they look for service coordination. Where appropriate for a family, service coordination may be conducted through interdisciplinary or interagency teams.

These programs are intended to be voluntary for the parents involved.

(3) ~~((The community network may include funding of))~~ In developing long-term comprehensive plans to reduce the rate of at-risk children and youth, the community networks shall consider increasing employment and job training opportunities in recognition that they constitute an effective network strategy and strong protective factor. The networks shall consider and may include funding of:

(a) At-risk youth job placement and training programs. The programs shall:

- (i) Identify and recruit at-risk youth for local job opportunities;
- (ii) Provide skills and needs assessments for each youth recruited;
- (iii) Provide career and occupational counseling to each youth recruited;
- (iv) Identify businesses willing to provide employment and training opportunities for at-risk youth;

(v) Match each youth recruited with a business that meets his or her skills and training needs;

(vi) Provide employment and training opportunities that prepare the individual for demand occupations; and

(vii) Include, to the extent possible, collaboration of business, labor, education and training, community organizations, and local government;

(b) Employment assistance, including job development, school-to-work placement, employment readiness training, basic skills, apprenticeships, job mentoring, and private sector and community service employment;

(c) Education assistance, including tutoring, mentoring, interactions with role models, entrepreneurial education and projects, violence prevention training, safe school strategies, and employment reentry assistance services;

~~((d))~~ (4) The community network may include funding of:

(a) Peer-to-peer, group, and individual counseling, including crisis intervention, for at-risk youth and their parents;

~~((e))~~ (b) Youth coalitions that provide opportunities to develop leadership skills and gain appropriate respect, recognition, and rewards for their positive contribution to their community;

~~((f))~~ (c) Technical assistance to applicants to increase their organizational capacity and to improve the likelihood of a successful application; and

~~((g))~~ (d) Technical assistance and training resources to successful applicants.

Sec. 7. RCW 70.190.090 and 1994 sp.s. c 7 s 306 are each amended to read as follows:

(1) A ~~((community))~~ network that has its membership finalized under RCW 70.190.060(4) shall, upon application to the council, be eligible to receive planning grants and technical assistance from the council. Planning grants may be funded through available federal funds for family preservation services. After receiving the planning grant the ~~((region will be given))~~ network has up to one year to submit the long-term comprehensive plan. ~~((Upon application the~~

~~community networks are eligible to receive funds appropriated under RCW 70.190.140.)~~

(2) The council shall enter into biennial contracts with ~~((community))~~ networks as part of the grant process. The contracts shall be consistent with available resources, and shall be distributed in accordance with the distribution formula developed pursuant to RCW 43.41.195, subject to the applicable matching fund requirement.

(3) No later than February 1 of each odd-numbered year following the initial contract between the council and a network, the council shall request from the network its plan for the upcoming biennial contract period.

(4) The council shall notify the ~~((community))~~ networks of their allocation of available resources at least sixty days prior to the start of a new biennial contract period.

(5) The networks shall, by contract, distribute funds (a) appropriated for plan implementation by the legislature, and (b) obtained from nonstate or federal sources. In distributing funds, the networks shall ensure that administrative costs are held to a maximum of ten percent.

(6) A network shall not provide services or operate programs.

(7) A network shall file a report with the council by May 1 of each year that includes but is not limited to the following information: Detailed expenditures, programs under way, progress on contracted services and programs, and successes and problems in achieving the outcomes required by RCW 70.190.130(1)(h) related to reducing the rate of state-funded out-of-home placements and the other three at-risk behaviors covered by the comprehensive plan and approved by the council.

Sec. 8. RCW 70.190.130 and 1994 sp.s. c 7 s 310 are each amended to read as follows:

(1) The council shall only disburse funds to a ~~((community))~~ network after a comprehensive plan has been prepared by the network and approved by the council ~~((or as provided in RCW 70.190.140))~~. In approving the plan the council shall consider whether the network:

~~((1))~~ (a) Promoted input from the widest practical range of agencies and affected parties, including public hearings;

~~((2))~~ (b) Reviewed the indicators of violence data compiled by the local public health departments and incorporated a response to those indicators in the plan;

~~((3))~~ (c) Obtained a declaration by the largest health department within the ~~((network's boundaries, ensuring that))~~ network boundary, indicating whether the plan ~~((met))~~ meets minimum standards for assessment and policy development relating to social development according to RCW 43.70.555;

~~((4))~~ (d) Included a specific mechanism of data collection and transmission based on the rules established under RCW 43.70.555;

~~((5))~~ (e) Considered all relevant causes of violence in its community and did not isolate only one or a few of the elements to the exclusion of others and

demonstrated evidence of building community capacity through effective neighborhood and community development; ~~((and~~
~~—(6))~~ (f) Considered youth employment and job training programs outlined in this chapter as a strategy to reduce the rate of at-risk children and youth;

(g) Integrated local programs that met the network's priorities and were deemed successful by the network;

(h) Committed to make measurable reductions in the rate of at-risk children and youth by reducing the rate of state-funded out-of-home placements and make reductions in at least three of the following rates of youth: Violent criminal acts, substance abuse, pregnancy and male parentage, suicide attempts, ~~((or))~~ dropping out of school, child abuse or neglect, and domestic violence; and

(i) Held a public hearing on its proposed comprehensive plan and submitted to the council all of the written comments received at the hearing and a copy of the minutes taken at the hearing.

(2) The council may establish a maximum amount to be expended by a network for purposes of planning and administrative duties, that shall not, in total, exceed ten percent of funds available to a network.

(3) The council may determine that a network is not in compliance with this chapter if it fails to comply with statutory requirements. Upon a determination of noncompliance, the council may suspend or revoke a network's status or contract and specify a process and deadline for the network's compliance.

NEW SECTION. **Sec. 9.** A new section is added to chapter 70.190 RCW to read as follows:

(1) The network members are immune from all civil liability arising from their actions done in their decision-making capacity as a network member, except for their intentional tortious acts or acts of official misconduct.

(2) The assets of a network are not subject to attachment or execution in satisfaction of a judgment for the tortious acts or official misconduct of any network member or for the acts of any agency or program to which it provides funds.

NEW SECTION. **Sec. 10.** 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. 11.** The amendments to RCW 70.190.060 in 1996 c . . . s 3 (section 3 of this act) shall apply prospectively only and are not intended to affect the composition of any community public health and safety network's membership that has been approved by the family policy council prior to the effective date of this section.

NEW SECTION. **Sec. 12.** (1) Section 7 of this act shall take effect July 1, 1996.

(2) Section 8 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 shall take effect immediately.

Passed the Senate March 7, 1996.
 Passed the House March 7, 1996.
 Approved by the Governor March 22, 1996.
 Filed in Office of Secretary of State March 22, 1996.

CHAPTER 133

[Engrossed Second Substitute House Bill 2217]

AT-RISK YOUTH

AN ACT Relating to at-risk youth; amending RCW 13.32A.090, 13.32A.130, 13.32A.030, 13.32A.050, 13.32A.060, 13.32A.065, 13.32A.070, 13.32A.082, 13.32A.095, 13.32A.100, 13.32A.110, 13.32A.120, 13.32A.140, 13.32A.150, 13.32A.152, 13.32A.160, 13.32A.170, 13.32A.179, 13.32A.190, 13.32A.192, 13.32A.194, 13.32A.250, 13.34.165, 28A.225.030, 28A.225.035, 28A.225.090, 70.96A.020, 70.96A.095, 71.34.030, 71.34.035, and 74.13.036; adding new sections to chapter 13.32A RCW; adding a new section to chapter 70.96A RCW; adding a new section to chapter 71.34 RCW; adding a new section to chapter 74.13 RCW; creating new sections; and prescribing penalties.

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

NEW SECTION. Sec. 1. The legislature finds that no children should be exposed to the dangers inherent in living on the streets. The legislature further finds that there are children who are not mentally ill or chemically dependent who are living on the street in dangerous situations. These children through their at-risk behavior place themselves at great personal risk and danger. The legislature further finds that these children with at-risk behaviors should receive treatment for their problems that result in excessive opposition to parental authority.

NEW SECTION. Sec. 2. This act shall be known and cited as the "Becca Too" bill.

NEW SECTION. Sec. 3. A new section is added to chapter 13.32A RCW to read as follows:

(1) In a disposition hearing, after a finding that a child is a child in need of services or an at-risk youth, the court may adopt the additional orders authorized under this section if it finds that the child involved in those proceedings is not eligible for inpatient treatment for a mental health or substance abuse condition and requires specialized treatment. The court may order that a child be placed in a staff secure facility, other than a crisis residential center, that will provide for the child's participation in a program designed to remedy his or her behavioral difficulties or needs. The court may not enter this order unless, at the disposition hearing, it finds that the placement is clearly necessary to protect the child and that a less restrictive order would be inadequate to protect the child, given the child's age, maturity, propensity to run away from home, past exposure to serious risk when the child ran away from home, and possible future exposure to serious risk should the child run away from home again.

(2) The order shall require periodic court review of the placement, with the first review hearing conducted not more than thirty days after the date of the

placement. At each review hearing the court shall advise the parents of their rights under RCW 13.32A.160(1), review the progress of the child, and determine whether the orders are still necessary for the protection of the child or a less restrictive placement would be adequate. The court shall modify its orders as it finds necessary to protect the child. Reviews of orders adopted under this section are subject to the review provisions under RCW 13.32A.190 and 13.32.198.

(3) Placements in staff secure facilities under this section shall be limited to children who meet the statutory definition of a child in need of services or an at-risk youth as defined in RCW 13.32A.030.

(4) State funds may only be used to pay for placements under this section if, and to the extent that, such funds are appropriated to expressly pay for them.

***NEW SECTION.** *Sec. 4. A new section is added to chapter 13.32A RCW to read as follows:*

(1) A violation of RCW 13.32A.082 by a licensed child-serving agency shall be addressed as a licensing violation under chapter 74.15 RCW.

(2) A violation of RCW 13.32A.082 by any other person is a misdemeanor.
*Sec. 4 was vetoed. See message at end of chapter.

NEW SECTION. *Sec. 5. A new section is added to chapter 70.96A RCW to read as follows:*

School district personnel who contact a chemical dependency inpatient treatment program or provider for the purpose of referring a student to inpatient treatment shall provide the parents with notice of the contact within forty-eight hours.

NEW SECTION. *Sec. 6. A new section is added to chapter 71.34 RCW to read as follows:*

School district personnel who contact a mental health inpatient treatment program or provider for the purpose of referring a student to inpatient treatment shall provide the parents with notice of the contact within forty-eight hours.

Sec. 7. RCW 13.32A.090 and 1995 c 312 s 10 are each amended to read as follows:

(1) The ~~((person in charge))~~ administrator of a designated crisis residential center or the department shall perform the duties under subsection (2) of this section:

(a) Upon admitting a child who has been brought to the center by a law enforcement officer under RCW 13.32A.060;

(b) Upon admitting a child who has run away from home or has requested admittance to the center;

(c) Upon learning from a person under RCW 13.32A.080(3) that the person is providing shelter to a child absent from home; or

(d) Upon learning that a child has been placed with a responsible adult pursuant to RCW 13.32A.060.

(2) When any of the circumstances under subsection (1) of this section are present, the ~~((person in charge))~~ administrator of a center or the department shall perform the following duties:

(a) Immediately notify the child's parent of the child's whereabouts, physical and emotional condition, and the circumstances surrounding his or her placement;

(b) Initially notify the parent that it is the paramount concern of the family reconciliation service personnel to achieve a reconciliation between the parent and child to reunify the family and inform the parent as to the procedures to be followed under this chapter;

(c) Inform the parent whether a referral to children's protective services has been made and, if so, inform the parent of the standard pursuant to RCW 26.44.020(12) governing child abuse and neglect in this state;

(d) Arrange transportation for the child to the residence of the parent, as soon as practicable, at the latter's expense to the extent of his or her ability to pay, with any unmet transportation expenses to be assumed by the department, when the child and his or her parent agrees to the child's return home or when the parent produces a copy of a court order entered under this chapter requiring the child to reside in the parent's home;

(e) Arrange transportation for the child to: (i) An out-of-home placement which may include a licensed group care facility or foster family when agreed to by the child and parent; or (ii) a certified or licensed mental health or chemical dependency program of the parent's choice; at the ~~((latter's))~~ parent's expense to the extent of his or her ability to pay, with any unmet transportation expenses assumed by the department(~~(;~~

~~—(f) Immediately notify the department of the placement)).~~

(3) If the administrator of the crisis residential center performs the duties listed in subsection (2) of this section, he or she shall also notify the department that a child has been admitted to the crisis residential center.

Sec. 8. RCW 13.32A.130 and 1995 c 312 s 12 are each amended to read as follows:

(1) A child admitted to a secure facility within a crisis residential center shall remain in the facility for not more than five consecutive days, but for at least twenty-four hours after admission. If the child admitted under this section is transferred between centers or between secure and semi-secure facilities, the aggregate length of time spent in all such centers or facilities may not exceed five consecutive days.

(2)(a)(i) The facility administrator shall determine within twenty-four hours after a child's admission to a secure facility whether the child ~~((can be safely admitted to))~~ is likely to remain in a semi-secure facility and may transfer the child to a semi-secure facility or release the child to the department. The determination shall be based on: (A) The need for continued assessment, protection, and treatment of the child in a secure facility; and (B) the likelihood the child would remain at a semi-secure facility until his or her parents can take the child home or a petition can be filed under this title.

(ii) In making the determination the administrator shall ~~((include consideration of))~~ consider the following information if known: (A) ~~((A))~~ The child's age and maturity; (B) the child's condition upon arrival at the center; (C) the circumstances that led to the child's being taken to the center; (D) whether the child's behavior endangers the health, safety, or welfare of the child or any other person; (E) the child's history of running away which has endangered the health, safety, and welfare of the child; and (F) the child's willingness to cooperate in ~~((conducting))~~ the assessment.

(b) If the administrator of a secure facility determines the child is unlikely to remain in a semi-secure facility, the administrator shall keep the child in the secure facility pursuant to this chapter and in order to provide for space for the child may transfer another child who has been in the facility for at least seventy-two hours to a semi-secure facility. The administrator shall only make a transfer of a child after determining that the child who may be transferred is likely to remain at the semi-secure facility.

(c) A crisis residential center administrator is authorized to transfer a child to a crisis residential center in the area where the child's parents reside or where the child's lawfully prescribed residence is located.

(d) An administrator may transfer a child from a semi-secure facility to a secure facility whenever ~~((the administrator))~~ he or she reasonably believes that the child is likely to leave the semi-secure facility and not return and after full consideration of all factors in (a)(i) and (ii) of this subsection.

(3) If no parent is available or willing to remove the child during the five-day period, the department shall consider the filing of a petition under RCW 13.32A.140.

(4) The requirements of this section shall not apply to a child who is: (a) Returned to the home of his or her parent; (b) placed in a semi-secure facility within a crisis residential center pursuant to a temporary out-of-home placement order authorized under RCW 13.32A.125; (c) placed in an out-of-home placement; or (d) ~~((is subject to a petition under RCW 13.32A.191))~~ the subject of an at-risk youth petition.

(5) Notwithstanding the provisions of subsection (1) of this section, the parents may remove the child at any time during the five-day period unless the staff of the crisis residential center has reasonable cause to believe that the child is absent from the home because he or she is abused or neglected or if allegations of abuse or neglect have been made against the parents. ~~((The department may remove the child whenever a dependency petition is filed under chapter 13.34 RCW.))~~ The department or any agency legally charged with the supervision of a child may remove a child from a crisis residential center at any time after the first twenty-four-hour period after admission has elapsed and only after full consideration by all parties of the factors in subsection (2)(a) of this section.

(6) Crisis residential center staff shall make reasonable efforts to protect the child and achieve a reconciliation of the family. If a reconciliation and voluntary

return of the child has not been achieved within forty-eight hours from the time of intake, and if the ~~((person in charge))~~ administrator of the center does not consider it likely that reconciliation will be achieved within the five-day period, then the ~~((person in charge))~~ administrator shall inform the parent and child of:

(a) The availability of counseling services; (b) the right to file a child in need of services petition for an out-of-home placement, the right of a parent to file an at-risk youth petition, and the right of the parent and child to obtain assistance in filing the petition; (c) the right to request the facility administrator or his or her designee to form a multidisciplinary team; ~~((and))~~ (d) the right to request a review of any out-of-home placement; (e) the right to request a mental health or chemical dependency evaluation by a county-designated professional or a private treatment facility; and (f) the right to request treatment in a program to address the child's at-risk behavior under section 3 of this act.

(7) At no time shall information regarding a parent's or child's rights be withheld. The department shall develop and distribute to all law enforcement agencies and to each crisis residential center administrator a written statement delineating the services and rights. Every officer taking a child into custody shall provide the child and his or her parent(s) or responsible adult with whom the child is placed with a copy of the statement. In addition, the administrator of the facility or his or her designee shall provide every resident and parent with a copy of the statement.

(8) A crisis residential center and its administrator or his or her designee acting in good faith in carrying out the provisions of this section are immune from criminal or civil liability for such actions.

Sec. 9. RCW 13.32A.030 and 1995 c 312 s 3 are each amended to read as follows:

As used in this chapter the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "Administrator" means the individual who has the daily administrative responsibility of a crisis residential center, or his or her designee.

(2) "At-risk youth" means a juvenile:

(a) Who is absent from home for at least seventy-two consecutive hours without consent of his or her parent;

(b) Who is beyond the control of his or her parent such that the child's behavior endangers the health, safety, or welfare of the child or any other person; or

(c) Who has a substance abuse problem for which there are no pending criminal charges related to the substance abuse.

~~((2))~~ (3) "Child," "juvenile," and "youth" mean any unemancipated individual who is under the chronological age of eighteen years.

~~((3))~~ (4) "Child in need of services" means a juvenile:

(a) Who is beyond the control of his or her parent such that the child's behavior endangers the health, safety, or welfare of the child or other person;

(b) Who has been reported to law enforcement as absent without consent for at least twenty-four consecutive hours from the parent's home, a crisis residential center, an out-of-home placement, or a court-ordered placement on two or more separate occasions; and

(i) Has exhibited a serious substance abuse problem; or

(ii) Has exhibited behaviors that create a serious risk of harm to the health, safety, or welfare of the child or any other person; or

(c)(i) Who is in need of necessary services, including food, shelter, health care, clothing, educational, or services designed to maintain or reunite the family;

(ii) Who lacks access, or has declined, to utilize these services; and

(iii) Whose parents have evidenced continuing but unsuccessful efforts to maintain the family structure or are unable or unwilling to continue efforts to maintain the family structure.

~~((4))~~ (5) "Child in need of services petition" means a petition filed in juvenile court by a parent, child, or the department seeking adjudication of placement of the child.

~~((5))~~ (6) "Crisis residential center" means a secure or semi-secure facility established pursuant to chapter 74.13 RCW.

(7) "Custodian" means the person or entity who has the legal right to the custody of the child.

~~((6))~~ (8) "Department" means the department of social and health services.

~~((7))~~ (9) "Extended family member" means an adult who is a grandparent, brother, sister, stepbrother, stepsister, uncle, aunt, or first cousin with whom the child has a relationship and is comfortable, and who is willing and available to care for the child.

~~((8))~~ (10) "Guardian" means that person or agency that (a) has been appointed as the guardian of a child in a legal proceeding other than a proceeding under chapter 13.34 RCW, and (b) has the right to legal custody of the child pursuant to such appointment. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under chapter 13.34 RCW.

~~((9))~~ (11) "Multidisciplinary team" means a group formed to provide assistance and support to a child who is an at-risk youth or a child in need of services and his or her parent. The team shall include the parent, a department case worker, a local government representative when authorized by the local government, and when appropriate, members from the mental health and substance abuse disciplines. The team may also include, but is not limited to, the following persons: Educators, law enforcement personnel, probation officers, employers, church persons, tribal members, therapists, medical personnel, social service providers, placement providers, and extended family members. The team members shall be volunteers who do not receive compensation while acting in a capacity as a team member, unless the member's employer chooses to provide compensation or the member is a state employee.

~~((10))~~ (12) "Out-of-home placement" means a placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

~~((11))~~ (13) "Parent" means the parent or parents who have the legal right to custody of the child. "Parent" includes custodian or guardian.

~~((12))~~ (14) "Secure facility" means a crisis residential center, or portion thereof, that has locking doors, locking windows, or a secured perimeter, designed and operated to prevent a child from leaving without permission of the facility staff.

~~((13))~~ (15) "Semi-secure facility" means any facility, including but not limited to crisis residential centers or specialized foster family homes, operated in a manner to reasonably assure that youth placed there will not run away. Pursuant to rules established by the department, the facility administrator shall establish reasonable hours for residents to come and go from the facility such that no residents are free to come and go at all hours of the day and night. To prevent residents from taking unreasonable actions, the facility administrator, where appropriate, may condition a resident's leaving the facility upon the resident being accompanied by the administrator or the administrator's designee and the resident may be required to notify the administrator or the administrator's designee of any intent to leave, his or her intended destination, and the probable time of his or her return to the center.

~~((14))~~ (16) "Temporary out-of-home placement" means an out-of-home placement of not more than fourteen days ordered by the court at a fact-finding hearing on a child in need of services petition.

Sec. 10. RCW 13.32A.050 and 1995 c 312 s 6 are each amended to read as follows:

(1) A law enforcement officer shall take a child into custody:

(a) If a law enforcement agency has been contacted by the parent of the child that the child is absent from parental custody without consent; or

(b) If a law enforcement officer reasonably believes, considering the child's age, the location, and the time of day, that a child is in circumstances which constitute a danger to the child's safety or that a child is violating a local curfew ordinance; or

(c) If an agency legally charged with the supervision of a child has notified a law enforcement agency that the child has run away from placement; or

(d) If a law enforcement agency has been notified by the juvenile court that the court finds probable cause exists to believe that the child has violated a court placement order issued pursuant to chapter 13.32A or 13.34 RCW or that the court has issued an order for law enforcement pick-up of the child under this chapter or chapter 13.34 RCW.

(2) Law enforcement custody shall not extend beyond the amount of time reasonably necessary to transport the child to a destination authorized by law and to place the child at that destination.

(3) If a law enforcement officer takes a child into custody pursuant to either subsection (1)(a) or (b) of this section and transports the child to a crisis residential center, the officer shall, within twenty-four hours of delivering the child to the center, provide to the center a written report detailing the reasons the officer took the child into custody. The center shall provide the department with a copy of the officer's report.

(4) If the law enforcement officer who initially takes the juvenile into custody or the staff of the crisis residential center have reasonable cause to believe that the child is absent from home because he or she is abused or neglected, a report shall be made immediately to the department.

(5) Nothing in this section affects the authority of any political subdivision to make regulations concerning the conduct of minors in public places by ordinance or other local law.

(6) If a law enforcement officer receives a report that causes the officer to have reasonable suspicion that a child is being harbored under RCW 13.32A.080 or for other reasons has a reasonable suspicion that a child is being harbored under RCW 13.32A.080, the officer shall remove the child from the custody of the person harboring the child and shall transport the child to one of the locations specified in RCW 13.32A.060.

(7) No child may be placed in a secure facility except as provided in this chapter.

Sec. 11. RCW 13.32A.060 and 1995 c 312 s 7 are each amended to read as follows:

(1) An officer taking a child into custody under RCW 13.32A.050(1) (a) or (b) shall inform the child of the reason for such custody and shall ~~((either))~~:

(a) Transport the child to his or her home or to a parent at his or her place of employment, if no parent is at home. ~~((The officer releasing a child into the custody of the parent shall inform the parent of the reason for the taking of the child into custody and shall inform the child and the parent of the nature and location of appropriate services available in their community.))~~ The parent may ~~((direct))~~ request that the officer ((to)) take the child to the home of an adult extended family member, responsible adult, crisis residential center, the department, or a licensed youth shelter. In responding to the request of the parent, the officer shall take the child to a requested place which, in the officer's belief, is within a reasonable distance of the parent's home. The officer releasing a child into the custody of a parent, an adult extended family member, responsible adult, or a licensed youth shelter shall inform ~~((the child and))~~ the person receiving the child of the reason for taking the child into custody and inform all parties of the nature and location of appropriate services available in the community; or

(b) After attempting to notify the parent, take the child to a designated crisis residential center's secure facility or a center's semi-secure facility if a secure facility is full, not available, or not located within a reasonable distance:

(i) If the child expresses fear or distress at the prospect of being returned to his or her home which leads the officer to believe there is a possibility that the child is experiencing some type of child abuse or neglect, as defined in RCW 26.44.020; ~~((or))~~

(ii) If it is not practical to transport the child to his or her home or place of the parent's employment; or

(iii) If there is no parent available to accept custody of the child; or

(c) After attempting to notify the parent, if a crisis residential center is full, not available, or not located within a reasonable distance, the officer may request the department to accept custody of the child. If the department determines that an appropriate placement is currently available, the department shall accept custody and place the child in an out-of-home placement. If the department declines to accept custody of the child, the officer may release the child after attempting to take the child to the following, in the order listed: The home of an adult extended family member; a responsible adult; a licensed youth shelter and shall immediately notify the department if no placement option is available and the child is released.

(2) An officer taking a child into custody under RCW 13.32A.050(1) (c) or (d) shall inform the child of the reason for custody. An officer taking a child into custody under RCW 13.32A.050(1)(c) ~~((shall))~~ may release the child to the supervising agency, or shall take the child to a designated crisis residential center's secure facility ~~((or,))~~. If the secure facility is not available ((or)), not located within a reasonable distance, or full, the officer shall take the child to a semi-secure ((facility within a)) crisis residential center((licensed by the department and established pursuant to chapter 74.13 RCW)). An officer taking a child into custody under RCW 13.32A.050(1)(d) may place the child in a juvenile detention facility as provided in RCW 13.32A.065 or a secure facility, except that the child shall be taken to detention whenever the officer has been notified that a juvenile court has entered a detention order under this chapter or chapter 13.34 RCW.

(3) The department shall ensure that all law enforcement authorities are informed on a regular basis as to the location of all designated secure and semi-secure facilities within ~~((crisis residential center or))~~ centers in their jurisdiction, where children taken into custody under RCW 13.32A.050 may be taken.

Sec. 12. RCW 13.32A.065 and 1981 c 298 s 4 are each amended to read as follows:

(1) A child may be placed in detention after being taken into custody pursuant to RCW 13.32A.050~~((4))~~ (1)(d). The court shall hold a detention review hearing within twenty-four hours, excluding Saturdays, Sundays, and holidays. The court shall release the child after twenty-four hours, excluding Saturdays, Sundays, and holidays, unless:

(a) A motion and order to show why the child should not be held in contempt has been filed and served on the child at or before the detention hearing; and

(b) The court believes that the child would not appear at a hearing on contempt.

(2) If the court orders the child to remain in detention, the court shall set the matter for a hearing on contempt within seventy-two hours, excluding Saturdays, Sundays, and holidays.

Sec. 13. RCW 13.32A.070 and 1995 c 312 s 8 are each amended to read as follows:

(1) A law enforcement officer acting in good faith pursuant to this chapter ~~((in failing to take a child into custody, in taking a child into custody, in placing a child in a crisis residential center, or in releasing a child to a person at the request of a parent))~~ is immune from civil or criminal liability for such action.

(2) A person with whom a child is placed pursuant to this chapter and who acts reasonably and in good faith is immune from civil or criminal liability for the act of receiving the child. The immunity does not release the person from liability under any other law.

Sec. 14. RCW 13.32A.082 and 1995 c 312 s 34 are each amended to read as follows:

(1) Any person who, without legal authorization, provides shelter to a minor and who knows at the time of providing the shelter that the minor is away from the parent's home, or other lawfully prescribed residence, without the permission of the parent, shall promptly report the location of the child to the parent, the law enforcement agency of the jurisdiction in which the person lives, or the department. The report may be made by telephone or any other reasonable means.

(2) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Shelter" means the person's home or any structure over which the person has any control.

(b) "Promptly report" means to report within eight hours after the person has knowledge that the minor is away from home without parental permission.

~~(((c) "Parent" means any parent having legal custody of the child, whether individually or jointly.))~~

(3) When the department receives a report under subsection (1) of this section, it shall make a good faith attempt to notify the parent that a report has been received and offer services designed to resolve the conflict and accomplish a reunification of the family.

Sec. 15. RCW 13.32A.095 and 1995 c 312 s 21 are each amended to read as follows:

The ~~((crisis residential center))~~ administrator of the crisis residential center shall notify parents and the appropriate law enforcement agency immediately as to any unauthorized leave from the center by a child placed at the center.

Sec. 16. RCW 13.32A.100 and 1981 c 298 s 8 are each amended to read as follows:

Where a child is placed in ~~((a residence other than that of his or her parent))~~ an out-of-home placement pursuant to RCW 13.32A.090(2)(e), the department shall make available family reconciliation services in order to facilitate the reunification of the family. Any such placement may continue as long as there is agreement by the child and parent.

Sec. 17. RCW 13.32A.110 and 1979 c 155 s 25 are each amended to read as follows:

If a child who has a legal residence outside the state of Washington is admitted to a crisis residential center or is ~~((placed))~~ released by a law enforcement officer ~~((with a responsible person other than the child's parent))~~ to the department, and the child refuses to return home, the provisions of RCW 13.24.010 shall apply.

Sec. 18. RCW 13.32A.120 and 1995 c 312 s 11 are each amended to read as follows:

(1) Where either a child or the child's parent or the person or facility currently providing shelter to the child notifies the center that such individual or individuals cannot agree to the continuation of an out-of-home placement arrived at pursuant to RCW 13.32A.090(2)(e), the administrator of the center shall immediately contact the remaining party or parties to the agreement and shall attempt to bring about the child's return home or to an alternative living arrangement agreeable to the child and the parent as soon as practicable.

(2) If a child and his or her parent cannot agree to an out-of-home placement under RCW 13.32A.090(2)(e), either the child or parent may file with the juvenile court a child in need of services petition to approve an out-of-home placement or the parent may file with the juvenile court a petition in the interest of a child alleged to be an at-risk youth under this chapter.

(3) If a child and his or her parent cannot agree to the continuation of an out-of-home placement arrived at under RCW 13.32A.090(2)(e), either the child or parent may file with the juvenile court a child in need of services petition to approve an out-of-home placement or the parent may file with the juvenile court a petition in the interest of a child alleged to be an at-risk youth under this chapter.

Sec. 19. RCW 13.32A.140 and 1995 c 312 s 15 are each amended to read as follows:

Unless the department files a dependency petition, the department shall file a child in need of services petition to approve an out-of-home placement on behalf of a child under any of the following sets of circumstances:

(1) The child has been admitted to a crisis residential center or has been placed ~~((with a responsible person other than his or her parent))~~ by the department in an out-of-home placement, and:

- (a) The parent has been notified that the child was so admitted or placed;
- (b) Seventy-two hours, including Saturdays, Sundays, and holidays, have passed since such notification;

(c) No agreement between the parent and the child as to where the child shall live has been reached;

(d) No child in need of services petition has been filed by either the child or parent;

(e) The parent has not filed an at-risk youth petition; and

(f) The child has no suitable place to live other than the home of his or her parent.

(2) The child has been admitted to a crisis residential center and:

(a) Seventy-two hours, including Saturdays, Sundays, and holidays, have passed since such placement;

(b) The staff, after searching with due diligence, have been unable to contact the parent of such child; and

(c) The child has no suitable place to live other than the home of his or her parent.

(3) An agreement between parent and child made pursuant to RCW 13.32A.090(2)(e) or pursuant to RCW 13.32A.120(1) is no longer acceptable to parent or child, and:

(a) The party to whom the arrangement is no longer acceptable has so notified the department;

(b) Seventy-two hours, including Saturdays, Sundays, and holidays, have passed since such notification;

(c) No new agreement between parent and child as to where the child shall live has been reached;

(d) No child in need of services petition has been filed by either the child or the parent;

(e) The parent has not filed an at-risk youth petition; and

(f) The child has no suitable place to live other than the home of his or her parent.

Under the circumstances of subsections (1), (2), or (3) of this section, the child shall remain in an out-of-home placement until a child in need of services petition filed by the department on behalf of the child is reviewed by the juvenile court and is resolved by ~~((such))~~ the court. The department may authorize emergency medical or dental care for a child ~~((placed under this section))~~ admitted to a crisis residential center or placed in an out-of-home placement by the department. The state, when the department files a child in need of services petition under this section, shall be represented as provided for in RCW 13.04.093.

~~((If the department files a petition under this section, the department shall submit in a supporting affidavit any information provided under section 38 of this act.))~~

Sec. 20. RCW 13.32A.150 and 1995 c 312 s 16 are each amended to read as follows:

(1) Except as otherwise provided in this chapter, the juvenile court shall not accept the filing of a child in need of services petition by the child or the parents

or the filing of an at-risk youth petition by the parent, unless verification is provided that a family assessment has been completed by the department. The family assessment provided by the department shall involve the multidisciplinary team as provided in RCW 13.32A.040, if one exists. The family assessment or plan of services developed by the multidisciplinary team shall be aimed at family reconciliation, reunification, and avoidance of the out-of-home placement of the child. If the department is unable to complete an assessment within two working days following a request for assessment the child or the parents may proceed under subsection (2) of this section or the parent may proceed under RCW 13.32A.191.

(2) A child or a child's parent may file with the juvenile court a child in need of services petition to approve an out-of-home placement for the child. The department shall, when requested, assist either a parent or child in the filing of the petition. The petition must be filed in the county where the parent resides. The petition shall ~~((only))~~ allege that the child is a child in need of services and shall ask only that the placement of a child outside the home of his or her parent be approved. The filing of a petition to approve the placement is not dependent upon the court's having obtained any prior jurisdiction over the child or his or her parent, and confers upon the court a special jurisdiction to approve or disapprove an out-of-home placement.

(3) A petition may not be filed if the child is the subject of a proceeding under chapter 13.34 RCW.

Sec. 21. RCW 13.32A.152 and 1995 c 312 s 4 are each amended to read as follows:

(1) Whenever a child in need of services petition is filed by a youth pursuant to RCW ~~((13.32A.130))~~ 13.32A.150, or the department pursuant to RCW ~~((13.32A.150))~~ 13.32A.140, the ~~((youth or the department))~~ filing party shall have a copy of the petition served on the parents of the youth. Service shall first be attempted in person and if unsuccessful, then by certified mail with return receipt.

(2) Whenever a child in need of services petition is filed by a youth or parent pursuant to RCW 13.32A.150, the court shall immediately notify the department that a petition has been filed.

Sec. 22. RCW 13.32A.160 and 1995 c 312 s 17 are each amended to read as follows:

(1) When a proper child in need of services petition to approve an out-of-home placement is filed under RCW 13.32A.120, 13.32A.140, or 13.32A.150 the juvenile court shall: (a)(i) Schedule a fact-finding hearing to be held: (A) For a child who is in a center or a child who is not residing at home, nor in an out-of-home placement, within ((three-judicial)) five calendar days unless the last calendar day is a Saturday, Sunday, or holiday, in which case the hearing shall be held on the preceding judicial day; or (B) for any other child, within ten days; and (ii) notify the parent, child, and the department of such date; (b) notify the

parent of the right to be represented by counsel and, if indigent, to have counsel appointed for him or her by the court; (c) appoint legal counsel for the child; (d) inform the child and his or her parent of the legal consequences of the court approving or disapproving ~~((an out-of-home placement))~~ a child in need of services petition; (e) notify the parents of their rights under this chapter and chapters 11.88, 13.34, 70.96A, and 71.34 RCW, including the right to file an at-risk youth petition, the right to submit ~~((an application))~~ an application for admission of their child to a treatment facility for alcohol, chemical dependency, or mental health treatment, and the right to file a guardianship petition; and (f) notify all parties, including the department, of their right to present evidence at the fact-finding hearing.

(2) Upon filing of a child in need of services petition, the child may be placed, if not already placed, by the department in a crisis residential center, foster family home, group home facility licensed under chapter 74.15 RCW, or any other suitable residence to be determined by the department. The court may place a child in a crisis residential center for a temporary out-of-home placement as long as the requirements of RCW 13.32A.125 are met.

(3) If the child has been placed in a foster family home or group care facility under chapter 74.15 RCW, the child shall remain there, or in any other suitable residence as determined by the department, pending resolution of the petition by the court. Any placement may be reviewed by the court within three judicial days upon the request of the juvenile or the juvenile's parent.

Sec. 23. RCW 13.32A.170 and 1995 c 312 s 18 are each amended to read as follows:

(1) The court shall hold a fact-finding hearing to consider a proper child in need of services petition, giving due weight to the intent of the legislature that families have the right to place reasonable restrictions and rules upon their children, appropriate to the individual child's developmental level. The court may appoint legal counsel and/or a guardian ad litem to represent the child and advise parents of their right to be represented by legal counsel. At the commencement of the hearing, the court shall advise the parents of their rights as set forth in RCW 13.32A.160(1). If the court approves or denies a child in need of services petition, a written statement of the reasons must be filed.

(2) The court may approve an order stating that the child shall be placed in a residence other than the home of his or her parent only if it is established by a preponderance of the evidence, including a departmental recommendation for approval or dismissal of the petition, that:

- ~~(a) ((The petition is not capricious;~~
- ~~(b) The petitioner, if a child, has made a reasonable effort to resolve the conflict;~~
- ~~(c) The conflict cannot be resolved by delivery of services to the family during continued placement of the child in the parental home;~~
- ~~(d)) The child is a child in need of services as defined in RCW 13.32A.030(4);~~

(b) If the petitioner is a child, he or she has made a reasonable effort to resolve the conflict;

(c) Reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home; and

~~((e))~~ (d) A suitable out-of-home placement resource is available.

The court may not grant a petition filed by the child or the department if it is established that the petition is based only upon a dislike of reasonable rules or reasonable discipline established by the parent. The court may not grant the petition if the child is the subject of a proceeding under chapter 13.34 RCW.

~~((2))~~ (3) Following the fact-finding hearing the court shall: (a) Approve a child in need of services petition and, if appropriate, enter a temporary out-of-home placement for a period not to exceed fourteen days pending approval of a disposition decision to be made under RCW 13.32A.179(2); (b) approve an at-risk youth petition filed by the parents and dismiss the child in need of services petition; (c) dismiss the petition; or (d) order the department to review the case to determine whether the case is appropriate for a dependency petition under chapter 13.34 RCW.

Sec. 24. RCW 13.32A.179 and 1995 c 312 s 20 are each amended to read as follows:

(1) A disposition hearing shall be held no later than fourteen days after the approval of the temporary out-of-home placement. The parents, child, and department shall be notified by the court of the time and place of the hearing.

~~((At the commencement of the hearing the court shall advise the parents of their rights as set forth in RCW 13.32A.160(1)(e). If the court approves or denies a child in need of services petition, a written statement of the reasons shall be filed.))~~ At the conclusion of the disposition hearing, the court may: (a) Reunite the family and dismiss the petition; (b) approve an at-risk youth petition filed by the parents and dismiss the child in need of services petition; (c) approve ~~((a voluntary))~~ an out-of-home placement requested in the child in need of services petition by the parents; (d) order ~~((any conditions set forth in RCW 13.32A.196(2)))~~ an out-of-home placement at the request of the child or the department not to exceed ninety days; or (e) order the department to ~~((file a petition))~~ review the matter for purposes of filing a dependency petition under chapter 13.34 RCW. Whether or not the court approves or orders an out-of-home placement, the court may also order any conditions of supervision as set forth in RCW 13.32A.196(2).

~~((3))~~ ~~((At the conclusion of the hearing, if the court has not taken action under subsection (2) of this section it may, at the request of the child or department, enter an order for out-of-home placement for not more than ninety days.))~~ The court may only enter an order under ~~((this))~~ subsection (2)(d) of this section if it finds by clear, cogent, and convincing evidence that: (a)(i) The order is in the best interest of the family; (ii) the parents have not requested an out-of-home placement; (iii) the parents have not exercised any other right listed in RCW

13.32A.160(1)(e); (iv) the child has made reasonable efforts to resolve the ~~((conflict))~~ problems that led to the filing of the petition; (v) the ~~((conflict))~~ problems cannot be resolved by delivery of services to the family during continued placement of the child in the parental home; (vi) reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home; and (vii) a suitable out-of-home placement resource is available; (b)(i) the order is in the best interest of the child; and (ii) the parents are unavailable; or (c) the parent's actions cause an imminent threat to the child's health or safety. ~~((If the court has entered an order under this section, it may order any conditions set forth in RCW 13.32A.196(2).))~~

(4) The court may order the department to submit a dispositional plan if such a plan would assist the court in ordering a suitable disposition in the case. The plan, if ordered, shall address only the needs of the child and shall not address the perceived needs of the parents, unless the order was entered under subsection (2)(d) of this section or specifically agreed to by the parents. If the court orders the department to prepare a plan, the department shall provide copies of the plan to the parent, the child, and the court. If the parties or the court desire the department to be involved in any future proceedings or case plan development, the department shall be provided with timely notification of all court hearings.

(5) A child who fails to comply with a court order issued under this section shall be subject to contempt proceedings, as provided in this chapter, but only if the noncompliance occurs within one year after the entry of the order.

~~((5))~~ (6) After the court approves or orders an out-of-home placement, the parents or the department may request, and the court may grant, dismissal of ((a placement order)) the child in need of services proceeding when it is not feasible for the department to provide services due to one or more of the following circumstances:

(a) The child has been absent from court approved placement for thirty consecutive days or more;

(b) The parents or the child, or all of them, refuse to cooperate in available, appropriate intervention aimed at reunifying the family; or

(c) The department has exhausted all available and appropriate resources that would result in reunification.

~~((6))~~ (7) The court shall dismiss a placement made under subsection (2)(c) of this section upon the request of the parents.

Sec. 25. RCW 13.32A.190 and 1995 c 312 s 24 are each amended to read as follows:

(1) Upon making a dispositional order under RCW 13.32A.179, the court shall schedule the matter on the calendar for review within three months, advise the parties of the date thereof, appoint legal counsel and/or a guardian ad litem to represent the child at the review hearing, advise parents of their right to be represented by legal counsel at the review hearing, and notify the parties of their

rights to present evidence at the hearing. Where resources are available, the court shall encourage the parent and child to participate in programs for reconciliation of their conflict.

(2) At the review hearing, the court shall approve or disapprove the continuation of the dispositional plan in accordance with this chapter. The court shall determine whether reasonable efforts have been made to reunify the family and make it possible for the child to return home. The court shall discontinue the placement and order that the child return home if the court has reasonable grounds to believe that the parents have made reasonable efforts to resolve the conflict and the court has reason to believe that the child's refusal to return home is capricious. If out-of-home placement is continued, the court may modify the dispositional plan.

(3) Out-of-home placement may not be continued past one hundred eighty days from the day the review hearing commenced. The court shall order the child to return to the home of the parent at the expiration of the placement. If an out-of-home placement is disapproved prior to one hundred eighty days, the court shall enter an order requiring the child to return to the home of the child's parent.

(4) The parents and the department may request, and the juvenile court may grant, dismissal of an out-of-home placement order when it is not feasible for the department to provide services due to one or more of the following circumstances:

(a) The child has been absent from court approved placement for thirty consecutive days or more;

(b) The parents or the child, or all of them, refuse to cooperate in available, appropriate intervention aimed at reunifying the family; or

(c) The department has exhausted all available and appropriate resources that would result in reunification.

(5) The court shall terminate a placement made under this section upon the request of a parent unless the placement is made pursuant to RCW 13.32A.179(3).

(6) The court may dismiss a child in need of services petition filed by a parent at any time if the court finds good cause to believe that continuation of out-of-home placement would serve no useful purpose.

(7) The court shall dismiss a child in need of services proceeding if the child is the subject of a proceeding under chapter 13.34 RCW.

Sec. 26. RCW 13.32A.192 and 1995 c 312 s 26 are each amended to read as follows:

(1) When a proper at-risk youth petition is filed by a child's parent under this chapter, the juvenile court shall:

(a)(i) Schedule a fact-finding hearing to be held: (A) For a child who is in a center or a child who is not residing at home, nor in an out-of-home placement, within ((three-judicial)) five calendar days unless the last calendar day is a Saturday, Sunday, or holiday, in which case the hearing shall be held on the

preceding judicial day; or (B) for any other child, within ten days; and (ii) notify the parent and the child of such date;

(b) Notify the parent of the right to be represented by counsel at the parent's own expense;

(c) Appoint legal counsel for the child;

(d) Inform the child and his or her parent of the legal consequences of the court finding the child to be an at-risk youth; and

(e) Notify the parent and the child of their rights to present evidence at the fact-finding hearing.

(2) Unless out-of-home placement of the child is otherwise authorized or required by law, the child shall reside in the home of his or her parent or in an out-of-home placement requested by the parent or child and approved by the parent.

(3) If upon sworn written or oral declaration of the petitioning parent, the court has reason to believe that a child has willfully and knowingly violated a court order issued pursuant to subsection (2) of this section, the court may issue an order directing law enforcement to take the child into custody and place the child in a juvenile detention facility or in a secure facility within a crisis residential center. If the child is placed in detention, a review shall be held as provided in RCW 13.32A.065.

(4) If both a child in need of services petition and an at-risk youth petition have been filed with regard to the same child, the petitions and proceedings shall be consolidated as an at-risk youth petition. Pending a fact-finding hearing regarding the petition, the child may be placed in the parent's home or in an out-of-home placement if not already placed in a temporary out-of-home placement pursuant to a child in need of services petition. The child or the parent may request a review of the child's placement including a review of any court order requiring the child to reside in the parent's home.

Sec. 27. RCW 13.32A.194 and 1995 c 312 s 27 are each amended to read as follows:

(1) The court shall hold a fact-finding hearing to consider a proper at-risk youth petition. The court shall grant the petition and enter an order finding the child to be an at-risk youth if the allegations in the petition are established by a preponderance of the evidence, unless the child is the subject of a proceeding under chapter 13.34 RCW. If the petition is granted, the court shall enter an order requiring the child to reside in the home of his or her parent or in an out-of-home placement as provided in RCW 13.32A.192(2).

(2) The court may order the department to submit a dispositional plan if such a plan would assist the court in ordering a suitable disposition in the case. If the court orders the department to prepare a plan, the department shall provide copies of the plan to the parent, the child, and the court. If the parties or the court desire the department to be involved in any future proceedings or case plan development, the department shall be provided timely notification of all court hearings.

(3) A dispositional hearing shall be held no later than fourteen days after the ~~((court has granted an at-risk youth petition))~~ fact-finding hearing. Each party shall be notified of the time and date of the hearing.

(4) If the court grants or denies an at-risk youth petition, a statement of the written reasons shall be entered into the records. If the court denies an at-risk youth petition, the court shall verbally advise the parties that the child is required to remain within the care, custody, and control of his or her parent.

Sec. 28. RCW 13.32A.250 and 1995 c 312 s 29 are each amended to read as follows:

(1) In all child in need of services proceedings and at-risk youth proceedings, the court shall verbally notify the parents and the child of the possibility of a finding of contempt for failure to comply with the terms of a court order entered pursuant to this chapter. Except as otherwise provided in this section, the court shall treat the parents and the child equally for the purposes of applying contempt of court processes and penalties under this section.

(2) Failure by a party to comply with an order entered under this chapter is a contempt of court as provided in chapter 7.21 RCW, subject to the limitations of subsection (3) of this section.

(3) The court may impose a fine of up to one hundred dollars and confinement for up to seven days, or both for contempt of court under this section.

(4) A child placed in confinement for contempt under this section shall be placed in confinement only in a secure juvenile detention facility operated by or pursuant to a contract with a county.

(5) A motion for contempt may be made by a parent, a child, juvenile court personnel, or by any public agency, organization, or person having custody of the child under a court order adopted pursuant to this chapter.

(6) Whenever the court finds probable cause to believe, based upon consideration of a motion for contempt and the information set forth in a supporting declaration, that a child has violated a placement order entered under this chapter, the court may issue an order directing law enforcement to pick up and take the child to detention. The order may be entered ex parte without prior notice to the child or other parties. Following the child's admission to detention, a detention review hearing must be held in accordance with RCW 13.32A.065.

Sec. 29. RCW 13.34.165 and 1989 c 373 s 17 are each amended to read as follows:

(1) Failure by a party to comply with an order entered under this chapter is contempt of court as provided in chapter 7.21 RCW.

(2) The maximum term of imprisonment that may be imposed as a punitive sanction for contempt of court under this section is confinement for up to seven days.

(3) A child imprisoned for contempt under this section shall be confined only in a secure juvenile detention facility operated by or pursuant to a contract with a county.

(4) A motion for contempt may be made by a parent, juvenile court personnel, or by any public agency, organization, or person having custody of the child under a court order entered pursuant to this chapter.

(5) Whenever the court finds probable cause to believe, based upon consideration of a motion for contempt and the information set forth in a supporting declaration, that a child has violated a placement order entered under this chapter, the court may issue an order directing law enforcement to pick up and take the child to detention. The order may be entered ex parte without prior notice to the child or other parties. Following the child's admission to detention, a detention review hearing must be held in accordance with RCW 13.32A.065.

**Sec. 30. RCW 28A.225.030 and 1995 c 312 s 68 are each amended to read as follows:*

If the actions taken by a school district under RCW 28A.225.020 are not successful in substantially reducing an enrolled student's absences from school, upon the fifth unexcused absence by a child within any month during the current school year or upon the tenth unexcused absence during the current school year the school district shall file a petition for a civil action with the juvenile court alleging a violation of RCW 28A.225.010: (1) By the parent; (2) by the child; or (3) by the parent and the child.

If the school district fails to file a petition under this section, the parent of a child with five or more unexcused absences in any month during the current school year or upon the tenth unexcused absence during the current school year may file a petition with the juvenile court alleging a violation of RCW 28A.225.010.

**Sec. 30 was vetoed. See message at end of chapter.*

Sec. 31. RCW 28A.225.035 and 1995 c 312 s 69 are each amended to read as follows:

(1) A petition for a civil action under RCW 28A.225.030 shall consist of a written notification to the court alleging that:

(a) The child has five or more unexcused absences within any month during the current school year or ten or more unexcused absences in the current school year;

(b) Actions taken by the school district have not been successful in substantially reducing the child's absences from school; and

(c) Court intervention and supervision are necessary to assist the school district or parent to reduce the child's absences from school.

(2) The petition shall set forth the name, age, school, and residence of the child and the names and residence of the child's parents.

(3) The petition shall set forth facts that support the allegations in this section and shall generally request relief available under this chapter.

(4) When a petition is filed under RCW 28A.225.030, the juvenile court may:

(a) Schedule a fact-finding hearing at which the court shall consider the petition;

(b) Separately notify the child, the parent of the child, and the school district of the fact-finding hearing;

(c) Notify the parent and the child of their rights to present evidence at the fact-finding hearing; and

(d) Notify the parent and the child of the options and rights available under chapter 13.32A RCW.

(5) The court may require the attendance of both the child and the parents at any hearing on a petition filed under RCW 28A.225.030.

(6) The court shall grant the petition and enter an order assuming jurisdiction to intervene for the remainder of the school year, if the allegations in the petition are established by a preponderance of the evidence.

(7) If the court assumes jurisdiction, the school district shall regularly report to the court any additional unexcused absences by the child.

Sec. 32. RCW 28A.225.090 and 1995 c 312 s 74 are each amended to read as follows:

Any person violating any of the provisions of either RCW 28A.225.010 or 28A.225.080 shall be fined not more than twenty-five dollars for each day of unexcused absence from school. However, a child found to be in violation of RCW 28A.225.010 shall be required to attend school and shall not be fined. If the child fails to comply with the court order to attend school, the court may: (1) Order the child be punished by detention; or (2) impose alternatives to detention such as community service hours or participation in dropout prevention programs or referral to a community truancy board, if available. Failure by a child to comply with an order issued under this section shall not be punishable by detention for a period greater than that permitted pursuant to a civil contempt proceeding against a child under chapter 13.32A RCW. It shall be a defense for a parent charged with violating RCW 28A.225.010 to show that he or she exercised reasonable diligence in attempting to cause a child in his or her custody to attend school or that the child's school did not perform its duties as required in RCW 28A.225.020. The court may order the parent to provide community service at the child's school instead of imposing a fine. Any fine imposed pursuant to this section may be suspended upon the condition that a parent charged with violating RCW 28A.225.010 shall participate with the school and the child in a supervised plan for the child's attendance at school or upon condition that the parent attend a conference or conferences scheduled by a school for the purpose of analyzing the causes of a child's absence.

School districts shall make complaint for violation of the provisions of RCW 28A.225.010 through 28A.225.140 to a judge of the juvenile court.

Sec. 33. RCW 70.96A.020 and 1994 c 231 s 1 are each amended to read as follows:

For the purposes of this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Alcoholic" means a person who suffers from the disease of alcoholism.

(2) "Alcoholism" means a disease, characterized by a dependency on alcoholic beverages, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(3) "Approved treatment program" means a discrete program of chemical dependency treatment provided by a treatment program certified by the department of social and health services as meeting standards adopted under this chapter.

(4) "Chemical dependency" means alcoholism or drug addiction, or dependence on alcohol and one or more other psychoactive chemicals, as the context requires.

(5) "Chemical dependency program" means expenditures and activities of the department designed and conducted to prevent or treat alcoholism and other drug addiction, including reasonable administration and overhead.

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

(7) "Designated chemical dependency specialist" means a person designated by the county alcoholism and other drug addiction program coordinator designated under RCW 70.96A.310 to perform the commitment duties described in RCW 70.96A.140 and qualified to do so by meeting standards adopted by the department.

(8) "Director" means the person administering the chemical dependency program within the department.

(9) "Drug addict" means a person who suffers from the disease of drug addiction.

(10) "Drug addiction" means a disease characterized by a dependency on psychoactive chemicals, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(11) "Emergency service patrol" means a patrol established under RCW 70.96A.170.

(12) "Gravely disabled by alcohol or other drugs" means that a person, as a result of the use of alcohol or other drugs: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by a repeated and escalating loss of cognition or volitional control over his or her actions and is not receiving care as essential for his or her health or safety.

(13) "Incapacitated by alcohol or other psychoactive chemicals" means that a person, as a result of the use of alcohol or other psychoactive chemicals, has his or her judgment so impaired that he or she is incapable of realizing and making a rational decision with respect to his or her need for treatment and presents a likelihood of serious harm to himself or herself, to any other person, or to property.

(14) "Incompetent person" means a person who has been adjudged incompetent by the superior court.

(15) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or other psychoactive chemicals.

(16) "Licensed physician" means a person licensed to practice medicine or osteopathy in the state of Washington.

(17) "Likelihood of serious harm" means either: (a) A substantial risk that physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's self; (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior that has caused the harm or that places another person or persons in reasonable fear of sustaining the harm; or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others.

(18) "Minor" means a person less than eighteen years of age.

(19) "Parent" means the parent or parents who have the legal right to custody of the child. Parent includes custodian or guardian.

(20) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment.

~~((20))~~ (21) "Person" means an individual, including a minor.

~~((21))~~ (22) "Secretary" means the secretary of the department of social and health services.

~~((22))~~ (23) "Treatment" means the broad range of emergency, detoxification, residential, and outpatient services and care, including diagnostic evaluation, chemical dependency education and counseling, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons.

~~((23))~~ (24) "Treatment program" means an organization, institution, or corporation, public or private, engaged in the care, treatment, or rehabilitation of alcoholics or other drug addicts.

Sec. 34. RCW 70.96A.095 and 1995 c 312 s 47 are each amended to read as follows:

(1) Any person thirteen years of age or older may give consent for himself or herself to the furnishing of ~~((counseling, care,))~~ outpatient treatment ~~((or rehabilitation))~~ by a chemical dependency treatment program ~~((or by any person))~~ certified by the department. Consent of the parent ~~((, parents, or legal guardian))~~ of a person less than eighteen years of age for inpatient treatment is ~~((not))~~ necessary to authorize the care ~~((, except that the person shall not become a resident of the treatment program without such permission except as provided in RCW 70.96A.120 or 70.96A.140))~~ unless the child meets the definition of a child in need of services in RCW 13.32A.030(4)(c), as determined by the department. Parental authorization is required for any treatment of a minor under the age of thirteen. The parent ~~((, parents, or legal guardian))~~ of a ~~((person less than eighteen years of age are))~~ minor is not liable for payment of care for such persons pursuant to this chapter, unless they have joined in the consent to the ~~((counseling, care,))~~ treatment ~~((, or rehabilitation))~~.

(2) The parent of any minor child may apply to ~~((an approved))~~ a certified treatment program for the admission of his or her minor child for purposes authorized in this chapter. The consent of the minor child shall not be required for the application or admission. The ~~((approved))~~ certified treatment program shall accept the application and evaluate the child for admission. The ability of a parent to apply to ~~((an approved))~~ a certified treatment program for the ~~((involuntary))~~ admission of his or her minor child does not create a right to obtain or benefit from any funds or resources of the state. However, the state may provide services for indigent minors to the extent that funds are available therefor.

(3) Any provider of outpatient treatment who provides outpatient treatment to a minor thirteen years of age or older shall provide notice of the minor's request for treatment to the minor's parents if: (a) The minor signs a written consent authorizing the disclosure; or (b) the treatment program director determines that the minor lacks capacity to make a rational choice regarding consenting to disclosure. The notice shall be made within seven days of the request for treatment, excluding Saturdays, Sundays, and holidays, and shall contain the name, location, and telephone number of the facility providing treatment, and the name of a professional person on the staff of the facility providing treatment who is designated to discuss the minor's need for treatment with the parent.

**Sec. 35. RCW 71.34.030 and 1995 c 312 s 52 are each amended to read as follows:*

(1)(a) Any minor thirteen years or older may request and receive outpatient treatment without the consent of the minor's parent. Parental authorization is required for outpatient treatment of a minor under the age of thirteen.

(b) Any provider of outpatient treatment for a minor thirteen years of age or older shall provide notice of the treatment to the minor's parents. The notice shall be made upon the completion of the child's second visit for

treatment, and shall contain the name, location, and telephone number of the mental health care provider who is designated to discuss the minor's need for treatment with the parent.

(c) A treatment provider may defer notification to a parent of a minor's request for treatment if: (i) The minor alleges physical or sexual abuse by the parent and the treatment provider notifies the department of the alleged abuse. Upon completion of its assessment of the allegation, the department shall notify the treatment provider of its findings. If the department determines the allegation is not valid, the treatment provider shall immediately notify the parent of the minor's treatment. If the department determines the allegation is valid, the treatment provider need not provide notice to the parent; or (ii) the provider believes the parental notification will interfere with the necessary treatment for the minor. If the provider believes the notification will interfere with the necessary treatment, the provider shall notify the department. The department shall review the circumstances and pursue either a child in need of services petition, if the child meets the definition under RCW 13.32A.030(4)(c), or a dependency petition under chapter 13.34 RCW, if the child meets the definition of a dependent child under RCW 13.34.030(4). If the department determines neither petition is appropriate it shall immediately inform the provider, who shall notify the parent of the treatment within twenty-four hours or after the second visit for treatment, whichever is later.

(2) When in the judgment of the professional person in charge of an evaluation and treatment facility there is reason to believe that a minor is in need of inpatient treatment because of a mental disorder, and the facility provides the type of evaluation and treatment needed by the minor, and it is not feasible to treat the minor in any less restrictive setting or the minor's home, the minor may be admitted to an evaluation and treatment facility in accordance with the following requirements:

(a) A minor may be voluntarily admitted by application of the parent. The consent of the minor is not required for the minor to be evaluated and admitted as appropriate.

(b) A minor thirteen years or older may, with the concurrence of the professional person in charge of an evaluation and treatment facility, admit himself or herself without parental consent to the evaluation and treatment facility, provided that notice is given by the facility to the minor's parent in accordance with the following requirements:

(i) Notice of the minor's admission shall be in the form most likely to reach the parent within twenty-four hours of the minor's voluntary admission and shall advise the parent that the minor has been admitted to inpatient treatment; the location and telephone number of the facility providing such treatment; and the name of a professional person on the staff of the facility providing treatment who is designated to discuss the minor's need for inpatient treatment with the parent.

(ii) The minor shall be released to the parent at the parent's request for release unless the facility files a petition with the superior court of the county in which treatment is being provided setting forth the basis for the facility's belief that the minor is in need of inpatient treatment and that release would constitute a threat to the minor's health or safety.

(iii) The petition shall be signed by the professional person in charge of the facility or that person's designee.

(iv) The parent may apply to the court for separate counsel to represent the parent if the parent cannot afford counsel.

(v) There shall be a hearing on the petition, which shall be held within three judicial days from the filing of the petition.

(vi) The hearing shall be conducted by a judge, court commissioner, or licensed attorney designated by the superior court as a hearing officer for such hearing. The hearing may be held at the treatment facility.

(vii) At such hearing, the facility must demonstrate by a preponderance of the evidence presented at the hearing that the minor is in need of inpatient treatment and that release would constitute a threat to the minor's health or safety. The hearing shall not be conducted using the rules of evidence, and the admission or exclusion of evidence sought to be presented shall be within the exercise of sound discretion by the judicial officer conducting the hearing.

(c) Written renewal of voluntary consent must be obtained from the applicant no less than once every twelve months.

(d) The minor's need for continued inpatient treatments shall be reviewed and documented no less than every one hundred eighty days.

(3) A notice of intent to leave shall result in the following:

(a) Any minor under the age of thirteen must be discharged immediately upon written request of the parent.

(b) Any minor thirteen years or older voluntarily admitted may give notice of intent to leave at any time. The notice need not follow any specific form so long as it is written and the intent of the minor can be discerned.

(c) The staff member receiving the notice shall date it immediately, record its existence in the minor's clinical record, and send copies of it to the minor's attorney, if any, the county-designated mental health professional, and the parent.

(d) The professional person in charge of the evaluation and treatment facility shall discharge the minor, thirteen years or older, from the facility within twenty-four hours after receipt of the minor's notice of intent to leave, unless the county-designated mental health professional or a parent or legal guardian files a petition or an application for initial detention within the time prescribed by this chapter.

(4) The ability of a parent to apply to a certified evaluation and treatment program for the involuntary admission of his or her minor child does not create a right to obtain or benefit from any funds or resources of the state.

However, the state may provide services for indigent minors to the extent that funds are available therefor.

*Sec. 35 was vetoed. See message at end of chapter.

Sec. 36. RCW 71.34.035 and 1995 c 312 s 58 are each amended to read as follows:

The department shall randomly select and review the information on children who are admitted to (~~in-patient~~) inpatient treatment on application of the child's parent regardless of the source of payment, if any. The review shall determine whether the children reviewed were appropriately admitted into treatment based on an objective evaluation of the child's condition and the outcome of the child's treatment.

Sec. 37. RCW 74.13.036 and 1995 c 312 s 65 are each amended to read as follows:

(1) The department of social and health services shall oversee implementation of chapter 13.34 RCW and chapter 13.32A RCW. The oversight shall be comprised of working with affected parts of the criminal justice and child care systems as well as with local government, legislative, and executive authorities to effectively carry out these chapters. The department shall work with all such entities to ensure that chapters 13.32A and 13.34 RCW are implemented in a uniform manner throughout the state.

(2) The department shall develop a plan and procedures, in cooperation with the state-wide advisory committee, to insure the full implementation of the provisions of chapter 13.32A RCW. Such plan and procedures shall include but are not limited to:

(a) Procedures defining and delineating the role of the department and juvenile court with regard to the execution of the child in need of services placement process;

(b) Procedures for designating department staff responsible for family reconciliation services;

(c) Procedures assuring enforcement of contempt proceedings in accordance with RCW 13.32A.170 and 13.32A.250; and

(d) Procedures for the continued education of all individuals in the criminal juvenile justice and child care systems who are affected by chapter 13.32A RCW, as well as members of the legislative and executive branches of government.

There shall be uniform application of the procedures developed by the department and juvenile court personnel, to the extent practicable. Local and regional differences shall be taken into consideration in the development of procedures required under this subsection.

(3) In addition to its other oversight duties, the department shall:

(a) Identify and evaluate resource needs in each region of the state;

(b) Disseminate information collected as part of the oversight process to affected groups and the general public;

(c) Educate affected entities within the juvenile justice and child care systems, local government, and the legislative branch regarding the implementation of chapters 13.32A and 13.34 RCW;

(d) Review complaints concerning the services, policies, and procedures of those entities charged with implementing chapters 13.32A and 13.34 RCW; and

(e) Report any violations and misunderstandings regarding the implementation of chapters 13.32A and 13.34 RCW.

(4) The secretary shall submit a quarterly report to the appropriate local government entities.

(5) The department shall provide an annual report to the legislature not later than December 1, indicating the number of times it has declined to accept custody of a child from a law enforcement agency under chapter 13.32A RCW and the number of times it has received a report of a child being released without placement under RCW 13.32A.060(1)(c). The report shall include the dates, places, and reasons the department declined to accept custody and the dates and places children are released without placement.

NEW SECTION. Sec. 38. It is the intent of the legislature that the changes in this act be construed to expedite the administrative and judicial processes provided for in the existing and amended statutes to assist in assuring that children placed in a crisis residential center have an appropriate placement available to them at the conclusion of their stay at the center.

NEW SECTION. Sec. 39. A new section is added to chapter 74.13 RCW to read as follows:

Within available funds appropriated for this purpose, the department shall establish, by contracts with private vendors, transitional living programs for dependent youth who are being assisted by the department in being emancipated as part of their permanency plan under chapter 13.34 RCW. These programs shall be licensed under rules adopted by the department.

Passed the House March 4, 1996.

Passed the Senate February 29, 1996.

Approved by the Governor March 22, 1996, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 22, 1996.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 4, 30, and 35, Engrossed Second Substitute House Bill No. 2217 entitled:

"AN ACT Relating to at-risk youth;"

My reasons for vetoing these sections are as follows:

Section 4 - Violation of Shelter Notification as a Misdemeanor Offense

Section 4 establishes penalties for violations of the requirement that shelter providers report the location of a known runaway to the youth's parents, local law enforcement, or the Department of Social and Health Services (DSHS) within 8 hours. It provides that a violation by a licensed child-serving agency shall be addressed as a licensing violation

under RCW 74.15. It also provides that a violation by any other person is a misdemeanor or offense.

I agree that a violation by a licensed child-serving agency should be addressed as a licensing violation. I also agree that it is appropriate to subject those persons who shelter runaway youths for the purpose of exploiting them to criminal sanctions for failure to report a youth's whereabouts. While I applaud the intent of this section to provide law enforcement with an additional tool for prosecuting those who would prey upon our youth, I have strong concerns about its overbreadth. Unwitting family members and friends who, in good faith attempt to provide youths with a safe alternative to the street, are also subject to criminal prosecution under this section. Also subject to criminal prosecution are drop-in day centers which are not required to be licensed because they do not provide overnight shelter. I fear that the effect of this section will be to drive troubled youths underground, out of the reach of help, and into the hands of those who would exploit them.

Existing law provides law enforcement with a number of tools for prosecuting persons who illegally shelter or exploit youths. Under RCW 13.32A.080, it is a gross misdemeanor offense to harbor a minor unlawfully. RCW 9A.44 provides criminal penalties for the rape of a child. An adult responsible for involving a youth in the commission of a criminal offense may be prosecuted under several statutes, including: RCW 69.50.406, distribution of a controlled substance to a minor; RCW 9A.88.070, promoting prostitution of a minor; and RCW 9A.08.020, complicity of an adult in the crime of a minor. These tools afford law enforcement with significant ability to prosecute and punish those adults who exploit or abuse runaway youths.

Section 30 - Truancy Petitions

Section 30 adds clarifying language to RCW 28A.225.030. This section was also amended in Engrossed Substitute House Bill No. 2640 which includes fundamentally the same language as well as other substantive changes, which for clarity of code revision, are not properly merged with this section. The language and effect of section 30 are not lost by this technical veto.

Section 35 - Outpatient Mental Health Treatment: Parental Notification

Section 35 requires a provider of mental health outpatient treatment to notify the parents of a minor patient, age 13 years or older, of the provision of treatment to the minor upon completion of his or her second visit. A treatment provider may defer notification in two situations. The first situation is where the youth alleges parental abuse or neglect. In that case, the provider must notify DSHS for the purpose of initiating an investigation. If DSHS determines the allegation is not valid, then the provider must immediately notify the parent of the child's treatment. The second situation is if the provider believes the notification will interfere with the provision of treatment. In that case, the provider must notify DSHS, and DSHS must pursue either a dependency or a Child In Need of Services (CHINS) petition. If the department determines that neither petition is appropriate, then it shall notify the provider who, in turn, must notify the parent of the treatment.

In an attempt to avoid creating a barrier to initial treatment, this section delays the parental notification requirement until the completion of a youth's second visit. In addition, in an effort to provide safety for youths in unsafe homes and to avoid interfering with the provision of treatment, this section allows a treatment provider to defer parental notification in certain situations. While I am pleased that this section acknowledges the need to maintain confidentiality in some situations, I do not believe the confidentiality safeguards set forth are sufficient to ensure that young people will feel safe seeking needed treatment.

First, I am concerned that despite the intent, the second visit notification requirement will have a chilling effect on young people seeking or continuing outpatient treatment. Providers will be compelled by their ethical responsibilities to advise youths at their first visit that the provider must break confidentiality upon completion of their second visit.

Young people who, for whatever reason, fear their parents' learning of their participation in treatment are not likely to pursue treatment further. In some cases, a young person's ability to access treatment may mean the difference between life and death. Current clinical practice seeks to involve the family at the earliest appropriate point. The issue here is not whether parents should be notified of their child's treatment, but when and how. Taking this clinical decision out of the hands of the mental health professionals is simply contrary to a young person's best interest.

Second, while this section exempts from notification those youths a court finds have been abused or neglected or who are without a functional parent, it does require notification for all other young people. The need for confidentiality must not be limited to young people who have been abused or neglected or who are lacking a functional parent. The need for confidentiality encompasses all young people who fear their parents' real or anticipated reactions to their participation in mental health treatment. Our goal should be to maintain young people's access to confidential outpatient treatment in order to provide a safe place where they may find help and begin preparing themselves for addressing their problems with their family.

Finally, I believe that our confidentiality rules for substance abuse and mental health outpatient treatment should be mutually consistent. Pursuant to federal law, parental notification for substance abuse outpatient treatment is permissible only upon a youth's written consent or a determination that the youth lacks the capacity to consent. There is no reason to treat parental notification for mental health outpatient treatment any differently.

For these reasons, I have vetoed sections 4, 30, and 35 of Engrossed Second Substitute House Bill No. 2217.

With the exception of sections 4, 30, and 35, Engrossed Second Substitute House Bill No. 2217 is approved."

CHAPTER 134

[Engrossed Substitute House Bill 2640]

SCHOOL ATTENDANCE

AN ACT Relating to school attendance; amending RCW 28A.225.010, 28A.225.020, 28A.225.030, 28A.225.035, 28A.225.151, 28A.225.090, 4.08.050, and 28A.225.025; adding a new section to chapter 2.56 RCW; adding a new section to chapter 28A.225 RCW; creating a new section; prescribing penalties; and providing an expiration date.

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

Sec. 1. RCW 28A.225.010 and 1990 c 33 s 219 are each amended to read as follows:

(1) All parents in this state of any child eight years of age and under eighteen years of age shall cause such child to attend the public school of the district in which the child resides and such child shall have the responsibility to and therefore shall attend for the full time when such school may be in session unless:

(a) The child is attending an approved private school for the same time or is enrolled in an extension program as provided in RCW 28A.195.010(4);

(b) The child is receiving home-based instruction as provided in subsection (4) of this section; (~~(c)~~)

(c) The child is attending an education center as provided in chapter 28A.205 RCW;

(d) The school district superintendent of the district in which the child resides shall have excused such child from attendance because the child is

physically or mentally unable to attend school, is attending a residential school operated by the department of social and health services, or has been temporarily excused upon the request of his or her parents for purposes agreed upon by the school authorities and the parent: PROVIDED, That such excused absences shall not be permitted if deemed to cause a serious adverse effect upon the student's educational progress: PROVIDED FURTHER, That students excused for such temporary absences may be claimed as full time equivalent students to the extent they would otherwise have been so claimed for the purposes of RCW 28A.150.250 and 28A.150.260 and shall not affect school district compliance with the provisions of RCW 28A.150.220; or

~~((d))~~ (e) The child is ~~((fifteen))~~ sixteen years of age or older:

(i) ~~((The school district superintendent determines that such child has already attained a reasonable proficiency in the branches required by law to be taught in the first nine grades of the public schools of this state;~~

~~((ii))~~ The child is regularly and lawfully ~~((engaged in a useful or remunerative occupation))~~ employed and either the parent agrees that the child should not be required to attend school or the child is emancipated in accordance with chapter 13.64 RCW;

~~((iii))~~ (ii) The child has already met graduation requirements in accordance with state board of education rules and regulations; or

~~((iv))~~ (iii) The child has received a certificate of educational competence under rules and regulations established by the state board of education under RCW 28A.305.190.

(2) A parent for the purpose of this chapter means a parent, guardian, or person having legal custody of a child.

(3) An approved private school for the purposes of this chapter and chapter 28A.200 RCW shall be one approved under regulations established by the state board of education pursuant to RCW 28A.305.130.

(4) For the purposes of this chapter and chapter 28A.200 RCW, instruction shall be home-based if it consists of planned and supervised instructional and related educational activities, including a curriculum and instruction in the basic skills of occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of an appreciation of art and music, provided for a number of hours equivalent to the total annual program hours per grade level established for approved private schools under RCW 28A.195.010 and 28A.195.040 and if such activities are:

(a) Provided by a parent who is instructing his or her child only and are supervised by a certificated person. A certificated person for purposes of this chapter and chapter 28A.200 RCW shall be a person certified under chapter 28A.410 RCW. For purposes of this section, "supervised by a certificated person" means: The planning by the certificated person and the parent of objectives consistent with this subsection; a minimum each month of an average of one contact hour per week with the child being supervised by the certificated person; and evaluation of such child's progress by the certificated person. The

number of children supervised by the certificated person shall not exceed thirty for purposes of this subsection; or

(b) Provided by a parent who is instructing his or her child only and who has either earned forty-five college level quarter credit hours or its equivalent in semester hours or has completed a course in home-based instruction at a postsecondary institution or a vocational-technical institute; or

(c) Provided by a parent who is deemed sufficiently qualified to provide home-based instruction by the superintendent of the local school district in which the child resides.

(5) The legislature recognizes that home-based instruction is less structured and more experiential than the instruction normally provided in a classroom setting. Therefore, the provisions of subsection (4) of this section relating to the nature and quantity of instructional and related educational activities shall be liberally construed.

Sec. 2. RCW 28A.225.020 and 1995 c 312 s 67 are each amended to read as follows:

(1) If a child required to attend school under ~~((the laws of the state of Washington))~~ RCW 28A.225.010 fails to attend school without valid justification, the ~~((child's))~~ public school in which the child is enrolled shall:

~~((1))~~ (a) Inform the child's custodial parent, parents, or guardian by a notice in writing or by telephone whenever the child has failed to attend school after one unexcused absence within any month during the current school year. School officials shall inform the parent of the potential consequences of additional unexcused absences;

~~((2))~~ (b) Schedule a conference or conferences with the custodial parent, parents, or guardian and child at a time ~~((and place))~~ reasonably convenient for all persons included for the purpose of analyzing the causes of the child's absences after two unexcused absences within any month during the current school year. If a regularly scheduled parent-teacher conference day is to take place within thirty days of the second unexcused absence, then the school district may schedule this conference on that day; and

~~((3))~~ (c) Take steps to eliminate or reduce the child's absences. These steps shall include, where appropriate, adjusting the child's school program or school or course assignment, providing more individualized or remedial instruction, providing appropriate vocational courses or work experience, ~~((or refer))~~ referring the child to a community truancy board, requiring the child to attend an alternative school or program, or assisting the parent or child to obtain supplementary services that might eliminate or ameliorate the cause or causes for the absence from school. If the child's parent does not attend the scheduled conference, the conference may be conducted with the student and school official. However, the parent shall be notified of the steps to be taken to eliminate or reduce the child's absence.

(2) For purposes of this chapter, an "unexcused absence" means that a child:

- (a) Has failed to attend the majority of hours or periods in an average school day or has failed to comply with a more restrictive school district policy; and
(b) Has failed to meet the school district's policy for excused absences.

Sec. 3. RCW 28A.225.030 and 1995 c 312 s 68 are each amended to read as follows:

(1) If a child is required to attend school under RCW 28A.225.010 and if the actions taken by a school district under RCW 28A.225.020 are not successful in substantially reducing an enrolled student's absences from public school, (~~upon the fifth~~) not later than the seventh unexcused absence by a child within any month during the current school year or (~~upon~~) not later than the tenth unexcused absence during the current school year the school district shall file a petition and supporting affidavit for a civil action with the juvenile court alleging a violation of RCW 28A.225.010: ((+)) (a) By the parent; ((-)) (b) by the child; or ((-)) (c) by the parent and the child. Except as provided in this subsection, no additional documents need be filed with the petition.

(2) The district shall not later than the fifth unexcused absence in a month:

(a) Enter into an agreement with a student and parent that establishes school attendance requirements;

(b) Refer a student to a community truancy board as defined in RCW 28A.225.025. The community truancy board shall enter into an agreement with the student and parent that establishes school attendance requirements and take other appropriate actions to reduce the child's absences; or

(c) File a petition under subsection (1) of this section.

(3) The petition may be filed by a school district employee who is not an attorney.

(4) If the school district fails to file a petition under this section, the parent of a child with five or more unexcused absences in any month during the current school year or upon the tenth unexcused absence during the current school year may file a petition with the juvenile court alleging a violation of RCW 28A.225.010.

Sec. 4. RCW 28A.225.035 and 1995 c 312 s 69 are each amended to read as follows:

(1) A petition for a civil action under RCW 28A.225.030 shall consist of a written notification to the court alleging that:

(a) The child has ~~((five or more))~~ unexcused absences ~~((within any month))~~ during the current school year ~~((or ten or more unexcused absences in the current school year))~~;

(b) Actions taken by the school district have not been successful in substantially reducing the child's absences from school; and

(c) Court intervention and supervision are necessary to assist the school district or parent to reduce the child's absences from school.

(2) The petition shall set forth the name, age, school, and residence of the child and the names and residence of the child's parents.

(3) The petition shall set forth facts that support the allegations in this section and shall generally request relief available under this chapter.

(4) When a petition is filed under RCW 28A.225.030, the juvenile court ~~((may:))~~

~~—((a)) shall schedule a ((fact-finding)) hearing at which the court shall consider the petition((s)). However, a hearing shall not be required if other actions by the court would substantially reduce the child's unexcused absences.~~

~~((b)) When a hearing is held, the court shall:~~

~~(a) Separately notify the child, the parent of the child, and the school district of the ((fact-finding)) hearing;~~

~~((c)) (b) Notify the parent and the child of their rights to present evidence at the ((fact-finding)) hearing; and~~

~~((d)) (c) Notify the parent and the child of the options and rights available under chapter 13.32A RCW.~~

(5) The court may require the attendance of both the child and the parents at any hearing on a petition filed under RCW 28A.225.030.

(6) The court may permit the first hearing to be held without requiring that either party be represented by legal counsel, and to be held without a guardian ad litem for the child under RCW 4.08.050. At the request of the school district, the court may permit a school district representative who is not an attorney to represent the school district at any future hearings.

(7) The court shall grant the petition and enter an order assuming jurisdiction to intervene for the remainder of the school year, if the allegations in the petition are established by a preponderance of the evidence.

~~((7)) (8) If the court assumes jurisdiction, the school district shall regularly report to the court any additional unexcused absences by the child.~~

(9) Community truancy boards and the courts shall coordinate, to the extent possible, proceedings and actions pertaining to children who are subject to truancy petitions and at-risk youth petitions in RCW 13.32A.191 or child in need of services petitions in RCW 13.32A.140.

Sec. 5. RCW 28A.225.151 and 1995 c 312 s 72 are each amended to read as follows:

(1) As required under subsection (2) of this section, each school shall document the actions taken under RCW ~~((28A.225.020 and))~~ 28A.225.030 and report this information ~~((at the end of each grading period))~~ to the school district superintendent who shall compile the data for all the schools in the district and prepare an annual school district report for each school year and submit the report to the superintendent of public instruction. The reports shall be made upon forms furnished by the superintendent of public instruction and shall be transmitted as determined by the superintendent of public instruction.

(2) The reports under subsection (1) of this section shall include:

(a) The number of enrolled students and the number of ~~((excused and))~~ unexcused absences;

(b) Documentation of the steps taken by the school district under each subsection of RCW 28A.225.020 at the request of the superintendent of public instruction. Each year, by May 1st, the superintendent of public instruction shall select ten school districts to submit the report at the end of the following school year. The ten districts shall represent different areas of the state and be of varied sizes. In addition, the superintendent of public instruction shall require any district that fails to keep appropriate records to submit a full report to the superintendent of public instruction under this subsection. All school districts shall document steps taken under RCW 28A.225.020 in each student's record, and make those records available upon request consistent with the laws governing student records;

(c) The number of enrolled students with ten or more unexcused absences in a school year or five or more unexcused absences in a month during a school year;

~~(d) ((Documentation of success by the school district in substantially reducing enrolled student absences for students with five or more absences in any month or ten or more unexcused absences in any school year))~~ A description of any programs or schools developed to serve students who have had five or more unexcused absences in a month or ten in a year including information about the number of students in the program or school and the number of unexcused absences of students during and after participation in the program. The school district shall also describe any placements in an approved private nonsectarian school or program or certified program under a court order under RCW 28A.225.090; and

(e) The number of petitions filed by a school district ~~((or a parent))~~ with the juvenile court~~((; and~~

~~— (f) The disposition of cases filed with the juvenile court, including the frequency of contempt orders issued to enforce a court's order under RCW 28A.225.090)).~~

(3) A report required under this section shall not disclose the name or other identification of a child or parent.

(4) The superintendent of public instruction shall collect these reports from all school districts and prepare an annual report for each school year to be submitted to the legislature no later than December 15th of each year.

Sec. 6. RCW 28A.225.090 and 1995 c 312 s 74 are each amended to read as follows:

~~((Any person violating any of the provisions of either RCW 28A.225.010 or 28A.225.080 shall be fined not more than twenty five dollars for each day of unexcused absence from school. However, a child found to be in violation of RCW 28A.225.010 shall be required to attend school and shall not be fined. If the child fails to comply with the court order to attend school, the)) (1) A court may~~((; (1) Order the child be punished by detention; or (2) impose alternatives to detention such as community service hours or participation in))~~ order a child subject to a petition under RCW 28A.225.035 to:~~

(a) Attend the child's current school;

(b) If there is space available and the program can provide educational services appropriate for the child, order the child to attend another public school, an alternative education program, center, a skill center, dropout prevention program(~~s or referral~~), or another public educational program;

(c) Attend a private nonsectarian school or program including an education center. Before ordering a child to attend an approved or certified private nonsectarian school or program, the court shall: (i) Consider the public and private programs available; (ii) find that placement is in the best interest of the child; and (iii) find that the private school or program is willing to accept the child and will not charge any fees in addition to those established by contract with the student's school district. If the court orders the child to enroll in a private school or program, the child's school district shall contract with the school or program to provide educational services for the child. The school district shall not be required to contract for a weekly rate that exceeds the state general apportionment dollars calculated on a weekly basis generated by the child and received by the district. A school district shall not be required to enter into a contract that is longer than the remainder of the school year. A school district shall not be required to enter into or continue a contract if the child is no longer enrolled in the district; or

(d) Be referred to a community truancy board, if available.

(2) If the child fails to comply with the court order, the court may order the child to be punished by detention or may impose alternatives to detention such as community service. Failure by a child to comply with an order issued under this ((section)) subsection shall not be punishable by detention for a period greater than that permitted pursuant to a contempt proceeding against a child under chapter 13.32A RCW.

(3) Any parent violating any of the provisions of either RCW 28A.225.010 or 28A.225.080 shall be fined not more than twenty-five dollars for each day of unexcused absence from school. It shall be a defense for a parent charged with violating RCW 28A.225.010 to show that he or she exercised reasonable diligence in attempting to cause a child in his or her custody to attend school or that the child's school did not perform its duties as required in RCW 28A.225.020. The court may order the parent to provide community service ((at the child's school)) instead of imposing a fine. Any fine imposed pursuant to this section may be suspended upon the condition that a parent charged with violating RCW 28A.225.010 shall participate with the school and the child in a supervised plan for the child's attendance at school or upon condition that the parent attend a conference or conferences scheduled by a school for the purpose of analyzing the causes of a child's absence.

((School districts shall make complaint for violation of the provisions of RCW 28A.225.010 through 28A.225.140 to a judge of the juvenile court.))

Sec. 7. RCW 4.08.050 and 1992 c 111 s 9 are each amended to read as follows:

Except as provided under RCW 26.50.020 and 28A.225.035, when an infant is a party he or she shall appear by guardian, or if he or she has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint one to act. Said guardian shall be appointed as follows:

(1) When the infant is plaintiff, upon the application of the infant, if he or she be of the age of fourteen years, or if under that age, upon the application of a relative or friend of the infant.

(2) When the infant is defendant, upon the application of the infant, if he or she be of the age of fourteen years, and applies within thirty days after the service of the summons; if he or she be under the age of fourteen, or neglects to apply, then upon the application of any other party to the action, or of a relative or friend of the infant.

NEW SECTION. Sec. 8. A new section is added to chapter 2.56 RCW to read as follows:

The administrator for the courts shall prepare a report for each school year to be submitted to the legislature no later than December 15th of each year that summarizes the disposition of petitions filed with the juvenile court under RCW 28A.225.030, including the number of contempt orders issued to enforce a court's order under RCW 28A.225.030.

Sec. 9. RCW 28A.225.025 and 1995 c 312 s 66 are each amended to read as follows:

For purposes of this chapter, "community truancy board" means a board composed of members of the local community in which the child attends school. The local school district boards of directors may create a community truancy board or may use other boards that exist or are created, such as diversion boards. However, a diversion or other existing board must agree before it is used as a truancy board. Members of the board shall be selected from representatives of the community. Duties of a community truancy board shall include, but not be limited to, recommending methods for improving school attendance such as assisting the parent or the child to obtain supplementary services that might eliminate or ameliorate the causes for the absences or suggesting to the school district that the child enroll in another school, an alternative education program, an education center, a skill center, a dropout prevention program, or another public or private educational program.

NEW SECTION. Sec. 10. (1) The superintendent of public instruction, subject to available funding, shall establish an incentive program to encourage the creation of alternative learning schools and programs for students who have been truant, suspended, expelled, or who are subject to other disciplinary actions. Grants may be awarded to individual school districts, school district consortiums, and educational service districts. Funds for the grants may be used for planning and initial program development. Grants shall be awarded no later than November 1, 1996.

(2) This section expires June 30, 1997.

NEW SECTION. Sec. 11. A new section is added to chapter 28A.225 RCW to read as follows:

The superintendent of public instruction, subject to available funding, shall allocate funds to provide educational services for children who have been referred to a community truancy board or to the courts under RCW 28A.225.030. The funds shall be used on behalf of such children for enrollment in skill centers, education centers, alternative programs, and in other public or private educational programs. Decisions regarding the expenditure of the funds shall be made by the community truancy board or the courts, whichever is applicable. The amount of the assistance for each child shall be determined in accordance with the omnibus appropriations act. These funds shall be in excess of any other funds provided through RCW 28A.150.260 as basic education and other state, federal, or local sources.

Passed the House March 2, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 22, 1996.

Filed in Office of Secretary of State March 22, 1996.

CHAPTER 135

[Engrossed Second Substitute House Bill 1078]

BRaille INSTRUCTION

AN ACT Relating to the instruction in Braille reading and writing to blind students; adding new sections to chapter 28A.155 RCW; adding a new section to chapter 28A.405 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. It is the goal of the legislature to encourage persons who are blind or visually impaired to participate fully in the social and economic life of the state and to engage in remunerative employment. The legislature finds that literacy is essential to the achievement of this goal. Furthermore, the legislature finds that literacy for most persons who are blind or visually impaired means the ability to read and write Braille with proficiency. The legislature sets as a further goal that students who are legally blind or visually impaired shall be given the opportunity to learn Braille in order to communicate effectively and efficiently.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.155 RCW to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply in section 3 of this act.

(1) "Student" means a student who:

(a) Has a visual acuity of 20/200 or less in the better eye with conventional correction or having a limited field of vision such that the widest diameter of the visual field subtends an angular distance not greater than twenty degrees;

(b) Is unable to read printed material at a competitive rate with facility due to functional visual impairment or lack of visual acuity; or

(c) Has a physical condition with a medical prognosis of a significant visual deterioration to the extent that (a) or (b) of this subsection could apply.

(2) "Braille" means the system of reading and writing through touch commonly known as standard English Braille.

NEW SECTION. Sec. 3. A new section is added to chapter 28A.155 RCW to read as follows:

(1) Each student shall be assessed individually to determine the appropriate learning media for the student including but not limited to Braille.

(2) No student may be denied the opportunity for instruction in Braille reading and writing solely because the student has some remaining vision.

(3) This section does not require the exclusive use of Braille if there are other special education services to meet the student's educational needs. The provision of special education or other services does not preclude Braille use or instruction.

(4) If a student's individualized learning media assessment indicates that Braille is an appropriate learning medium, instruction in Braille shall be provided as a part of such student's educational curriculum and if such student has an individualized education program, such instruction shall be provided as part of that program.

(5) If Braille will not be provided to a student, the reason for not incorporating it in the student's individualized education program shall be documented in such plan. If no individualized education program exists, such documentation, signed by the parent or guardian, shall be placed in the student's file.

NEW SECTION. Sec. 4. A new section is added to chapter 28A.405 RCW to read as follows:

Teachers of visually impaired students shall be qualified according to rules adopted by the state board of education.

Passed the House January 17, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 22, 1996.

Filed in Office of Secretary of State March 22, 1996.

CHAPTER 136

[Substitute House Bill 2444]

HABITAT CONSERVATION PLANS

AN ACT Relating to habitat conservation plans; adding a new section to chapter 76.09 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 76.09 RCW to read as follows:

Forest practices consistent with a habitat conservation plan approved prior to the effective date of this act, by the secretary of the interior or commerce under 16 U.S.C. Sec. 1531 et seq., and the endangered species act of 1973 as amended, are exempt from rules and policies under this chapter, provided the proposed forest practices indicated in the application are in compliance with the plan, and provided this exemption applies only to rules and policies adopted primarily for the protection of one or more species, including unlisted species, covered by the plan. Such forest practices are deemed not to have the potential for a substantial impact on the environment but may be found to have the potential for a substantial impact on the environment due to other reasons under RCW 76.09.050.

Nothing in this section is intended to limit the board's rule-making authority under 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 shall take effect immediately.

Passed the House March 4, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 25, 1996.

Filed in Office of Secretary of State March 25, 1996.

CHAPTER 137

[Engrossed Second Substitute Senate Bill 6705]

TELECOMMUNICATIONS, TELECOMMUNICATIONS PLANNING, AND HIGHER EDUCATION TECHNOLOGY—PLANNING

AN ACT Relating to telecommunications, telecommunications planning, and higher education technology; amending RCW 28B.80.600, 43.105.032, 43.105.041, 43.105.041, 43.105.170, 43.105.180, and 43.105.190; adding a new title to the Revised Code of Washington to be codified as Title 28D RCW; creating a new section; 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 recognizes that technology is an important tool in the preparation of an educated and knowledgeable work force and citizenry. The legislature supports the creation of a K-20 education network for the coordinated expansion of current technology and the development of new technologies that support an integrated and interoperable educational technology network serving kindergarten through higher education and promoting access for Washington citizens. The intent of the legislature is to significantly enhance the education system's ability to access telecommunications resources and to provide citizen access to quality primary, secondary, and postsecondary courses and degree programs state-wide through distance education. It is also the intent of the legislature that these services be a collaborative endeavor and that resources be used effectively. The development of a distance education system using technology will provide great opportunities for change in the delivery of

educational services and deserves due deliberation and coordinated policy planning to ensure that the high standards of program quality and cost-efficient service are enhanced. The legislature finds that, in order to facilitate lifelong learning, educational technology systems must be coordinated among all educational sectors, with the other entities of federal, state, and local government, and be readily accessible to the general population of the state. It is the intent of the legislature to make maximum use of a common telecommunications backbone network in building and expanding education technology systems. Therefore, coordinated policy and planning to ensure program quality, interoperability, and efficient service delivery are the highest priority of the legislature.

NEW SECTION. Sec. 2. (1) The K-20 telecommunications oversight and policy committee is established to: Adopt policy goals and objectives for a K-20 telecommunications system, adopt a network design and implementation plan, and authorize release of funds for network purposes.

(2) The duties of the committee shall include, but need not be limited to:

(a) The adoption of system goals and objectives and timelines for submission of the proposed plans under sections 4 through 6 and 8 of this act by June 1, 1996;

(b) The authorization of the construction and acquisition of a network backbone upon its approval of phase one of a technical plan for the network as specified in section 8(1) of this act;

(c) The preparation and subsequent updates of a network design and implementation plan that includes locations to be served by the network, service delivery specifications, a network governance structure, other appropriate components, and a phased technical plan in accordance with section 8(2) of this act. The plan shall be adopted after considering the recommendations of the information services board, the higher education coordinating board, and the superintendent of public instruction.

(d) The preparation of an implementation plan that prioritizes access to the network backbone and other telecommunication components; and

(e) The authorization of the release of funds for expenditures to construct the network and distance education components.

(3) By April 15, 1996, the department of information services shall convene the committee. The committee shall include the following voting members or their designees: The governor; one member from each caucus of the senate, appointed by the president of the senate; one member from each caucus of the house of representatives, appointed by the speaker of the house of representatives; the superintendent of public instruction; the chair of the higher education coordinating board; and the chair of the information services board. On a nonvoting basis, the committee shall include the following members or their designees: One community college or technical college president, appointed by the state board for community and technical colleges; one president of a public baccalaureate institution, appointed by the council of presidents; the state

librarian; one educational service district superintendent, one school district superintendent, and one representative of an approved private school, each appointed by the superintendent of public instruction; one representative of independent nonprofit baccalaureate institutions, appointed by the Washington friends of higher education; and one representative of the computer or telecommunications industry, appointed by the information services board. The voting members must reach a consensus in approving the network design and implementation plan. The department shall provide staff support to the committee.

NEW SECTION. Sec. 3. The design and implementation plan for the K-20 telecommunication system shall: (1) Provide optimum geographic and social distribution of the benefits of a network; (2) minimize duplication of technology resources and education programs or degrees at public institutions of postsecondary education; (3) maximize existing networks and video telecommunications resources owned or operated by the state; (4) consider the benefits of purchasing additional hardware to expand the current telecommunications network versus leasing network services from the department of information services or from private sector providers; (5) foster partnerships among public, private, and nonprofit entities, including independent nonprofit baccalaureate institutions of higher education, libraries, and public hospitals; (6) ensure that each network site is designed to maximize utilization by the institutions of postsecondary education and public schools; (7) provide for future access by public entities on a no-cost or low-cost basis; and (8) ensure that the network can be expanded and upgraded, is based on an open-architecture model, and connects to national and world-wide information infrastructures.

NEW SECTION. Sec. 4. Within the timelines specified by the committee, the higher education coordinating board shall prepare and submit to the K-20 telecommunications oversight and policy committee a proposed location plan of higher education delivery sites proposed for connection to the K-20 education network. The development of the plan shall begin immediately. For each site proposed for connection to the network, the board shall recommend service delivery specifications that include, but need not be limited to, an assessment of community needs and programming and service levels that provide for effective use of network resources. The board shall prioritize the implementation of the proposed location plan. The board shall ensure that the proposed location plan adheres to the principles described in section 3 of this act and the goals and objectives adopted by the committee under section 2 of this act.

NEW SECTION. Sec. 5. Within timelines specified by the committee, the superintendent of public instruction shall prepare and submit to the K-20 telecommunications oversight and policy committee a proposed location plan of public education delivery sites proposed for connection to the K-20 education network. The development of the plan shall begin immediately. For each site proposed for connection to the network, the superintendent shall approve service

delivery specifications that include, but need not be limited to, an assessment of community needs and programming and service levels that provide for effective use of network resources. The superintendent shall prioritize the implementation of the proposed location plan. The superintendent shall ensure that the proposed location plan adheres to the principles described in section 3 of this act and the goals and objectives adopted by the committee under section 2 of this act.

NEW SECTION. Sec. 6. Within timelines specified by the committee, the higher education coordinating board and the superintendent of public instruction shall recommend to the K-20 telecommunications oversight and policy committee network governance structure that ensures participation by all members of the network and, to the extent feasible, adheres to the goals and objectives adopted under section 2 of this act.

NEW SECTION. Sec. 7. The K-20 technology account is hereby created in the state treasury. The department of information services shall deposit into the account all moneys received from legislative appropriations, gifts, grants, and endowments for the K-20 telecommunication system. The account shall be subject to appropriation and may be expended solely for the K-20 telecommunication system approved by the committee under section 2 of this act. Disbursements from the account shall be on authorization of the director of the department of information services with approval of the committee under section 2 of this act.

NEW SECTION. Sec. 8. The information services board shall prepare a technical plan for the design and construction of the K-20 telecommunication system. The board shall ensure that the technical plan adheres to the principles described in section 3 of this act and the goals and objectives established by the committee under section 2 of this act. The board shall provide formal project approval and oversight during the development and implementation of the K-20 telecommunications network. In approving the plan, the board shall conduct a request for proposal process. The technical plan shall be developed in phases as follows:

(1) Phase one shall provide a telecommunication backbone connecting educational service districts, the main campuses of public baccalaureate institutions, the branch campuses of public research institutions, and the main campuses of community colleges and technical colleges.

(2) Phase two shall provide for (a) connection to the network by entities that include, but need not be limited to: School districts, public higher education off-campus and extension centers, branch campuses of community colleges and technical colleges, and independent nonprofit baccalaureate institutions, as prioritized by the telecommunications oversight and policy committee; and (b) distance education facilities and components for entities listed in subsections (1) and (2) of this section.

(3) Subsequent phases may include, but need not be limited to, connections to public libraries, state and local governments, community resource centers, and the private sector.

Sec. 9. RCW 28B.80.600 and 1990 c 208 s 9 are each amended to read as follows:

The higher education coordinating board shall provide state-wide coordination ~~((of video))~~ in telecommunications programming ~~((for the public four-year higher education institutions))~~, location selection, meeting community needs, and development of a state-wide higher education telecommunications plan.

Sec. 10. RCW 43.105.032 and 1992 c 20 s 8 are each amended to read as follows:

There is hereby created the Washington state information services board. The board shall be composed of ~~((nine))~~ thirteen members. ~~((Seven))~~ Eight members shall be appointed by the governor, one of ~~((which))~~ whom shall be a representative of higher education, one of ~~((which))~~ whom shall be a representative of an agency under a state-wide elected official other than the governor, and ~~((one))~~ two of ~~((which))~~ whom shall be ~~((a))~~ representatives of the private sector. One member shall represent the judicial branch and be appointed by the chief justice of the supreme court. ~~((One member shall represent the legislative branch and shall be selected by the president of the senate and the speaker of the house of representatives.))~~ One member shall be the superintendent of public instruction or shall be appointed by the superintendent of public instruction. One member shall represent the house of representatives and shall be selected by the speaker of the house of representatives; one member shall represent the senate and shall be appointed by the president of the senate. The representatives of the house of representatives and senate shall not be from the same political party. One member shall be the director who shall be a voting member of the board. These members shall constitute the membership of the board with full voting rights. Members of the board shall serve at the pleasure of the appointing authority. ~~((The director shall be an ex-officio, nonvoting member of the board.))~~ The board shall select a chairperson from among its members.

Vacancies shall be filled in the same manner that the original appointments were made.

A majority of the members of the board shall constitute a quorum for the transaction of business.

Members of the board shall be compensated for service on the board in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

Sec. 11. RCW 43.105.041 and 1995 2nd sp.s. c 14 s 512 are each amended to read as follows:

The board shall have the following powers and duties related to information services:

(1) To develop standards governing the acquisition and disposition of equipment, proprietary software and purchased services, and confidentiality of computerized data;

(2) To purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services, or to delegate to other agencies and institutions of state government, under appropriate standards, the authority to purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services: PROVIDED, That, agencies and institutions of state government, except as provided in RCW 43.105.017(5) and section 507, chapter 14, Laws of 1995 2nd sp. sess., are expressly prohibited from acquiring or disposing of equipment, proprietary software, and purchased services without such delegation of authority. The acquisition and disposition of equipment, proprietary software, and purchased services is exempt from RCW 43.19.1919 and, as provided in RCW 43.19.1901, from the provisions of RCW 43.19.190 through 43.19.200. This subsection does not apply to the legislative branch;

(3) To develop state-wide or interagency technical policies, standards, and procedures;

(4) To review and approve standards and common specifications for new or expanded telecommunications networks proposed by agencies, public postsecondary education institutions, educational service districts, or state-wide or regional providers of K-12 information technology services, and to assure the cost-effective development and incremental implementation of a state-wide video telecommunications system to serve: Public schools; educational service districts; vocational-technical institutes; community colleges; colleges and universities; state and local government; and the general public through public affairs programming;

(5) To provide direction concerning strategic planning goals and objectives for the state. The board shall seek input from the legislature and the judiciary;

(6) To develop and implement a process for the resolution of appeals by:

(a) Vendors concerning the conduct of an acquisition process by an agency or the department; or

(b) A customer agency concerning the provision of services by the department or by other state agency providers;

(7) To establish policies for the periodic review by the department of agency performance which may include but are not limited to analysis of:

(a) Planning, management, control, and use of information services;

(b) Training and education; and

(c) Project management;

(8) To set its meeting schedules and convene at scheduled times, or meet at the request of a majority of its members, the chair, or the director; and

(9) To review and approve that portion of the department's budget requests that provides for support to the board.

Sec. 12. RCW 43.105.041 and 1990 c 208 s 6 are each amended to read as follows:

The board shall have the following powers and duties related to information services:

(1) To develop standards governing the acquisition and disposition of equipment, proprietary software and purchased services, and confidentiality of computerized data;

(2) To purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services, or to delegate to other agencies and institutions of state government, under appropriate standards, the authority to purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services: PROVIDED, That, agencies and institutions of state government are expressly prohibited from acquiring or disposing of equipment, proprietary software, and purchased services without such delegation of authority. The acquisition and disposition of equipment, proprietary software, and purchased services is exempt from RCW 43.19.1919 and, as provided in RCW 43.19.1901, from the provisions of RCW 43.19.190 through 43.19.200. This subsection does not apply to the legislative branch;

(3) To develop state-wide or interagency technical policies, standards, and procedures;

(4) To review and approve standards and common specifications for new or expanded telecommunications networks proposed by agencies, public postsecondary education institutions, educational service districts, or state-wide or regional providers of K-12 information technology services, and to assure the cost-effective development and incremental implementation of a state-wide video telecommunications system to serve: Public schools; educational service districts; vocational-technical institutes; community colleges; colleges and universities; state and local government; and the general public through public affairs programming;

(5) To provide direction concerning strategic planning goals and objectives for the state. The board shall seek input from the legislature and the judiciary;

(6) To develop and implement a process for the resolution of appeals by:

(a) Vendors concerning the conduct of an acquisition process by an agency or the department; or

(b) A customer agency concerning the provision of services by the department or by other state agency providers;

(7) To establish policies for the periodic review by the department of agency performance which may include but are not limited to analysis of:

(a) Planning, management, control, and use of information services;

(b) Training and education; and

(c) Project management;

(8) To set its meeting schedules and convene at scheduled times, or meet at the request of a majority of its members, the chair, or the director; and

(9) To review and approve that portion of the department's budget requests that provides for support to the board.

Sec. 13. RCW 43.105.170 and 1992 c 20 s 2 are each amended to read as follows:

(1) Each agency shall develop an agency strategic information technology plan which establishes agency goals and objectives regarding the development and use of information technology. The superintendent of public instruction shall develop its plan in conjunction with educational service districts and state-wide or regional providers of K-12 education information technology services. Plans shall include, but not be limited to, the following:

(a) A statement of the agency's mission, goals, and objectives for information technology;

(b) An explanation of how the agency's mission, goals, and objectives for information technology support and conform to the state strategic information technology plan developed under RCW 43.105.160;

(c) Projects and resources required to meet the objectives of the plan; and

(d) Where feasible, estimated schedules and funding required to implement identified projects.

(2) Plans developed under subsection (1) of this section shall be submitted to the department for review and forwarded along with the department's recommendations to the board for review and approval. The board may reject, require modification to, or approve plans as deemed appropriate by the board. Plans submitted under this subsection shall be updated and submitted for review and approval as necessary.

(3) Each agency shall prepare and submit to the department a biennial performance report. The superintendent of public instruction shall develop its plan in conjunction with educational service districts and state-wide or regional providers of K-12 education information technology services. The report shall include:

(a) An evaluation of the agency's performance relating to information technology;

(b) An assessment of progress made toward implementing the agency strategic information technology plan; and

(c) An inventory of agency information services, equipment, and proprietary software.

(4) The department, with the approval of the board, shall establish standards, elements, form, and format for plans and reports developed under this section.

(5) The board may exempt any agency from any or all of the requirements of this section.

Sec. 14. RCW 43.105.180 and 1992 c 20 s 3 are each amended to read as follows:

Upon request of the office of financial management, the department shall evaluate agency budget requests for major information technology projects

identified under RCW 43.105.190, including those proposed by the superintendent of public instruction, in conjunction with educational service districts, or state-wide or regional providers of K-12 education information technology services. The department shall submit recommendations for funding all or part of such requests to the office of financial management.

The department, with the advice and approval of the office of financial management, shall establish criteria for the evaluation of agency budget requests under this section. Criteria shall include, but not be limited to: Feasibility of the proposed projects, consistency with state and agency strategic information technology plans, consistency with agency goals and objectives, costs, and benefits.

Sec. 15. RCW 43.105.190 and 1992 c 20 s 4 are each amended to read as follows:

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

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

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

Project plans and any agreements established under such plans shall be approved and mutually agreed upon by the director, the director of financial management, and the head of the agency proposing the project.

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

(2) The office of financial management shall establish policies and standards governing the funding of projects developed under this section. The policies and standards shall provide for:

(a) Funding of a project under terms and conditions mutually agreed to by the director, the director of financial management, and the head of the agency proposing the project. However, the office of financial management may require

incremental funding of a project on a phase-by-phase basis whereby funds for a given phase of a project may be released only when the office of financial management determines, with the advice of the department, that the previous phase is satisfactorily completed;

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

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

(3) The department shall evaluate projects at three stages of development as follows: (a) Initial needs assessment; (b) feasibility study including definition of scope, development of tasks and timelines, and estimated costs and benefits; and (c) final project implementation plan based upon available funding.

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

NEW SECTION. Sec. 16. Sections 1 through 8 of this act shall constitute a new chapter in Title 28D RCW.

NEW SECTION. Sec. 17. Section 11 of this act expires June 30, 1997.

NEW SECTION. Sec. 18. Section 12 of this act shall take effect June 30, 1997.

NEW SECTION. Sec. 19. Sections 1 through 11 and 13 through 15 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

NEW SECTION. Sec. 20. Nothing in this act shall prevent the ongoing maintenance and operation of existing telecommunications and information systems or programs.

Passed the Senate March 7, 1996.

Passed the House March 7, 1996.

Approved by the Governor March 25, 1996.

Filed in Office of Secretary of State March 25, 1996.

CHAPTER 138

[Engrossed Substitute House Bill 2875]

PUGET SOUND WATER QUALITY PROTECTION

AN ACT Relating to water quality; adding a new chapter to Title 90 RCW; creating a new section; recodifying RCW 90.70.027 and 90.70.902; repealing RCW 90.70.065, 90.70.075, 90.70.090, and 90.70.100; making an appropriation; providing an effective date; and declaring an emergency.

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

NEW SECTION. Sec. 1. FINDINGS. (1) The legislature finds that:

(a) Puget Sound and related inland marine waterways of Washington state represent a unique and unparalleled resource. A rich and varied range of marine

organisms, comprising an interdependent, sensitive communal ecosystem reside in these sheltered waters. Residents of this region enjoy a way of life centered around the waters of Puget Sound, featuring accessible recreational opportunities, world-class port facilities and water transportation systems, harvest of marine food resources, shoreline-oriented life styles, water-dependent industries, tourism, irreplaceable aesthetics, and other activities, all of which to some degree depend upon a clean and healthy marine resource;

(b) The Puget Sound water quality authority has done an excellent job in developing a comprehensive plan to identify actions to restore and protect the biological health and diversity of Puget Sound;

(c) The large number of governmental entities that now have regulatory programs affecting the water quality of Puget Sound have diverse interests and limited jurisdictions that cannot adequately address the cumulative, wide-ranging impacts that contribute to the degradation of Puget Sound; and

(d) Coordination of the regulatory programs, at the state and local level, is best accomplished through the development of interagency mechanisms that allow these entities to transcend their diverse interests and limited jurisdictions.

(2) It is therefore the policy of the state of Washington to coordinate the activities of state and local agencies by establishing a biennial work plan that clearly delineates state and local actions necessary to protect and restore the biological health and diversity of Puget Sound. It is further the policy of the state to implement the Puget Sound water quality management plan to the maximum extent possible.

NEW SECTION. Sec. 2. DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Action team" means the Puget Sound water quality action team.

(2) "Chair" means the chair of the action team.

(3) "Council" means the Puget Sound council created in section 4 of this act.

(4) "Puget Sound management plan" means the 1994 Puget Sound water quality management plan as it exists June 30, 1996, and as subsequently amended by the action team.

(5) "Support staff" means the staff to the action team.

(6) "Work plan" means the work plan and budget developed by the action team.

NEW SECTION. Sec. 3. PUGET SOUND ACTION TEAM. (1) The Puget Sound action team is created. The action team shall consist of: The directors of the departments of ecology; agriculture; natural resources; fish and wildlife; and community, trade, and economic development; the secretaries of the departments of health and transportation; the director of the parks and recreation commission; the director of the interagency committee for outdoor recreation; the administrative officer of the conservation commission designated in RCW 89.08.050; one person representing cities, appointed by the governor; one person representing counties, appointed by the governor; and the chair of the action

team. The members representing cities and counties shall each be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(2) The action team shall:

(a) Prepare a Puget Sound work plan and budget for inclusion in the governor's biennial budget;

(b) Coordinate monitoring and research programs as provided in section 7 of this act;

(c) Work under the direction of the action team chair as provided in section 5 of this act;

(d) Coordinate permitting requirements as necessary to expedite permit issuance for any local watershed plan developed pursuant to rules adopted under this chapter;

(e) Identify and resolve any policy or rule conflicts that may exist between one or more agencies represented on the action team;

(f) Periodically amend the Puget Sound management plan;

(g) Enter into, amend, and terminate contracts with individuals, corporations, or research institutions for the purposes of this chapter;

(h) Receive such gifts, grants, and endowments, in trust or otherwise, for the use and benefit of the purposes of the action team. The action team may expend the same or any income therefrom according to the terms of the gifts, grants, or endowments;

(i) Promote extensive public participation, and otherwise seek to broadly disseminate information concerning Puget Sound;

(j) Receive and expend funding from other public agencies;

(k) To reduce costs and improve efficiency, review by December 1, 1996, all requirements for reports and documentation from state agencies and local governments specified in the plan for the purpose of eliminating and consolidating reporting requirements; and

(l) Beginning in December 1998, and every two years thereafter, submit a report to the appropriate policy and fiscal committees of the legislature that describes and evaluates the successes and shortcomings of the current work plan relative to the priority problems identified for each geographic area of Puget Sound.

(3) By July 1, 1996, the action team shall begin developing its initial work plan, which shall include the coordination of necessary support staff.

(4) The action team shall incorporate, to the maximum extent possible, the recommendations of the council regarding amendments to the Puget Sound plan and the work plan.

(5) All proceedings of the action team are subject to the open public meetings act under chapter 42.30 RCW.

NEW SECTION. See. 4. PUGET SOUND COUNCIL. (1) There is established the Puget Sound council composed of nine members. Seven members shall be appointed by the governor. In making these appointments, the governor shall include representation from business, the environmental community,

agriculture, the shellfish industry, counties, cities, and the tribes. One member shall be a member of the senate selected by the president of the senate and one member shall be a member of the house of representatives selected by the speaker of the house of representatives. The legislative members shall be nonvoting members of the council. Appointments to the council shall reflect geographical balance and the diversity of population within the Puget Sound basin. Members shall serve four-year terms. Of the initial members appointed to the council, two shall serve for two years, two shall serve for three years, and two shall serve for four years. Thereafter members shall be appointed to four-year terms. Vacancies shall be filled by appointment in the same manner as the original appointment for the remainder of the unexpired term of the position being vacated. Nonlegislative members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Legislative members shall be reimbursed as provided in RCW 44.04.120.

(2) The council shall:

(a) Recommend to the action team projects and activities for inclusion in the biennial work plan;

(b) Recommend to the action team coordination of work plan activities with other relevant activities, including but not limited to, agencies' activities other than those funded through the plan, local plan initiatives, and governmental and nongovernmental watershed restoration and protection activities; and

(c) Recommend to the action team proposed amendments to the Puget Sound management plan.

(3) The chair of the action team shall convene the council at least four times per year and shall jointly convene the council and the action team at least two times per year.

NEW SECTION. Sec. 5. GOVERNOR'S OFFICE. (1) By June 1, 1996, the governor shall appoint a person in the governor's office to chair the action team. The chair shall serve at the pleasure of the governor.

(2) The chair shall be responsible for:

(a) Organizing the development of the council recommendations;

(b) Organizing the development of the work plan required under section 6 of this act;

(c) Presenting work plan and budget recommendations to the governor and the legislature;

(d) Overseeing the implementation of the elements of the work plan that receive funding through appropriations by the legislature; and

(e) Serving as chair of the council.

(3) The chair of the action team shall be a full-time employee responsible for the administration of all functions of the action team and the council, including hiring and terminating support staff, budget preparation, contracting, coordinating with the governor, the legislature, and other state and local entities, and the delegation of responsibilities as deemed appropriate. The salary of the chair shall be fixed by the governor, subject to RCW 43.03.040.

NEW SECTION. Sec. 6. WORK PLANS. (1)(a) Each biennium, the action team shall prepare a Puget Sound work plan and budget for inclusion in the governor's biennial budget. The work plan shall prescribe the necessary federal, state, and local actions to maintain and enhance Puget Sound water quality, including but not limited to, enhancement of recreational opportunities, and restoration of a balanced population of indigenous shellfish, fish, and wildlife.

(b) In developing a work plan, the action team shall meet the following objectives:

(i) Use the plan elements of the Puget Sound management plan to prioritize local and state actions necessary to restore and protect the biological health and diversity of Puget Sound;

(ii) Consider the problems and priorities identified in local plans; and

(iii) Coordinate the work plan activities with other relevant activities, including but not limited to, agencies' activities that have not been funded through the plan, local plans, and governmental and nongovernmental watershed restoration activities.

(2) In addition to the requirements identified under section 3(2)(a) of this act, the work plan and budget shall:

(a) Identify and prioritize the local and state actions necessary to address the water quality problems in the following locations:

(i) Area 1: Island and San Juan counties;

(ii) Area 2: Skagit and Whatcom counties;

(iii) Area 3: Clallam and Jefferson counties;

(iv) Area 4: Snohomish, King, and Pierce counties; and

(v) Area 5: Kitsap, Mason, and Thurston counties;

(b) Provide sufficient funding to characterize local watersheds, provide technical assistance, and implement state responsibilities identified in the work plan. The number and qualifications of staff assigned to each region shall be determined by the types of problems identified pursuant to (a) of this subsection;

(c) Provide sufficient funding to implement and coordinate the Puget Sound ambient monitoring plan pursuant to section 7 of this act;

(d) Provide funds to assist local jurisdictions to implement elements of the work plan assigned to local governments and to develop and implement local plans;

(e) Provide sufficient funding to provide support staff for the action team; and

(f) Describe any proposed amendments to the Puget Sound plan.

(3) The work plan shall be submitted to the appropriate policy and fiscal committees of the legislature by December 20th of each even-numbered year.

(4) The work plan shall be implemented consistent with the legislative provisos of the biennial appropriation acts.

NEW SECTION. Sec. 7. PUGET SOUND RESEARCH AND MONITORING. In addition to other powers and duties specified in this chapter, the action team shall ensure implementation and coordination of the Puget Sound ambient monitoring program established in the Puget Sound management plan. The program shall include, at a minimum:

(1) A research program, including but not limited to methods to provide current research information to managers and scientists, and to establish priorities based on the needs of the action team;

(2) A monitoring program, including baselines, protocols, guidelines, and quantifiable performance measures. In consultation with state agencies, local and tribal governments, and other public and private interests, the action team shall develop and track quantifiable performance measures that can be used by the governor and the legislature to assess the effectiveness over time of programs and actions initiated under the plan to improve and protect Puget Sound water quality and biological resources. The performance measures shall be developed by June 30, 1997. The performance measures shall include, but not be limited to a methodology to track the progress of: Fish and wildlife habitat; sites with sediment contamination; wetlands; shellfish beds; and other key indicators of Puget Sound health. State agencies shall assist the action team in the development and tracking of these performance measures. The performance measures may be limited to a selected geographic area.

NEW SECTION. Sec. 8. WORK PLAN IMPLEMENTATION. (1) Local governments are required to implement local elements of the work plan subject to the availability of appropriated funds or other funding sources.

(2) The council shall review the progress of work plan implementation. Where prescribed actions have not been accomplished in accordance with the work plan, the responsible agency shall submit to the council written explanations for the shortfalls, together with proposed remedies.

NEW SECTION. Sec. 9. PUBLIC PARTICIPATION. The chair of the action team shall hold public hearings to solicit public comment on the work plan.

NEW SECTION. Sec. 10. RULE MAKING. By January 1, 1997, the action team shall adopt chapter 400-12 WAC with revisions that:

(1) Direct counties to develop a prioritized list of watershed improvement projects; and

(2) Identify all funding sources that can be used to implement local plans.

NEW SECTION. Sec. 11. (1) The powers, duties, and functions of the Puget Sound water quality authority pertaining to the cleanup and protection of Puget Sound are transferred to the Puget Sound action team. All references to the executive director or the Puget Sound water quality authority in the Revised Code of Washington shall be construed to mean the chair of the action team or the action team when referring to the functions transferred in this section.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the authority pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the action team. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the authority in carrying out the powers, functions, and duties transferred shall be made available to the action team. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the action team.

(b) Any appropriations made to the authority for carrying out the powers, functions, and duties transferred shall, on the effective date of this section, be transferred and credited to the action team.

(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 rules and all pending business before the authority pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the action team. All existing contracts and obligations shall remain in full force and shall be performed by the action team.

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

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

NEW SECTION. Sec. 12. The following acts or parts of acts are each repealed:

- (1) RCW 90.70.065 and 1995 c 269 s 3501, 1994 c 264 s 98, & 1990 c 115 s 9;
- (2) RCW 90.70.075 and 1990 c 115 s 10;
- (3) RCW 90.70.090 and 1990 c 115 s 8; and
- (4) RCW 90.70.100 and 1991 c 200 s 502.

NEW SECTION. Sec. 13. RCW 90.70.027 and 90.70.902 are each recodified as new sections in the new chapter created in section 16 of this act.

NEW SECTION. Sec. 14. CAPTIONS NOT LAW. Captions used in this chapter do not constitute any part of the law.

NEW SECTION. Sec. 15. This act may be known and cited as the Puget Sound water quality protection act.

NEW SECTION. Sec. 16. Sections 1 through 10, 14, and 15 of this act shall constitute a new chapter in Title 90 RCW.

NEW SECTION. Sec. 17. The sum of one million dollars, or as much thereof as may be necessary is appropriated for the biennium ending June 30, 1997, from the water quality account to the department of ecology. The amount appropriated in this section is provided solely for grants to local governments for on-site sewage system projects or programs identified in local watershed action plans. In issuing grants, the department shall give priority to areas that have formed shellfish protection districts under chapter 90.72 RCW, to areas that have created operation and maintenance programs, and to areas where failing on-site systems have contaminated or threaten to contaminate highly productive shellfish growing areas or recreational harvest areas. The department of ecology shall develop criteria for assistance that establishes higher priority for areas with substantial numbers of low-income households for which on-site system upgrades are proposed.

NEW SECTION. Sec. 18. Section 11 of this act shall take effect June 30, 1996.

NEW SECTION. Sec. 19. Section 5 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 shall take effect immediately.

Passed the House March 7, 1996.

Passed the Senate March 7, 1996.

Approved by the Governor March 25, 1996.

Filed in Office of Secretary of State March 25, 1996.

CHAPTER 139

[Engrossed House Bill 2254]

LICENSE PLATES FOR OFFICERS OF A RECOGNIZED FOREIGN ORGANIZATION

AN ACT Relating to vehicle license plates for officers of a recognized foreign organization; amending RCW 82.80.020; adding new sections to chapter 46.16 RCW; and adding a new section to chapter 82.44 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 46.16 RCW to read as follows:

(1) If the eligible applicant bears the entire cost of plate production, the department shall provide for the issuance of special license plates, in lieu of regular motor vehicle license plates, for passenger vehicles having manufacturers' rated carrying capacities of one ton or less that are owned or leased by an officer of the Taipei Economic and Cultural Office. The department shall issue the special license plates in a distinguishing color, running in a separate numerical series, and bearing the words "Foreign Organization." A vehicle for which

special license plates are issued under this section is exempt from regular license fees under RCW 46.16.060, excise tax under RCW 82.44.020, and any additional vehicle license fees imposed under RCW 82.80.020.

(2) Whenever the owner or lessee as provided in subsection (1) of this section transfers or assigns the interest or title in the motor vehicle for which the special plates were issued, the plates must be removed from the motor vehicle, and if another qualified vehicle is acquired, attached to that vehicle, and the director must be immediately notified of the transfer of the plates; otherwise the removed plates must be immediately forwarded to the director to be destroyed. Whenever the owner or lessee as provided in subsection (1) of this section is for any reason relieved of his or her duties as a representative of a recognized foreign organization, he or she shall immediately forward the special plates to the director, who shall upon receipt dispose of the plates as otherwise provided by law.

NEW SECTION. Sec. 2. A new section is added to chapter 46.16 RCW to read as follows:

A motor vehicle owned or leased by an officer of the Taipei Economic and Cultural Office eligible for a special license plate under section I of this act is exempt from the payment of license fees for the licensing of the vehicle as provided in this chapter.

NEW SECTION. Sec. 3. A new section is added to chapter 82.44 RCW to read as follows:

Motor vehicles licensed under section I of this act are exempt from the taxes imposed in RCW 82.44.020 (1) and (2). When the motor vehicle ceases to be used for the purposes of section I of this act or at the time of its retail sale, the excise tax imposed in RCW 82.44.020 (1) and (2) must be imposed for twelve full months from the date of application of the new owner.

Sec. 4. RCW 82.80.020 and 1993 c 60 s I are each amended to read as follows:

(1) The legislative authority of a county may fix and impose an additional fee, not to exceed fifteen dollars per vehicle, for each vehicle that is subject to license fees under RCW 46.16.060 and is determined by the department of licensing to be registered within the boundaries of the county.

(2) The department of licensing shall administer and collect the fee. The department shall deduct a percentage amount, as provided by contract, not to exceed two percent of the taxes collected, for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer for monthly distribution under RCW 82.80.080.

(3) The proceeds of this fee shall be used strictly for transportation purposes in accordance with RCW 82.80.070.

(4) A county imposing this fee or initiating an exemption process shall delay the effective date at least six months from the date the ordinance is enacted to

allow the department of licensing to implement administration and collection of or exemption from the fee.

(5) The legislative authority of a county may develop and initiate an exemption process of the fifteen dollar fee for the registered owners of vehicles residing within the boundaries of the county (a) who are sixty-one years old or older at the time payment of the fee is due and whose household income for the previous calendar year is less than an amount prescribed by the county legislative authority, or (b) who has a physical disability.

(6) The legislative authority of a county shall develop and initiate an exemption process of the fifteen-dollar fee for vehicles registered within the boundaries of the county that are licensed under section 1 of this act.

Passed the House February 9, 1996.

Passed the Senate March 1, 1996.

Approved by the Governor March 25, 1996.

Filed in Office of Secretary of State March 25, 1996.

CHAPTER 140

[Substitute House Bill 2186]

LONG-TERM CARE BENEFITS FOR PUBLIC EMPLOYEES ESTABLISHED

AN ACT Relating to long-term care benefits for public employees; and amending RCW 41.05.065.

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

Sec. 1. RCW 41.05.065 and 1995 1st sp.s. c 6 s 5 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 participation and coverage, including establishment of eligibility criteria.

(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.

(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.

Passed the House March 6, 1996.
Passed the Senate February 29, 1996.
Approved by the Governor March 25, 1996.
Filed in Office of Secretary of State March 25, 1996.

CHAPTER 141

[Engrossed Substitute House Bill 2214]

**MATERIALS USED FOR MEDICAL RESEARCH AND QUALITY CONTROL
TESTING—SALES AND USE TAX EXEMPTIONS**

AN ACT Relating to sales and use tax exemptions for research and development; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 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 82.08 RCW to read as follows:

The tax levied by RCW 82.08.020 shall not apply to sales of human blood, tissue, organs, bodies, or body parts for medical research and quality control testing purposes.

NEW SECTION. **Sec. 2.** A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter shall not apply in respect to the use of human blood, tissue, organs, bodies, or body parts for medical research and quality control testing purposes.

NEW SECTION. **Sec. 3.** This act shall take effect July 1, 1996.

Passed the House February 10, 1996.
Passed the Senate March 7, 1996.
Approved by the Governor March 25, 1996.
Filed in Office of Secretary of State March 25, 1996.

CHAPTER 142

[Second Substitute House Bill 2293]

TECHNOLOGY FEES AT INSTITUTIONS OF HIGHER EDUCATION

AN ACT Relating to higher education fiscal matters; amending RCW 28B.15.031 and 28B.15.615; adding a new section to chapter 28B.15 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 28B.15 RCW to read as follows:

(1) The governing board of each of the state universities, the regional universities, and The Evergreen State College, upon the written agreement of its respective student government association or its equivalent, may establish and charge each enrolled student a technology fee, separate from tuition fees. During the 1996-97 academic year, any technology fee shall not exceed one hundred

twenty dollars for a full-time student. Any technology fee charged to a part-time student shall be calculated as a pro rata share of the fee charged to a full-time student.

(2) Revenue from this fee shall be used exclusively for technology resources for general student use.

(3) Only changes in the amount of the student technology fee agreed upon by both the governing board and its respective student government association or its equivalent shall be used to adjust the amount charged to students. Changes in the amount charged to students, once implemented, become the basis for future changes.

(4) Annually, the student government association or its equivalent may abolish the fee by a majority vote. In the event of such a vote, the student government association or its equivalent shall notify the governing board of the institution. The fee shall cease being collected the term after the student government association or its equivalent voted to eliminate the fee.

(5) The student government association or its equivalent shall approve the annual expenditure plan for the fee revenue.

(6) The universities and The Evergreen State College shall deposit three and one-half percent of revenues from the technology fee into the institutional financial aid fund under RCW 28B.15.820.

(7) As used in this section, "technology fee" is a fee charged to students to recover, in whole or in part, the costs of providing and maintaining services to students that include, but need not be limited to: Access to the internet and world wide web, e-mail, computer and multimedia work stations and laboratories, computer software, and dial-up telephone services.

(8) Prior to the establishment of a technology fee, a governing board shall provide to the student governing body a list of existing fees of a similar nature or for a similar purpose. The board and the student governing body shall ensure that student fees for technology are not duplicative.

Sec. 2. RCW 28B.15.031 and 1995 1st sp.s. c 9 s 2 are each amended to read as follows:

The term "operating fees" as used in this chapter shall include the fees, other than building fees, charged all students registering at the state's colleges and universities but shall not include fees for short courses, self-supporting degree credit programs and courses, marine station work, experimental station work, correspondence or extension courses, and individual instruction and student deposits or rentals, disciplinary and library fines, which colleges and universities shall have the right to impose, laboratory, gymnasium, health, technology and student activity fees, or fees, charges, rentals, and other income derived from any or all revenue producing lands, buildings and facilities of the colleges or universities heretofore or hereafter acquired, constructed or installed, including but not limited to income from rooms, dormitories, dining rooms, hospitals, infirmaries, housing or student activity buildings, vehicular parking facilities, land, or the appurtenances thereon, or such other special fees as may be

established by any college or university board of trustees or regents from time to time. All moneys received as operating fees at any institution of higher education shall be deposited in a local account containing only operating fees revenue and related interest: PROVIDED, That a minimum of three and one-half percent of operating fees shall be retained by the institutions, except the technical colleges, for the purposes of RCW 28B.15.820. Local operating fee accounts shall not be subject to appropriation by the legislature or allotment procedures under chapter 43.88 RCW.

Sec. 3. RCW 28B.15.615 and 1993 sp.s. c 18 s 23 are each amended to read as follows:

Subject to the limitations of RCW 28B.15.910, the governing boards of the state universities and the regional universities may exempt the following students from paying all or a portion of the resident operating fee and the technology fee: Students granted a graduate service appointment, designated as such by the institution, involving not less than twenty hours of work per week. The exemption shall be for the term of the appointment. ~~((The stipend paid to persons holding graduate student appointments from nonstate funds shall be reduced and the institution reimbursed from such funds in an amount equal to the resident operating fee which funds shall be transmitted to the general fund.))~~

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. 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 shall take effect immediately.

Passed the House March 2, 1996.

Passed the Senate February 29, 1996.

Approved by the Governor March 25, 1996.

Filed in Office of Secretary of State March 25, 1996.

CHAPTER 143

[House Bill 2414]

STANDARDIZATION OF RECORDED DOCUMENTS

AN ACT Relating to standardization of recorded documents; amending RCW 36.18.010 and 65.04.050; adding new sections to chapter 65.04 RCW; and providing an effective date.

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

Sec. 1. RCW 36.18.010 and 1995 c 246 s 37 are each amended to read as follows:

County auditors or recording officers shall collect the following fees for their official services:

For recording instruments, for the first page(~~(, legal-size)~~)eight and one-half by fourteen inches or less(~~(,)~~), five dollars; for each additional (~~(legal-size)~~)

page eight and one-half by fourteen inches or less, one dollar; the fee for recording multiple transactions contained in one instrument will be calculated individually for each transaction requiring separate indexing as required under RCW 65.04.050;

For preparing and certifying copies, for the first (~~(legal-size)~~) page eight and one-half by fourteen inches or less, three dollars; for each additional (~~(legal-size)~~) page eight and one-half by fourteen inches or less, one dollar;

For preparing noncertified copies, for each (~~(legal-size)~~) page eight and one-half by fourteen inches or less, one dollar;

For administering an oath or taking an affidavit, with or without seal, two dollars;

For issuing a marriage license, eight dollars, (this fee includes taking necessary affidavits, filing returns, indexing, and transmittal of a record of the marriage to the state registrar of vital statistics) plus an additional five-dollar fee for use and support of the prevention of child abuse and neglect activities to be transmitted monthly to the state treasurer and deposited in the state general fund plus an additional ten-dollar fee to be transmitted monthly to the state treasurer and deposited in the state general fund. The legislature intends to appropriate an amount at least equal to the revenue generated by this fee for the purposes of the displaced homemaker act, chapter 28B.04 RCW;

For searching records per hour, eight dollars;

For recording plats, fifty cents for each lot except cemetery plats for which the charge shall be twenty-five cents per lot; also one dollar for each acknowledgment, dedication, and description: PROVIDED, That there shall be a minimum fee of twenty-five dollars per plat;

For recording of miscellaneous records(~~(s)~~) not listed above, for the first (~~(legal-size)~~) page eight and one-half by fourteen inches or less, five dollars; for each additional (~~(legal-size)~~) page eight and one-half by fourteen inches or less, one dollar;

For modernization and improvement of the recording and indexing system, a surcharge as provided in RCW 36.22.170.

NEW SECTION. Sec. 2. A new section is added to chapter 65.04 RCW 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;

(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 of the instrument to be recorded indicating the kind or kinds of documents or transactions contained therein. The auditor or recording officer shall only be required to index 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) with reference to the document page number where additional names are if applicable;

(f) An abbreviated legal description of the property, including lot, block, plat, or section, township, and range, 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;

(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. Further, all instruments presented for recording must have a one-inch margin on the top, bottom, and sides for all pages except page one, be prepared in ink color capable of being imaged, and have all seals legible and capable of being imaged, and no attachments may be affixed to the pages.

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

NEW SECTION. Sec. 3. A new section is added to chapter 65.04 RCW to read as follows:

If an instrument presented for recording does not contain the information required by section 2(1)(a) through (e) of this act, the person preparing the instrument for recording shall prepare a cover sheet that contains the required information. The cover sheet shall be attached to the instrument and shall be recorded as a part of the instrument. An additional page fee as determined under RCW 36.18.010 shall be collected for recording of the cover sheet. Any errors in the cover sheet shall not affect the transactions contained in the instrument

itself. The cover sheet need not be separately signed or acknowledged. The cover sheet information shall be used to generate the auditor's grantor/grantee index, however, the names and legal description in the instrument itself will determine the legal chain of title. The cover sheet shall be substantially the following form:

WASHINGTON STATE COUNTY AUDITOR/RECORDER'S INDEXING FORM

Return Address

Please print or type information

Document Title(s) (or transactions contained therein):

- 1.
2.
3.
4.

Grantor(s) (Last name first, then first name and initials)

- 1.
2.
3.
4.
5. [] Additional names on page ___ of document.

Grantee(s) (Last name first, then first name and initials)

- 1.
2.
3.
4.
5. [] Additional names on page ___ of document.

Legal Description (abbreviated: i.e., lot, block, plat or section, township, range)

[] Additional legal description is on page ___ of document.

Assessor's Property Tax Parcel or Account Number:

Reference Number(s) of Documents assigned or released:

[] Additional references on page ___ of document.

The Auditor or Recording Officer will rely on the information provided on this form. The staff will not read the document to verify the accuracy of or the completeness of the indexing information provided herein.

Sec. 4. RCW 65.04.050 and 1991 c 26 s 6 are each amended to read as follows:

Every auditor or recording officer must keep a general index, direct and inverted. The index may be either printed on paper or produced on microfilm or microfiche, or it can be created from a computerized data base and displayed on a video display terminal. Any reference to a prior record location number may be entered in the remarks column. Any property legal description contained in the instrument must be entered in the description of property column of the general index. The direct index shall be divided into ~~((seven))~~ eight columns, and with heads to the respective columns, as follows: Date of reception, grantor, grantee, nature of instrument, volume and page where recorded and/or the auditor's file number, remarks, description of property, assessor's property tax parcel or account number. The auditor or recording officer shall correctly enter in such index every instrument concerning or affecting real estate which by law is required to be recorded, the names of grantors being in alphabetical order. The inverted index shall also be divided into ~~((seven))~~ eight columns, precisely similar, except that "grantee" shall occupy the second column and "grantor" the third, the names of grantees being in alphabetical order. The auditor or recording officer may combine the direct and indirect indexes into a single index if it contains all the information required to be contained in the separate direct and indirect indexes and the names of all grantors and grantees can be found by a person searching the combined index. For the purposes of this chapter, the term "grantor" means any person conveying or encumbering the title to any property, or any person against whom any lis pendens, judgment, notice of lien, order of sale, execution, writ of attachment, or claims of separate or community property shall be placed on record. The auditor or recording officer shall also enter in the general index, the name of the party or parties platting a town, village, or addition in the column prescribed for "grantors," describing the grantee in such case as "the public." However, the auditor or recording officer shall not receive or record any such plat or map until it has been approved by the mayor and common council of the municipality in which the property so platted is situated, or if the property be not situated within any municipal corporation, then the plat must be first approved by the county legislative authority. The auditor or recording officer shall not receive for record any plat, map, or subdivision of land bearing a name the same or similar to the name of any map or plat already on record in the office. The auditor or recording officer may establish a name reservation system to preclude the possibility of duplication of names.

NEW SECTION. Sec. 5. This act shall take effect January 1, 1997.

Passed the House March 4, 1996.

Passed the Senate February 29, 1996.

Approved by the Governor March 25, 1996.

Filed in Office of Secretary of State March 25, 1996.

CHAPTER 144

[Substitute House Bill 2431]

PILOTAGE EXEMPTIONS FOR CERTAIN VESSELS ALLOWED

AN ACT Relating to state pilotage exemptions for United States vessels operating on coastwise, fisheries, or recreational endorsements; and amending RCW 88.16.070.

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

Sec. 1. RCW 88.16.070 and 1995 c 174 s 1 are each amended to read as follows:

A United States vessel on a voyage in which it is operating exclusively on its coastwise endorsement, its fishery endorsement (including catching and processing its own catch outside United States waters and economic zone for delivery in the United States), and/or its recreational (or pleasure) endorsement, and all United States and Canadian vessels engaged exclusively in the coasting trade on the west coast of the continental United States (including Alaska) and/or British Columbia shall be exempt from the provisions of this chapter unless a pilot licensed under this chapter be actually employed, in which case the pilotage rates provided for in this chapter shall apply. However, the board shall, upon the written petition of any interested party, and upon notice and opportunity for hearing, grant an exemption from the provisions of this chapter to any vessel that the board finds is a small passenger vessel or yacht which is not more than five hundred gross tons (international), does not exceed two hundred feet in length, and is operated exclusively in the waters of the Puget Sound pilotage district and lower British Columbia. Such an exemption shall not be detrimental to the public interest in regard to safe operation preventing loss of human lives, loss of property, and protecting the marine environment of the state of Washington. Such petition shall set out the general description of the vessel, the contemplated use of same, the proposed area of operation, and the name and address of the vessel's owner. The board shall annually, or at any other time when in the public interest, review any exemptions granted to this specified class of small vessels to insure that each exempted vessel remains in compliance with the original exemption. The board shall have the authority to revoke such exemption where there is not continued compliance with the requirements for exemption. The board shall maintain a file which shall include all petitions for exemption, a roster of vessels granted exemption, and the board's written decisions which shall set forth the findings for grants of exemption. Each applicant for exemption or annual renewal shall pay a fee, payable to the pilotage account. Fees for initial applications and for renewals shall be established by rule, and shall not exceed one thousand five hundred dollars. The board shall report annually to the legislature on such exemptions. Every vessel not so exempt, shall while navigating the Puget Sound and Grays Harbor and Willapa Bay pilotage districts, employ a pilot licensed under the provisions of this chapter and shall be liable for and pay pilotage rates in accordance with the pilotage rates herein established or which may hereafter be established under the provisions of this

chapter: PROVIDED, That any vessel inbound to or outbound from Canadian ports is exempt from the provisions of this section, if said vessel actually employs a pilot licensed by the Pacific pilotage authority (the pilot licensing authority for the western district of Canada), and if it is communicating with the vessel traffic system and has appropriate navigational charts, and if said vessel uses only those waters east of the international boundary line which are west of a line which begins at the southwestern edge of Point Roberts then to Alden Point (Patos Island), then to Skipjack Island light, then to Turn Point (Stuart Island), then to Kellet Bluff (Henry Island), then to Lime Kiln (San Juan Island) then to the intersection of one hundred twenty-three degrees seven minutes west longitude and forty-eight degrees twenty-five minutes north latitude then to the international boundary. The board shall correspond with the Pacific pilotage authority from time to time to ensure the provisions of this section are enforced. If any exempted vessel does not comply with these provisions it shall be deemed to be in violation of this section and subject to the penalties provided in RCW 88.16.150 as now or hereafter amended and liable to pilotage fees as determined by the board. The board shall investigate any accident on the waters covered by this chapter involving a Canadian pilot and shall include the results in its annual report.

Passed the House February 5, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 25, 1996.

Filed in Office of Secretary of State March 25, 1996.

CHAPTER 145

[House Bill 2440]

LOW-DENSITY LIGHT AND POWER BUSINESSES—TAX DEDUCTIONS INCREASED

AN ACT Relating to excise taxation of low-density light and power businesses; amending RCW 82.16.053; and providing an effective date.

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

Sec. 1. RCW 82.16.053 and 1994 c 236 s 1 are each amended to read as follows:

(1) In computing tax under this chapter, a light and power business may deduct from gross income the lesser of the amounts determined under subsections (2) through (4) of this section.

(2)(a) (~~Twenty-five~~) Fifty percent of wholesale power cost paid during the reporting period, if the light and power business has fewer than five and one-half customers per mile of line.

(b) (~~Twenty~~) Forty percent of wholesale power cost paid during the reporting period, if the light and power business has more than five and one-half but less than eleven customers per mile.

(c) (~~Fifteen~~) Thirty percent of the wholesale power cost paid during the reporting period, if the light and power business has more than eleven but less than seventeen customers per mile of line.

(d) Zero if the light and power business has more than seventeen customers per mile of line.

(3) Wholesale power cost multiplied by the percentage by which the average retail electric power rates for the light and power business exceed the state average electric power rate. If more than fifty percent of the kilowatt hours sold by a light and power business are sold to irrigators, then only sales to nonirrigators shall be used to calculate the average electric power rate for that light and power business. For purposes of this subsection, the department shall determine state average electric power rate each year based on the most recent available data and shall inform taxpayers of its determination.

(4) (~~Two~~) Four hundred thousand dollars per month.

NEW SECTION. See. 2. This act shall take effect July 1, 1996.

Passed the House February 6, 1996.

Passed the Senate February 27, 1996.

Approved by the Governor March 25, 1996.

Filed in Office of Secretary of State March 25, 1996.

CHAPTER 146

[House Bill 2457]

PROPERTY TAXATION OF SENIOR CITIZENS AND PERSONS RETIRED BECAUSE OF PHYSICAL DISABILITY—VALUATION REVISED

AN ACT Relating to the property taxation of senior citizens and persons retired because of physical disability; amending RCW 84.36.381; and declaring an emergency.

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

Sec. 1. RCW 84.36.381 and 1995 1st sp.s. c 8 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 or nursing 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 or hospital 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 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 physical disability: PROVIDED, That 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 twenty-eight 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 eighteen thousand dollars or less but greater than fifteen thousand dollars shall be exempt from all regular property taxes on the greater of thirty thousand dollars or thirty percent of the valuation of his or her residence, but not to exceed fifty 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 fifteen thousand dollars or less shall be exempt from all regular property taxes on the greater of thirty-four thousand dollars or fifty percent of the valuation of his or her residence; and

(6) For a person who otherwise qualifies under this section and has a combined disposable income of twenty-eight thousand dollars or less, the valuation of the residence shall be the ~~((true and fair))~~ 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 ~~((true and fair))~~ 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 ~~((true and fair))~~ 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. 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 shall take effect immediately.

Passed the House February 6, 1996.

Passed the Senate March 1, 1996.

Approved by the Governor March 25, 1996.

Filed in Office of Secretary of State March 25, 1996.

CHAPTER 147

[Substitute House Bill 2498]

UNIFORM CONSTRUCTION TRADE ADMINISTRATIVE PROCEDURES

AN ACT Relating to uniform construction trade administrative procedures; amending RCW 18.27.030, 18.27.100, 18.106.100, 18.106.180, 18.106.200, 19.28.123, 19.28.350, 19.28.540, and 19.28.620; and declaring an emergency.

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

Sec. 1. RCW 18.27.030 and 1992 c 217 s 1 are each amended to read as follows:

(1) An applicant for registration as a contractor shall submit an application under oath upon a form to be prescribed by the director and which shall include the following information pertaining to the applicant:

- (a) Employer social security number.
- (b) As applicable: (i) The industrial insurance account number covering employees domiciled in Washington; and (ii) evidence of workers' compensation coverage in the applicant's state of domicile for the applicant's employees working in Washington who are not domiciled in Washington.
- (c) Employment security department number.
- (d) State excise tax registration number.
- (e) Unified business identifier (UBI) account number may be substituted for the information required by (b), (c), and (d) of this subsection.
- (f) Type of contracting activity, whether a general or a specialty contractor and if the latter, the type of specialty.
- (g) The name and address of each partner if the applicant be a firm or partnership, or the name and address of the owner if the applicant be an individual proprietorship, or the name and address of the corporate officers and statutory agent, if any, if the applicant be a corporation. The information contained in such application shall be a matter of public record and open to public inspection.

(2) The department may verify the workers' compensation coverage information provided by the applicant under subsection (1)(b) of this section, including but not limited to information regarding the coverage of an individual employee of the applicant. If coverage is provided under the laws of another state, the department may notify the other state that the applicant is employing employees in Washington.

(3) Registration shall be denied if the applicant has been previously registered as a sole proprietor, partnership, or corporation, and was a principal or officer of the corporation, and if the applicant has an unsatisfied final judgment ~~((in an action))~~ based on ~~((RCW 18.27.040))~~ this chapter that was incurred during a previous registration under this chapter.

Sec. 2. RCW 18.27.100 and 1993 c 454 s 3 are each amended to read as follows:

(1) Except as provided in RCW 18.27.065 for partnerships and joint ventures, no person who has registered under one name as provided in this chapter shall engage in the business, or act in the capacity, of a contractor under any other name unless such name also is registered under this chapter.

(2) All advertising and all contracts, correspondence, cards, signs, posters, papers, and documents which show a contractor's name or address shall show the contractor's name or address as registered under this chapter.

~~(3)((a) The alphabetized listing of contractors appearing in the advertising section of telephone books or other directories and))~~ All advertising that shows the contractor's name or address shall show the contractor's current registration number. The registration number may be omitted in an alphabetized listing of

registered contractors stating only the name, address, and telephone number: PROVIDED, That signs on motor vehicles subject to RCW 46.16.010 and on-premise signs shall not constitute advertising as provided in this section. All materials used to directly solicit business from retail customers who are not businesses shall show the contractor's current registration number. A contractor shall not use a false or expired registration number in purchasing or offering to purchase an advertisement for which a contractor registration number is required. Advertising by airwave transmission shall not be subject to this subsection if the person selling the advertisement obtains the contractor's current registration number from the contractor.

~~((b) A person selling advertising should not accept advertisements for which the contractor registration number is required under (a) of this subsection if the contractor fails to provide the contractor registration number.))~~

(4) No contractor shall advertise that he or she is bonded and insured because of the bond required to be filed and sufficiency of insurance as provided in this chapter.

(5) A contractor shall not falsify a registration number and use it in connection with any solicitation or identification as a contractor. All individual contractors and all partners, associates, agents, salesmen, solicitors, officers, and employees of contractors shall use their true names and addresses at all times while engaged in the business or capacity of a contractor or activities related thereto.

(6)(a) The finding of a violation of this section by the director at a hearing held in accordance with the Administrative Procedure Act, chapter 34.05 RCW, shall subject the person committing the violation to a penalty of not more than five thousand dollars as determined by the director.

(b) Penalties under this section shall not apply to a violation determined to be an inadvertent error.

Sec. 3. RCW 18.106.100 and 1977 ex.s. c 149 s 9 are each amended to read as follows:

(1) The department may revoke ~~((any))~~ or suspend a certificate of competency ~~((upon))~~ for any of the following ~~((grounds))~~ reasons:

(a) The certificate was obtained through error or fraud;

(b) The certificate holder ~~((thereof))~~ is judged to be incompetent to carry on the trade of plumbing as a journeyman plumber or specialty plumber;

(c) The certificate holder ~~((thereof))~~ has violated any ~~((of the))~~ provision(s) of this chapter or any rule ~~((or regulation promulgated thereto))~~ adopted under this chapter.

(2) Before ~~((any))~~ a certificate of competency ~~((shall be))~~ is revoked or suspended, the ~~((holder thereof shall be given written notice of the department's intention to do so, mailed by registered mail, return receipt requested, to said holder's last known address. Said))~~ department shall send written notice by registered mail with return receipt requested to the certificate holder's last known address. The notice ~~((shall enumerate))~~ must list the allegations against ~~((such))~~

the certificate holder(,) and (~~shall~~) give him or her the opportunity to request a hearing before the advisory board. At (~~such~~) the hearing, the department and the certificate holder (~~shall~~) have opportunity to produce witnesses and give testimony. The hearing (~~shall~~) must be conducted in accordance with (~~the provisions of~~) chapter 34.05 RCW. The board shall render its decision based upon the testimony and evidence presented(,) and shall notify the parties immediately upon reaching its decision. A majority of the board (~~shall be~~) is necessary to render a decision.

(3) The department may deny renewal of a certificate of competency issued under this chapter if the applicant owes outstanding penalties for a final judgment under this chapter. The department shall notify the applicant of the denial by registered mail, return receipt requested, to the address on the application. The applicant may appeal the denial within twenty days by filing a notice of appeal with the department accompanied by a certified check for two hundred dollars which shall be returned to the applicant if the decision of the department is not upheld by the hearings officer. The office of administrative hearings shall conduct the hearing under chapter 34.05 RCW. If the hearings officer sustains the decision of the department, the two hundred dollars must be applied to the cost of the hearing.

Sec. 4. RCW 18.106.180 and 1994 c 174 s 3 are each amended to read as follows:

An authorized representative of the department may issue a notice of infraction as specified in RCW 18.106.020(3) if a person who is doing plumbing work or who is offering to do plumbing work fails to produce evidence of having a certificate or permit issued by the department in accordance with this chapter or of being supervised by a person who has such a certificate or permit. A notice of infraction issued under this section shall be personally served on the person named in the notice by an authorized representative of the department or sent by certified mail to the last known address provided to the department of the person named in the notice.

Sec. 5. RCW 18.106.200 and 1994 c 174 s 5 are each amended to read as follows:

A violation designated as an infraction under this chapter shall be heard and determined by an administrative law judge of the office of administrative hearings. If a party desires to contest the notice of infraction, the party shall file a notice of appeal with the department within (~~fourteen~~) twenty days of issuance of the infraction. The administrative law judge shall conduct hearings in these cases at locations in the county where the infraction is alleged to have occurred.

Sec. 6. RCW 19.28.123 and 1988 c 81 s 5 are each amended to read as follows:

It shall be the purpose and function of the board to establish, in addition to a general electrical contractors' license, such classifications of specialty electrical

contractors' licenses as it deems appropriate with regard to individual sections pertaining to state adopted codes in this chapter ((19.28 RCW)). In addition, it shall be the purpose and function of the board to establish and administer written examinations for general electrical ((contractors' qualifying)) administrators' certificates and the various specialty electrical ((contractors' qualifying)) administrators' certificates. Examinations shall be designed to reasonably insure that general and specialty electrical ((contractor's qualifying)) administrators' certificate holders are competent to engage in and supervise the work covered by this statute and their respective licenses. The examinations shall include questions from the following categories to assure proper safety and protection for the general public: (1) Safety, (2) state electrical code, and (3) electrical theory. The department with the consent of the board shall be permitted to enter into a contract with a professional testing agency to develop, administer, and score these examinations. The fee for the examination may be set by the department in its contract with the professional testing agency. The department may direct that the applicant pay the fee to the professional testing agency. The fee shall cover but not exceed the costs of preparing and administering the examination. It shall be the further purpose and function of this board to advise the director as to the need of additional electrical inspectors and compliance officers to be utilized by the director on either a full-time or part-time employment basis and to carry out the duties enumerated in RCW 19.28.510 through 19.28.620 as well as generally advise the department on all matters relative to RCW 19.28.510 through 19.28.620.

Sec. 7. RCW 19.28.350 and 1988 c 81 s 12 are each amended to read as follows:

Any person, firm, partnership, corporation, or other entity violating any of the provisions of RCW 19.28.010 through 19.28.360 shall be assessed a penalty of not less than fifty dollars or more than ten thousand dollars. The department shall set by rule a schedule of penalties for violating RCW 19.28.010 through 19.28.360. The department shall notify the person, firm, partnership, corporation, or other entity violating any of the provisions of RCW 19.28.010 through 19.28.360 of the amount of the penalty and of the specific violation by certified mail, return receipt requested, sent to the last known address of the assessed party. Any penalty is subject to review by an appeal to the board. The filing of an appeal stays the effect of the penalty until the board makes its decision. The appeal shall be filed within ((fifteen)) twenty days after notice of the penalty is given to the assessed party by certified mail, return receipt requested, sent to the last known address of the assessed party and shall be made by filing a written notice of appeal with the department. The notice shall be accompanied by a certified check for two hundred dollars, which shall be returned to the assessed party if the decision of the department is not sustained by the board. If the board sustains the decision of the department, the two hundred dollars shall be applied by the department to the payment of the per diem and expenses of the members of the board incurred in the matter, and any

balance remaining after payment of per diem and expenses shall be paid into the electrical license fund. The hearing and review procedures shall be conducted in accordance with chapter 34.05 RCW. The board shall assign its hearings to an administrative law judge to conduct the hearing and issue a proposed decision and order. The board shall be allowed a minimum of twenty days to review a proposed decision and shall issue its decision no later than the next regularly scheduled board meeting.

Sec. 8. RCW 19.28.540 and 1988 c 81 s 14 are each amended to read as follows:

The department, in coordination with the board, shall prepare an examination to be administered to applicants for journeyman and specialty certificates of competency. The examination shall be constructed to determine:

(1) Whether the applicant possesses varied general knowledge of the technical information and practical procedures that are identified with the status of journeyman electrician or specialty electrician; and

(2) Whether the applicant is sufficiently familiar with the applicable electrical codes and the rules of the department pertaining to electrical installations and electricians.

The department shall, at least four times annually, administer the examination to persons eligible to take it under RCW 19.28.530. A person may take the journeyman or specialty test as many times as necessary without limit. All applicants shall, before taking the examination, pay ~~((to the department an))~~ the required examination fee~~((—The department shall set the fee by rule))~~ to the agency administering the examination. The fee shall cover but not exceed the costs of preparing and administering the examination.

The department shall certify the results of the examination upon such terms and after such a period of time as the department, in cooperation with the board, deems necessary and proper.

(3) The department upon the consent of the board may enter into a contract with a professional testing agency to develop, administer, and score journeyman and/or specialty electrician certification examinations. The department may set the examination fee by contract with the professional testing agency.

Sec. 9. RCW 19.28.620 and 1988 c 81 s 16 are each amended to read as follows:

(1) It is unlawful for any person, firm, partnership, corporation, or other entity to employ an individual for purposes of RCW 19.28.510 through 19.28.620 who has not been issued a certificate of competency or a training certificate. It is unlawful for any individual to engage in the electrical construction trade or to maintain or install any electrical equipment or conductors without having in his or her possession a certificate of competency or a training certificate under RCW 19.28.510 through 19.28.620. Any person, firm, partnership, corporation, or other entity found in violation of RCW 19.28.510 through 19.28.620 shall be assessed a penalty of not less than fifty dollars or

more than five hundred dollars. The department shall set by rule a schedule of penalties for violating RCW 19.28.510 through 19.28.620. An appeal may be made to the board as is provided in RCW 19.28.350. The appeal shall be filed within ~~((fifteen))~~ twenty days after the notice of the penalty is given to the assessed party by certified mail, return receipt requested, sent to the last known address of the assessed party and shall be made by filing a written notice of appeal with the department. Any equipment maintained or installed by any person who does not possess a certificate of competency under RCW 19.28.510 through 19.28.620 shall not receive an electrical work permit and electrical service shall not be connected or maintained to operate the equipment. Each day that a person, firm, partnership, corporation, or other entity violates ~~((the provisions of))~~ RCW 19.28.510 through 19.28.620 is a separate violation.

(2) A civil penalty shall be collected in a civil action brought by the attorney general in the county wherein the alleged violation arose at the request of the department if any of ~~((the provisions of))~~ RCW 19.28.510 through 19.28.620 or any rules ~~((promulgated))~~ adopted under RCW 19.28.510 through 19.28.620 are violated.

NEW SECTION. **Sec. 10.** Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 2, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 25, 1996.

Filed in Office of Secretary of State March 25, 1996.

CHAPTER 148

[Substitute House Bill 2590]

EXCISE TAX CHANGES NEEDED AS A RESULT OF JEFFERSON LINES V. OKLAHOMA

AN ACT Relating to excise tax changes needed as a result of the United States supreme court in *Jefferson Lines v. Oklahoma*; amending RCW 82.04.050, 82.04.060, 82.04.190, 82.12.020, and 82.12.035; reenacting and amending RCW 82.04.260; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 82.04.050 and 1995 1st sp.s. c 12 s 2 are each amended to read as follows:

(1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7) and 82.04.290.

(2) The term "sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding sales of laundry service to members by nonprofit associations composed exclusively of nonprofit hospitals, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the

purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The sale of and charge made for the furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same;

(g) The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), and (f) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or

distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events;
and

~~(g) ((Guided tours and guided charters; and~~
~~—(h)))~~ The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4) The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

(5) The term shall also include the providing of telephone service, as defined in RCW 82.04.065, to consumers.

(6) The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(7) The term shall also not include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to persons who participate in the federal conservation reserve program or its successor administered by the United States department of agriculture, or to farmers for the purpose of producing for sale any agricultural product, nor shall it include sales of chemical sprays or washes to persons for the purpose of post-harvest treatment of fruit for the prevention of scald, fungus, mold, or decay.

(8) The term shall not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor shall the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority.

Sec. 2. RCW 82.04.260 and 1995 2nd sp.s. c 12 s 1 and 1995 2nd sp.s. c 6 s 1 are each reenacted and amended to read as follows:

(1) Upon every person engaging within this state in the business of buying wheat, oats, dry peas, dry beans, lentils, triticale, canola, corn, rye and barley, but not including any manufactured or processed products thereof, and selling the same at wholesale; the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of 0.011 percent.

(2) Upon every person engaging within this state in the business of manufacturing wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola byproducts, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business shall be equal to the value of the flour, pearl barley, oil, canola meal, or canola byproduct manufactured, multiplied by the rate of 0.138 percent.

(3) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business shall be equal to the value of the peas split or processed, multiplied by the rate of 0.275 percent.

(4) Upon every person engaging within this state in the business of manufacturing seafood products which remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured, multiplied by the rate of 0.138 percent.

(5) Upon every person engaging within this state in the business of manufacturing by canning, preserving, freezing or dehydrating fresh fruits and vegetables; as to such persons the amount of tax with respect to such business shall be equal to the value of the products canned, preserved, frozen or dehydrated multiplied by the rate of 0.33 percent.

(6) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(7) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(8) Upon every person engaging within this state in the business of making sales, at retail or wholesale, of nuclear fuel assemblies manufactured by that person, as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the assemblies multiplied by the rate of 0.275 percent.

(9) Upon every person engaging within this state in the business of manufacturing nuclear fuel assemblies, as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured multiplied by the rate of 0.275 percent.

(10) Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(11) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.363 percent.

(12) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds derived from such activities multiplied by the rate of 0.363 percent. Persons subject to taxation under this subsection shall be exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(13) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business shall be equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state shall be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(14) Upon every person engaging within this state as an insurance agent, insurance broker, or insurance solicitor licensed under chapter 48.17 RCW; as to such persons, the amount of the tax with respect to such licensed activities shall

be equal to the gross income of such business multiplied by the rate of 0.55 percent.

(15) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities shall be equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter. The moneys collected under this subsection shall be deposited in the health services account created under RCW 43.72.900.

Sec. 3. RCW 82.04.060 and 1983 2nd ex.s. c 3 s 26 are each amended to read as follows:

"Sale at wholesale" or "wholesale sale" means any sale of tangible personal property, any sale of amusement or recreation services as defined in RCW 82.04.050(3)(a), or any sale of telephone service as defined in RCW 82.04.065, which is not a sale at retail and means any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property, if such charge is expressly defined as a retail sale by RCW 82.04.050 when rendered to or for consumers: PROVIDED, That the term "real or personal property" as used in this section shall not include any natural products named in RCW 82.04.100.

Sec. 4. RCW 82.04.190 and 1995 1st sp.s. c 3 s 4 are each amended to read as follows:

"Consumer" means the following:

(1) Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than for the purpose (a) of resale as tangible personal property in the regular course of business or (b) of incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers or (c) of consuming such property in producing for sale a new article of tangible personal property or a new substance, of which such property becomes an ingredient or component or as a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale or (d) purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon;

(2)(a) Any person engaged in any business activity taxable under RCW 82.04.290 ((and)); (b) any person who purchases, acquires, or uses any telephone

service as defined in RCW 82.04.065, other than for resale in the regular course of business; and (c) any person who purchases, acquires, or uses any amusement and recreation service defined in RCW 82.04.050(3)(a), other than for resale in the regular course of business;

(3) Any person engaged in the business of contracting for the building, repairing or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state of Washington or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind as defined in RCW 82.04.280, in respect to tangible personal property when such person incorporates such property as an ingredient or component of such publicly owned street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right of way of such street, place, road, highway, easement, bridge, tunnel, or trestle or in or upon the site of such mass public transportation terminal or parking facility;

(4) Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business, excluding only (a) municipal corporations or political subdivisions of the state in respect to labor and services rendered to their real property which is used or held for public road purposes, and (b) the United States, instrumentalities thereof, and county and city housing authorities created pursuant to chapter 35.82 RCW in respect to labor and services rendered to their real property. Nothing contained in this or any other subsection of this definition shall be construed to modify any other definition of "consumer";

(5) Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

(6) Any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation; also, any person engaged in the business of clearing land and moving earth of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW. Any such person shall be a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person; and

(7) Any person who is a lessor of machinery and equipment, the rental of which is exempt from the tax imposed by RCW 82.08.020 under RCW

82.08.02565, with respect to the sale of or charge made for tangible personal property consumed and for labor and services rendered in respect to repairing the machinery and equipment.

Nothing contained in this or any other subsection of this definition shall be construed to modify any other definition of "consumer."

Sec. 5. RCW 82.12.020 and 1994 c 93 s 2 are each amended to read as follows:

(1) There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any article of tangible personal property purchased at retail, or acquired by lease, gift, repossession, or bailment, or extracted or produced or manufactured by the person so using the same, or otherwise furnished to a person engaged in any business taxable under RCW 82.04.280 (2) or (7), or any amusement or recreation service defined as a retail sale in RCW 82.04.050(3)(a).

(2) This tax shall apply to the use of every service defined as a retail sale in RCW 82.04.050(3)(a) and the use of every article of tangible personal property, including property acquired at a casual or isolated sale, and including byproducts used by the manufacturer thereof, except as hereinafter provided, irrespective of whether the article or similar articles are manufactured or are available for purchase within this state.

(3) Except as provided in RCW 82.12.0252, payment by one purchaser or user of tangible personal property or service of the tax imposed by chapter 82.08 or 82.12 RCW shall not have the effect of exempting any other purchaser or user of the same property or service from the taxes imposed by such chapters.

(4) The tax shall be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the retail sales tax under RCW 82.08.020.

Sec. 6. RCW 82.12.035 and 1987 c 27 s 2 are each amended to read as follows:

A credit shall be allowed against the taxes imposed by this chapter upon the use of tangible personal property, or services taxable under RCW 82.04.050(3)(a), in the state of Washington in the amount that the present user thereof or his or her bailor or donor has paid a retail sales or use tax with respect to such property to any other state of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof, prior to the use of such property in Washington.

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

NEW SECTION. Sec. 8. 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 shall take effect April 1, 1996.

Passed the House March 7, 1996.

Passed the Senate March 7, 1996.

Approved by the Governor March 25, 1996.

Filed in Office of Secretary of State March 25, 1996.

CHAPTER 149

[Engrossed Substitute House Bill 2592]

PENALTY AND INTEREST ADMINISTRATION OF THE DEPARTMENT OF REVENUE—PROVISION OF CONSISTENCY

AN ACT Relating to penalty and interest administration of the department of revenue; amending RCW 82.32.050, 82.32.190, 82.32.200, 82.45.100, 82.45.150, 82.24.120, 82.24.180, 82.24.270, 82.24.280, 63.29.340, 54.28.060, 83.100.070, 83.100.130, 82.32.090, 54.28.040, 82.32.105, and 82.12.045; adding a new section to chapter 83.100 RCW; 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 a consistent application of interest and penalties is in the best interest of the residents of the state of Washington. The legislature also finds that the goal of the department of revenue's interest and penalty system should be to encourage taxpayers to voluntarily comply with Washington's tax code in a timely manner. The administration of tax programs requires that there be consequences for those taxpayers who do not timely satisfy their reporting and tax obligations, but these consequences should not be so severe as to discourage taxpayers from voluntarily satisfying their tax obligations.

It is the intent of the legislature that, to the extent possible, a single interest and penalty system apply to all tax programs administered by the department of revenue.

Sec. 2. RCW 82.32.050 and 1992 c 169 s 1 are each amended to read as follows:

(1) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due and shall add thereto interest on the tax only at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the date of payment for tax liabilities arising before January 1, 1992. For tax liabilities arising after December 31, 1991, until the date of payment, the rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year. The department shall notify the taxpayer by mail of the additional amount and the same shall become due and shall be paid within thirty days from the date of the notice, or within such further time as the department may provide.

(2) For the purposes of this section, the rate of interest to be charged to the taxpayer shall be an average of the federal short-term rate as defined in 26

U.S.C. Sec. 1274(d) plus two percentage points. The rate shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually, for the months of January, April, July, and October of the immediately preceding calendar year as published by the United States secretary of the treasury.

(3) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the tax year, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver shall also extend the period for making a refund or credit as provided in RCW 82.32.060(2).

(4) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department of revenue and that has a statutorily defined due date.

Sec. 3. RCW 82.32.190 and 1971 ex.s. c 299 s 21 are each amended to read as follows:

(1) The department, by its order, may hold in abeyance the collection of tax from any taxpayer or any group of taxpayers when a question bearing on their liability for tax hereunder is pending before the courts(~~(=PROVIDED, That))~~. The department may impose such conditions as may be deemed just and equitable and shall require the payment of interest at the rate of three-quarters of one percent of the amount of the tax for each thirty days or portion thereof from the date upon which such tax became due until the date of payment.

(2) Interest imposed under this section for periods after the effective date of this act shall be computed on a daily basis at the rate as computed under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January of each year. Interest for taxes held in abeyance under this section before the effective date of this act but outstanding after the effective date of this act shall not be recalculated but shall remain at three-quarters of one percent per each thirty days or portion thereof.

Sec. 4. RCW 82.32.200 and 1975 1st ex.s. c 278 s 83 are each amended to read as follows:

(1) When any assessment or additional assessment has been made, the taxpayer may obtain a stay of collection, under such circumstances and for such periods as the department of revenue may by general regulation provide, of the whole or any part thereof, by filing with the department a bond in an amount, not exceeding twice the amount on which stay is desired, and with sureties as the department deems necessary, conditioned for the payment of the amount of the assessments, collection of which is stayed by the bond, together with the interest thereon at the rate of one percent of the amount of such assessment for each

thirty days or portion thereof from the ~~((due date thereof until paid))~~ date the bond is filed until the date of payment.

(2) Interest imposed under this section after the effective date of this act shall be computed on a daily basis on the amount of tax at the rate as computed under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January of each year. Interest for bonds filed before the effective date of this act but outstanding after the effective date of this act shall not be recalculated but shall remain at one percent per each thirty days or portion thereof.

Sec. 5. RCW 82.45.100 and 1993 sp.s. c 25 s 507 are each amended to read as follows:

(1) Payment of the tax imposed under this chapter is due and payable immediately at the time of sale, and if not paid within ~~((thirty days))~~ one month thereafter shall bear interest at the rate of one percent per month from the time of sale until the date of payment.

(2) In addition to the interest described in subsection (1) of this section, if the payment of any tax is not received by the county treasurer or the department of revenue, as the case may be, within ~~((thirty days))~~ one month of the date due, there shall be assessed a penalty of five percent of the amount of the tax; if the tax is not received within ~~((sixty days))~~ two months of the date due, there shall be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received within ~~((ninety days))~~ three months of the date due, there shall be assessed a total penalty of twenty percent of the amount of the tax. The payment of the penalty described in this subsection shall be collectible from the seller only, and RCW 82.45.070 does not apply to the penalties described in this subsection.

(3) If the tax imposed under this chapter is not received by the due date, the transferee shall be personally liable for the tax, along with any interest as provided in subsection (1) of this section, unless:

(a) An instrument evidencing the sale is recorded in the official real property records of the county in which the property conveyed is located; or

(b) Either the transferor or transferee notifies the department of revenue in writing of the occurrence of the sale within thirty days following the date of the sale.

(4) If upon examination of any affidavits or from other information obtained by the department or its agents it appears that all or a portion of the tax is unpaid, the department shall assess against the taxpayer the additional amount found to be due plus interest and penalties as provided in subsections (1) and (2) of this section. ~~((If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable under this chapter, an additional penalty of fifty percent of the additional tax found to be due shall be added.))~~ The department shall notify the taxpayer by mail of the additional amount and the same shall become due and shall be paid within thirty days from the date of the notice, or within such further time as the department may provide.

(5) No assessment or refund may be made by the department more than four years after the date of sale except upon a showing of:

(a) Fraud or misrepresentation of a material fact by the taxpayer;

(b) A failure by the taxpayer to record documentation of a sale or otherwise report the sale to the county treasurer; or

(c) A failure of the transferor or transferee to report the sale under RCW 82.45.090(2).

(6) Penalties collected (~~(pursuant to)~~ under subsection (2) of this section and RCW 82.32.090 (2) through (6) shall be deposited in the housing trust fund as described in chapter 43.185 RCW.

Sec. 6. RCW 82.45.150 and 1994 c 137 s 1 are each amended to read as follows:

All of chapter 82.32 RCW, except RCW 82.32.030, 82.32.050, 82.32.140, ~~((and))~~ 82.32.270, and ~~((except for the penalties and the limitations thereon imposed by RCW))~~ 82.32.090(1) and (8), applies to the tax imposed by this chapter, in addition to any other provisions of law for the payment and enforcement of the tax imposed by this chapter. The department of revenue shall by rule provide for the effective administration of this chapter. The rules shall prescribe and furnish a real estate excise tax affidavit form verified by both the seller and the buyer, or agents of each, to be used by each county, or the department, as the case may be, in the collection of the tax imposed by this chapter, except that an affidavit given in connection with grant of an easement or right of way to a gas, electrical, or telecommunications company, as defined in RCW 80.04.010, or to a public utility district or cooperative that distributes electricity, need be verified only on behalf of the company, district, or cooperative. The department of revenue shall annually conduct audits of transactions and affidavits filed under this chapter.

Sec. 7. RCW 82.24.120 and 1995 c 278 s 8 are each amended to read as follows:

(1) If any person, subject to the provisions of this chapter or any rules adopted by the department of revenue under authority hereof, is found to have failed to affix the stamps required, or to have them affixed as herein provided, or to pay any tax due hereunder, or to have violated any of the provisions of this chapter or rules adopted by the department of revenue in the administration hereof, there shall be assessed and collected from such person, in addition to any tax that may be found due, a remedial penalty equal to the greater of ten dollars per package of unstamped cigarettes or two hundred fifty dollars, plus interest ~~((thereon))~~ on the amount of the tax at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment, and upon notice mailed to the last known address of the person. The amount shall become due and payable in thirty days from the date of the notice. If the amount remains unpaid, the department or its duly authorized agent may make

immediate demand upon such person for the payment of all such taxes, penalties, and interest.

(2) The department, for good reason shown, may ~~((remit))~~ waive or cancel all or any part of penalties imposed, but the taxpayer must pay all taxes due and interest thereon, at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment.

(3) The keeping of any unstamped articles coming within the provisions of this chapter shall be prima facie evidence of intent to violate the provisions of this chapter.

(4) This section does not apply to taxes or tax increases due under RCW 82.24.270 and 82.24.280.

Sec. 8. RCW 82.24.180 and 1990 c 267 s 2 are each amended to read as follows:

(1) The department of revenue may return any property seized under the provisions of this chapter when it is shown that there was no intention to violate the provisions thereof.

(2) When any property is returned under this section, the department may return such goods to the parties from whom they were seized if and when such parties affix the proper amount of stamps thereto, and pay to the department as penalty an amount equal to the greater of ten dollars per package of unstamped cigarettes or two hundred fifty dollars, and interest ~~((thereon at the rate of one percent for each thirty days or portion thereof))~~ on the amount of the tax at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment, and in such cases, no advertisement shall be made or notices posted in connection with said seizure.

Sec. 9. RCW 82.24.270 and 1995 c 278 s 12 are each amended to read as follows:

(1) All cigarettes taxed under this chapter that are given away for advertising or other purposes are not required to have the state tax stamp affixed. Instead, the manufacturer of the cigarettes shall pay the tax on a monthly tax return to be supplied by the department.

(2) The tax is due on or before the twenty-fifth day of the month following the month in which the taxable activities, that is the providing of cigarette samples, occur. If not paid by the due date, interest applies to any unpaid tax ~~((or penalty))~~. Interest shall be calculated at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment.

(3) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer the additional amount found to be due. The department shall notify the taxpayer by mail of the additional amount due, including any applicable penalties and interest. The taxpayer shall pay the additional amount within thirty days from the date of the notice, or within such further time as the department may provide.

(4) All the cigarettes must evidence the payment of the tax by having printed on their packages wording to the following effect: "Complimentary, not for sale, all applicable state taxes paid by manufacturer."

(5) All of chapter 82.32 RCW applies to taxes due under this section except: RCW 82.32.050(1) and 82.32.270.

Sec. 10. RCW 82.24.280 and 1995 c 278 s 13 are each amended to read as follows:

(1) Any additional tax liability arising from a tax rate increase under this chapter shall be paid, along with reports and returns prescribed by the department, on or before the last day of the month in which the increase becomes effective.

(2) If not paid by the due date, interest shall apply to any unpaid tax (~~or penalty~~). Interest shall be calculated at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment.

(3) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due. The department shall notify the taxpayer by mail of the additional amount due, including any applicable penalties and interest. The taxpayer shall pay the additional amount within thirty days from the date of the notice, or within such further time as the department may provide.

(4) All of chapter 82.32 RCW applies to tax rate increases except: RCW 82.32.050(1) and 82.32.270.

Sec. 11. RCW 63.29.340 and 1983 c 179 s 34 are each amended to read as follows:

(1) A person who fails to pay or deliver property within the time prescribed by this chapter shall be required to pay to the department interest at the (~~maximum rate permitted under RCW 19.52.020~~) rate as computed under RCW 82.32.050(2) from the date the property should have been paid or delivered until the property is paid or delivered.

(2) A person who willfully fails to render any report, to pay or deliver property, or to perform other duties required under this chapter shall pay a civil penalty of one hundred dollars for each day the report is withheld or the duty is not performed, but not more than five thousand dollars, plus one hundred percent of the value of the property which should have been reported, paid or delivered.

(3) A person who willfully refuses after written demand by the department to pay or deliver property to the department as required under this chapter or who enters into a contract to avoid the duties of this chapter is guilty of a gross misdemeanor and upon conviction may be punished by a fine of not more than one thousand dollars or imprisonment for not more than one year, or both.

Sec. 12. RCW 54.28.060 and 1957 c 278 s 6 are each amended to read as follows:

Interest at the rate (~~(of six percent per annum)~~) as computed under RCW 82.32.050(2) shall be added to the tax hereby imposed (~~((after))~~) from the due date until the date of payment. The tax shall constitute a debt to the state and may be collected as such.

Sec. 13. RCW 83.100.070 and 1988 c 64 s 8 are each amended to read as follows:

(1) Any tax due under this chapter which is not paid by the due date under RCW 83.100.060(1) shall bear interest at the rate of twelve percent per annum from the date the tax is due until (~~(paid)~~) the date of payment.

(2) Interest imposed under this section for periods after the effective date of this act shall be computed at the rate as computed under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January of each year.

(3) If the Washington return is not filed when due under RCW 83.100.050, then the person required to file the federal return shall pay, in addition to interest, a penalty equal to five percent of the tax due for each month after the date the return is due until filed. No penalty may exceed twenty-five percent of the tax.

Sec. 14. RCW 83.100.130 and 1988 c 64 s 12 are each amended to read as follows:

(1) Whenever the department determines that a person required to file the federal return has overpaid the tax due under this chapter, the department shall refund the amount of the overpayment, together with interest at the then existing rate under RCW 83.100.070(1). If the application for refund, with supporting documents, is filed within four months after an adjustment or final determination of federal tax liability, the department shall pay interest until the date the refund is mailed. If the application for refund, with supporting documents, is filed after four months after the adjustment or final determination, the department shall pay interest only until the end of the four-month period.

(2) Interest refunded under this section for periods after the effective date of this act shall be computed on a daily basis at the rate as computed under RCW 82.32.050(2) less one percentage point, and shall be refunded from the date of overpayment until the date the refund is mailed. The rate so computed shall be adjusted on the first day of January of each year.

Sec. 15. RCW 82.32.090 and 1992 c 206 s 3 are each amended to read as follows:

(1) If payment of any tax due on a return to be filed by a taxpayer is not received by the department of revenue by the due date, there shall be assessed a penalty of five percent of the amount of the tax; and if the tax is not received (~~((within thirty days after))~~) on or before the last day of the month following the due date, there shall be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received (~~((within sixty days after))~~) on or before the last day of the second month following the due date, there shall be assessed a

total penalty of twenty percent of the amount of the tax. No penalty so added shall be less than five dollars.

(2) If payment of any tax assessed by the department of revenue is not received by the department by the due date specified in the notice, or any extension thereof, the department shall add a penalty of ten percent of the amount of the additional tax found due. No penalty so added shall be less than five dollars.

(3) If a warrant be issued by the department of revenue for the collection of taxes, increases, and penalties, there shall be added thereto a penalty of five percent of the amount of the tax, but not less than ten dollars.

(4) If the department finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting or tax liabilities, the department shall add a penalty of ten percent of the amount of the additional tax found due because of the failure to follow the instructions. A taxpayer disregards specific written instructions when the department of revenue has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless the department has not issued final instructions because the matter is under appeal pursuant to this chapter or departmental regulations. The department shall not assess the penalty under this section upon any taxpayer who has made a good faith effort to comply with the specific written instructions provided by the department to that taxpayer. Specific written instructions may be given as a part of a tax assessment, audit, determination, or closing agreement, provided that such specific written instructions shall apply only to the taxpayer addressed or referenced on such documents. Any specific written instructions by the department of revenue shall be clearly identified as such and shall inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection.

(5) If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of fifty percent of the additional tax found to be due shall be added.

(6) The aggregate of penalties imposed under subsections (1), (2), and (3) of this section (~~((for failure to pay a tax due on a return by the due date, late payment of any tax, increase, or penalty, or issuance of a warrant))~~) shall not exceed thirty-five percent of the tax due, or twenty dollars, whichever is greater. This subsection does not prohibit or restrict the application of other penalties authorized by law.

(7) The department of revenue may not impose both the evasion penalty and the penalty for disregarding specific written instructions on the same tax found to be due.

(8) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department of revenue, and that has a statutorily defined due date.

Sec. 16. RCW 54.28.040 and 1982 1st ex.s. c 35 s 20 are each amended to read as follows:

~~((Prior to))~~ (1) Before May 1st, the department of revenue shall compute the tax imposed by this chapter for the last preceding calendar year and notify the district of the amount thereof, which shall be payable on or before the following June 1st.

(2) If payment of any tax is not received by the department on or before the due date, there shall be assessed a penalty of five percent of the amount of the tax; if the tax is not received within one month of the due date, there shall be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received within two months of the due date there shall be assessed a total penalty of twenty percent of the amount of the tax.

(3) Upon receipt of the amount of each tax imposed the department of revenue shall deposit the same with the state treasurer, who shall deposit four percent of the revenues received under RCW 54.28.020(1) and 54.28.025(1) and all revenues received under RCW 54.28.020(2) and 54.28.025(2) in the general fund of the state and shall distribute the remainder in the manner hereinafter set forth. The state treasurer shall send a duplicate copy of each transmittal to the department of revenue.

Sec. 17. RCW 82.32.105 and 1975 1st ex.s. c 278 s 78 are each amended to read as follows:

(1) If the department of revenue finds that the payment by a taxpayer of a tax less than that properly due or the failure of a taxpayer to pay any tax by the due date was the result of circumstances beyond the control of the taxpayer, the department of revenue shall waive or cancel any ~~((interest or))~~ penalties imposed under this chapter with respect to such tax. ~~((The department of revenue shall prescribe rules for the waiver or cancellation of interest or penalties imposed by this chapter. Notwithstanding the foregoing the amount of any interest which has been waived, canceled or refunded prior to May 1, 1965 shall not be reassessed according to the provisions of this chapter.))~~

(2) The department shall waive or cancel the penalty imposed under RCW 82.32.090(1) when the circumstances under which the delinquency occurred do not qualify for waiver or cancellation under subsection (1) of this section if:

(a) The taxpayer requests the waiver for a tax return required to be filed under RCW 82.32.045, 82.23B.020, 82.27.060, 82.29A.050, or 84.33.086; and

(b) The taxpayer has timely filed and remitted payment on all tax returns due for that tax program for a period of twenty-four months immediately preceding the period covered by the return for which the waiver is being requested.

(3) The department shall waive or cancel interest imposed under this chapter if:

(a) The failure to timely pay the tax was the direct result of written instructions given the taxpayer by the department; or

(b) The extension of a due date for payment of an assessment of deficiency was not at the request of the taxpayer and was for the sole convenience of the department.

(4) The department of revenue shall adopt rules for the waiver or cancellation of penalties and interest imposed by this chapter.

NEW SECTION. Sec. 18. A new section is added to chapter 83.100 RCW to read as follows:

The department may enter into closing agreements as provided in RCW 82.32.350 and 82.32.360.

Sec. 19. RCW 82.12.045 and 1983 c 77 s 2 are each amended to read as follows:

(1) In the collection of the use tax on motor vehicles, the department of revenue may designate the county auditors of the several counties of the state as its collecting agents. Upon such designation, it shall be the duty of each county auditor to collect the tax at the time an applicant applies for the registration of, and transfer of title to, the motor vehicle, except in the following instances:

~~((1))~~ (a) Where the applicant exhibits a dealer's report of sale showing that the retail sales tax has been collected by the dealer;

~~((2))~~ (b) Where the application is for the renewal of registration;

~~((3))~~ (c) Where the applicant presents a written statement signed by the department of revenue, or its duly authorized agent showing that no use tax is legally due; or

~~((4))~~ (d) Where the applicant presents satisfactory evidence showing that the retail sales tax or the use tax has been paid by him on the vehicle in question.

(2) The term "motor vehicle," as used in this section means and includes all motor vehicles, trailers and semitrailers used, or of a type designed primarily to be used, upon the public streets and highways, for the convenience or pleasure of the owner, or for the conveyance, for hire or otherwise, of persons or property, including fixed loads, facilities for human habitation, and vehicles carrying exempt licenses.

(3) It shall be the duty of every applicant for registration and transfer of certificate of title who is subject to payment of tax under this section to declare upon his application the value of the vehicle for which application is made, which shall consist of the consideration paid or contracted to be paid therefor. ~~((Any person wilfully misrepresenting, or failing or refusing to declare upon his application, such value shall be guilty of a gross misdemeanor.))~~

(4) Each county auditor who acts as agent of the department of revenue shall at the time of remitting license fee receipts on motor vehicles subject to the provisions of this section pay over and account to the state treasurer for all use tax revenue collected under this section, after first deducting as his collection fee the sum of two dollars for each motor vehicle upon which the tax has been collected. All revenue received by the state treasurer under this section shall be

credited to the general fund. The auditor's collection fee shall be deposited in the county current expense fund. A duplicate of the county auditor's transmittal report to the state treasurer shall be forwarded forthwith to the department of revenue.

(5) Any applicant who has paid use tax to a county auditor under this section may apply to the department of revenue for refund thereof if he has reason to believe that such tax was not legally due and owing. No refund shall be allowed unless application therefor is received by the department of revenue within ~~((two years after payment of the tax))~~ the statutory period for assessment of taxes, penalties, or interest prescribed by RCW 82.32.050(3). Upon receipt of an application for refund the department of revenue shall consider the same and issue its order either granting or denying it and if refund is denied the taxpayer shall have the right of appeal as provided in RCW 82.32.170, 82.32.180 and 82.32.190.

(6) The provisions of this section shall be construed as cumulative of other methods prescribed in chapters 82.04 to 82.32 RCW, inclusive, for the collection of the tax imposed by this chapter. The department of revenue shall have power to promulgate such rules ~~((and regulations))~~ as may be necessary to administer the provisions of this section. Any duties required by this section to be performed by the county auditor may be performed by the director of licensing but no collection fee shall be deductible by said director in remitting use tax revenue to the state treasurer.

NEW SECTION. Sec. 20. This act shall take effect January 1, 1997.

Passed the House March 2, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 25, 1996.

Filed in Office of Secretary of State March 25, 1996.

CHAPTER 150

[House Bill 2593]

RAILROAD-RELATED BUSINESSES—TAX RATES LOWERED

AN ACT Relating to taxation of railroad-related businesses; amending RCW 82.16.010 and 82.16.020; and declaring an emergency.

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

Sec. 1. RCW 82.16.010 and 1994 c 163 s 4 are each amended to read as follows:

For the purposes of this chapter, unless otherwise required by the context:

(1) "Railroad business" means the business of operating any railroad, by whatever power operated, for public use in the conveyance of persons or property for hire. It shall not, however, include any business herein defined as an urban transportation business.

(2) "Express business" means the business of carrying property for public hire on the line of any common carrier operated in this state, when such common carrier is not owned or leased by the person engaging in such business.

(3) "Railroad car business" means the business of ~~((renting, leasing or))~~ operating stock cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any other kinds of cars used for transportation of property or persons upon the line of any railroad operated in this state when such railroad is not owned or leased by the person engaging in such business.

(4) "Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale.

(5) "Light and power business" means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.

(6) "Telegraph business" means the business of affording telegraphic communication for hire.

(7) "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

(8) "Motor transportation business" means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier or contract carrier as defined by RCW 81.68.010 and 81.80.010: PROVIDED, That "motor transportation business" shall not mean or include the transportation of logs or other forest products exclusively upon private roads or private highways.

(9) "Urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, insofar as (a) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof, or (b) operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope hereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pickup, or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property.

(10) "Public service business" means any of the businesses defined in subdivisions (1), (2), (3), (4), (5), (6), (7), (8), and (9) or any business subject to control by the state, or having the powers of eminent domain and the duties incident thereto, or any business hereafter declared by the legislature to be of a public service nature, except telephone business as defined in RCW 82.04.065

and low-level radioactive waste site operating companies as redefined in RCW 81.04.010. It includes, among others, without limiting the scope hereof: Airplane transportation, boom, dock, ferry, pipe line, toll bridge, toll logging road, water transportation and wharf businesses.

(11) "Tugboat business" means the business of operating tugboats, towboats, wharf boats or similar vessels in the towing or pushing of vessels, barges or rafts for hire.

(12) "Gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(13) The meaning attributed, in chapter 82.04 RCW, to the term "tax year," "person," "value proceeding or accruing," "business," "engaging in business," "in this state," "within this state," "cash discount" and "successor" shall apply equally in the provisions of this chapter.

Sec. 2. RCW 82.16.020 and 1989 c 302 s 204 are each amended to read as follows:

(1) There is levied and there shall be collected from every person a tax for the act or privilege of engaging within this state in any one or more of the businesses herein mentioned. The tax shall be equal to the gross income of the business, multiplied by the rate set out after the business, as follows:

(a) ((Railroad)) Express, ((~~railroad car~~)) sewerage collection, and telegraph businesses: Three and six-tenths percent;

(b) Light and power business: Three and sixty-two one-hundredths percent;

(c) Gas distribution business: Three and six-tenths percent;

(d) Urban transportation business: Six-tenths of one percent;

(e) Vessels under sixty-five feet in length, except tugboats, operating upon the waters within the state: Six-tenths of one percent;

(f) Motor transportation, railroad, railroad car, and tugboat businesses, and all public service businesses other than ones mentioned above: One and eight-tenths of one percent;

(g) Water distribution business: Four and seven-tenths percent.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section.

(3) Twenty percent of the moneys collected under subsection (1) of this section on water distribution businesses and sixty percent of the moneys collected under subsection (1) of this section on sewerage collection businesses shall be deposited in the public works assistance account created in RCW 43.155.050.

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 shall take effect immediately.

Passed the House February 9, 1996.
Passed the Senate March 7, 1996.
Approved by the Governor March 25, 1996.
Filed in Office of Secretary of State March 25, 1996.

CHAPTER 151

[Substitute House Bill 2724]

**PAYMENT OF JOB MODIFICATION OR ACCOMMODATION COSTS
FOR INJURED WORKERS**

AN ACT Relating to payment of job modification or accommodation costs for injured workers; and amending RCW 51.32.095.

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

Sec. 1. RCW 51.32.095 and 1988 c 161 s 9 are each amended to read as follows:

(1) One of the primary purposes of this title is to enable the injured worker to become employable at gainful employment. To this end, the department or self-insurers shall utilize the services of individuals and organizations, public or private, whose experience, training, and interests in vocational rehabilitation and retraining qualify them to lend expert assistance to the supervisor of industrial insurance in such programs of vocational rehabilitation as may be reasonable to make the worker employable consistent with his or her physical and mental status. Where, after evaluation and recommendation by such individuals or organizations and prior to final evaluation of the worker's permanent disability and in the sole opinion of the supervisor or supervisor's designee, whether or not medical treatment has been concluded, vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment, the supervisor or supervisor's designee may, in his or her sole discretion, pay or, if the employer is a self-insurer, direct the self-insurer to pay the cost as provided in subsection (3) of this section.

(2) When in the sole discretion of the supervisor or the supervisor's designee vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, then the following order of priorities shall be used:

- (a) Return to the previous job with the same employer;
- (b) Modification of the previous job with the same employer including transitional return to work;
- (c) A new job with the same employer in keeping with any limitations or restrictions;
- (d) Modification of a new job with the same employer including transitional return to work;
- (e) Modification of the previous job with a new employer;
- (f) A new job with a new employer or self-employment based upon transferable skills;

(g) Modification of a new job with a new employer;
 (h) A new job with a new employer or self-employment involving on-the-job training;

(i) Short-term retraining and job placement.

(3) Costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, transportation, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed three thousand dollars in any fifty-two week period, and the cost of continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation. Such expenses may include training fees for on-the-job training and the cost of furnishing tools and other equipment necessary for self-employment or reemployment: PROVIDED, That such compensation or payment of retraining with job placement expenses may not be authorized for a period of more than fifty-two weeks: PROVIDED FURTHER, That such period may, in the sole discretion of the supervisor after his or her review, be extended for an additional fifty-two weeks or portion thereof by written order of the supervisor.

In cases where the worker is required to reside away from his or her customary residence, the reasonable cost of board and lodging shall also be paid. Said costs shall be chargeable to the employer's cost experience or shall be paid by the self-insurer as the case may be.

(4) In addition to the vocational rehabilitation expenditures provided for under subsection (3) of this section, an additional five thousand dollars may, upon authorization of the supervisor or the supervisor's designee, be expended for: (a) Accommodations for an injured worker that are medically necessary for the worker to participate in an approved retraining plan; and (b) accommodations necessary to perform the essential functions of an occupation in which an injured worker is seeking employment, consistent with the retraining plan or the recommendations of a vocational evaluation. The injured worker's attending physician must verify the necessity of the modifications or accommodations. The total expenditures authorized in this subsection and the expenditures authorized under RCW 51.32.250 shall not exceed five thousand dollars.

(5) The department shall establish criteria to monitor the quality and effectiveness of rehabilitation services provided by the individuals and organizations used under subsection (1) of this section. The state fund shall make referrals for vocational rehabilitation services based on these performance criteria.

~~((5))~~ (6) The department shall engage in, where feasible and cost-effective, a cooperative program with the state employment security department to provide job placement services under this section.

~~((6))~~ (7) The benefits in this section shall be provided for the injured workers of self-insured employers. Self-insurers shall report both benefits

provided and benefits denied under this section in the manner prescribed by the department by rule adopted under chapter 34.05 RCW. The director may, in his or her sole discretion and upon his or her own initiative or at any time that a dispute arises under this section, promptly make such inquiries as circumstances require and take such other action as he or she considers will properly determine the matter and protect the rights of the parties.

~~((7))~~ (8) The benefits provided for in this section are available to any otherwise eligible worker regardless of the date of industrial injury. However, claims shall not be reopened solely for vocational rehabilitation purposes.

Passed the House February 6, 1996.

Passed the Senate March 1, 1996.

Approved by the Governor March 25, 1996.

Filed in Office of Secretary of State March 25, 1996.

CHAPTER 152

[Substitute House Bill 2758]

STATE FISCAL CONDITIONS AND ECONOMIC PERFORMANCE—MEASUREMENT

AN ACT Relating to the measurement of state fiscal conditions and economic performance; adding a new chapter to Title 82 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The citizens of Washington should enjoy a high quality of life, which requires a healthy state economy. To achieve this goal, the legislature recognizes that the state must be able to compete economically at a national and international level. It is critical to the economic well-being of the citizens of this state that the legislature strive to continually improve the state's economic climate. Therefore, the legislature intends to provide a mechanism whereby the information necessary to achieve this goal is available on a timely and reliable basis.

NEW SECTION. Sec. 2. (1) The economic climate council is hereby created.

(2) The council shall select a series of no more than ten benchmarks that characterize the competitive environment of the state. The benchmarks should be indicators of the cost of doing business; the education and skills of the work force; a sound infrastructure; and the quality of life. In selecting the appropriate benchmarks, the council shall use the following criteria:

(a) The availability of comparative information for other states and countries;

(b) The timeliness with which benchmark information can be obtained; and

(c) The accuracy and validity of the benchmarks in measuring the economic climate indicators named in this section.

The council shall report to the legislature by September 30, 1996, on the benchmarks selected under this subsection (2).

(3) Twice each year the council shall prepare an official state economic climate report on the present status of benchmarks, changes in the benchmarks since the previous report, and the reasons for the changes. The reports shall include current benchmark comparisons with other states and countries, and an analysis of factors related to the benchmarks that may affect the ability of the state to compete economically at the national and international level.

(4) The council shall submit reports prepared under this section to the governor and the fiscal committees of the senate and the house of representatives on or before March 31st and September 30th of each year. The first report shall be made by September 30, 1996.

(5) All agencies of state government shall provide to the council immediate access to all information relating to economic climate reports.

NEW SECTION. Sec. 3. (1) Until July 1, 1997, the economic and revenue forecast council shall, in addition to its other duties and responsibilities, function as the economic climate council created under section 2 of this act.

(2) The staff of the economic and revenue forecast council shall serve as staff to the economic climate council until July 1, 1997.

(3) By September 30, 1996, the council shall make recommendations to the legislature regarding: (a) Permanent composition of the economic climate council, including the procedures for appointment of members, length of terms, selection of a chair, and reimbursement for expenses or other compensation; and (b) a permanent staffing structure to support the work of the economic climate council.

NEW SECTION. Sec. 4. (1) The economic climate council shall create an advisory committee to assist the council in selecting benchmarks and developing economic climate reports and benchmarks. The advisory committee shall provide for a process to ensure public participation in the selection of the benchmarks. The advisory committee shall consist of no more than seven members. At least two of the members of the advisory committee shall have experience in and represent business, and at least two of the members shall have experience in and represent labor. All of the members of the advisory committee shall have special expertise and interest in the state's economic climate and competitive strategies. Appointments to the advisory committee shall be recommended by the chair of the council and approved by a two-thirds vote of the council. The chair of the advisory committee shall be selected by the members of the committee.

(2) The advisory committee shall meet as determined by the chair of the committee until September 30, 1996, and shall meet at least twice per year thereafter in advance of the economic climate reports due on March 31st and September 30th of each year.

(3) Members of the advisory council shall serve without compensation but shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 while attending meetings of the advisory committee, sessions of the economic climate council, or on official business authorized by the council.

NEW SECTION. Sec. 5. Sections 1, 2, and 4 of this act shall constitute a new chapter in Title 82 RCW.

Passed the House February 6, 1996.

Passed the Senate February 29, 1996.

Approved by the Governor March 25, 1996.

Filed in Office of Secretary of State March 25, 1996.

CHAPTER 153

[Substitute Senate Bill 6126]

COUNTY TREASURY RECEIPTING PRACTICES REVISED

AN ACT Relating to county treasurer receipting practices; amending RCW 84.56.340; reenacting and amending RCW 84.56.020; adding a new section to chapter 36.29 RCW; and creating a new section.

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

Sec. 1. RCW 84.56.020 and 1991 c 245 s 16 and 1991 c 52 s 1 are each reenacted and amended to read as follows:

(1) The county treasurer shall be the receiver and collector of all taxes extended upon the tax rolls of the county, whether levied for state, county, school, bridge, road, municipal or other purposes, and also of all fines, forfeitures or penalties received by any person or officer for the use of his or her county. All taxes upon real and personal property made payable by the provisions of this title shall be due and payable to the treasurer on or before the thirtieth day of April and, except as provided in this section, shall be delinquent after that date(~~(= PROVIDED, That)~~).

(2) Each tax statement shall include a notice that checks for payment of taxes may be made payable to "Treasurer of County" or other appropriate office, but tax statements shall not include any suggestion that checks may be made payable to the name of the individual holding the office of treasurer nor any other individual(~~(= PROVIDED FURTHER, That)~~).

(3) When the total amount of tax or special assessments on personal property or on any lot, block or tract of real property payable by one person is ~~((thirty))~~ fifty dollars or more, and if one-half of such tax be paid on or before the thirtieth day of April, the remainder of such tax shall be due and payable on or before the thirty-first day of October following and shall be delinquent after that date(~~(= PROVIDED FURTHER, That)~~).

(4) When the total amount of tax or special assessments on any lot, block or tract of real property or on any mobile home payable by one person is ~~((thirty))~~ fifty dollars or more, and if one-half of such tax be paid after the thirtieth day of April but before the thirty-first day of October, together with the applicable interest and penalty on the full amount of ~~((such))~~ tax payable for that year, the remainder of such tax shall be due and payable on or before the thirty-first day of October following and shall be delinquent after that date.

~~((2))~~ (5) Delinquent taxes under this section are subject to interest at the rate of twelve percent per annum computed on a monthly basis on the full year amount of tax unpaid from the date of delinquency until paid. Interest shall be calculated at the rate in effect at the time of payment of the tax, regardless of when the taxes were first delinquent. In addition, delinquent taxes under this section are subject to penalties as follows:

(a) A penalty of three percent of the full year amount of tax unpaid shall be assessed on the ~~((amount of))~~ tax delinquent on June 1st of the year in which the tax is due.

(b) An additional penalty of eight percent shall be assessed on the ~~((total))~~ amount of tax delinquent on December 1st of the year in which the tax is due.

~~((3))~~ (6) Subsection ~~((2))~~ (5) of this section notwithstanding, no interest or penalties may be assessed for the period April 30, ~~((1991))~~ 1996, through December 31, ~~((1991))~~ 1996, on delinquent ~~((1991))~~ taxes imposed in 1995 for collection in 1996 which are imposed on the personal residences owned by military personnel who participated in the situation known as ~~((“Operation Desert Shield,” “Operation Desert Storm,” or any following operation from August 2, 1990, to a date specified by an agency of the federal government as the end of such operations))~~ “Joint Endeavor.”

~~((4))~~ (7) For purposes of this chapter, “interest” means both interest and penalties.

~~((5))~~ (8) All collections of interest on delinquent taxes shall be credited to the county current expense fund; but the cost of foreclosure and sale of real property, and the fees and costs of distraint and sale of personal property, for delinquent taxes, shall, when collected, be credited to the operation and maintenance fund of the county treasurer prosecuting the foreclosure or distraint or sale; and shall be used by the county treasurer as a revolving fund to defray the cost of further foreclosure, distraint and sale for delinquent taxes without regard to budget limitations.

Sec. 2. RCW 84.56.340 and 1994 c 30I s 53 are each amended to read as follows:

Any person desiring to pay taxes upon any part or parts of real property heretofore or hereafter assessed as one parcel, or tract, or upon such person’s undivided fractional interest in such a property, may do so by applying to the county assessor, who must carefully investigate and ascertain the relative or proportionate value said part or part interest bears to the whole tract assessed, on which basis the assessment must be divided, and the assessor shall forthwith certify such proportionate value to the county treasurer: PROVIDED, That excepting when property is being acquired for public use, or where a person or financial institution desires to pay the taxes and any penalties and interest on a mobile home upon which they have a lien by mortgage or otherwise, no segregation of property for tax purposes shall be made unless all current year and delinquent taxes and assessments on the entire tract have been paid in full. The county assessor shall duly certify the proportionate value to the county treasurer.

The county treasurer, upon receipt of certification, shall duly accept payment and issue receipt on the apportionment certified by the county assessor. In cases where protest is filed to said division appeal shall be made to the county legislative authority at its next regular session for final division, and the county treasurer shall accept and receipt for said taxes as determined and ordered by the county legislative authority. Any person desiring to pay on an undivided interest in any real property may do so by paying to the county treasurer a sum equal to such proportion of the entire taxes charged on the entire tract as interest paid on bears to the whole.

NEW SECTION. Sec. 3. A new section is added to chapter 36.29 RCW to read as follows:

County treasurers are authorized to accept credit cards, charge cards, debit cards, federal wire, and automatic clearinghouse system transactions, or other electronic communication, for any payment of any kind including, but not limited to, taxes, fines, interest, penalties, special assessments, fees, rates, charges, or moneys due counties. A payer desiring to pay by a credit card, charge card, debit card, federal wire, automatic clearinghouse system, or other electronic communication shall bear the cost of processing the transaction in an amount determined by the treasurer. Such determination shall be based upon costs incurred by the treasurer including handling, collecting, discount, disbursing, and accounting for the transaction.

NEW SECTION. Sec. 4. This act is effective for taxes levied for collection in 1997 and thereafter.

Passed the Senate March 2, 1996.

Passed the House February 27, 1996.

Approved by the Governor March 25, 1996.

Filed in Office of Secretary of State March 25, 1996.

CHAPTER 154

[Senate Bill 6138]

MESSAGE PRACTITIONERS—LICENSE REVOCATION

AN ACT Relating to license revocation of massage practitioners; and amending RCW 18.108.085.

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

Sec. 1. RCW 18.108.085 and 1995 c 353 s 2 are each amended to read as follows:

- (1) In addition to any other authority provided by law, the secretary may:
 - (a) Adopt rules, in accordance with chapter 34.05 RCW necessary to implement this chapter;
 - (b) Set all license, examination, and renewal fees in accordance with RCW 43.70.250;
 - (c) Establish forms and procedures necessary to administer this chapter;

(d) Issue a license to any applicant who has met the education, training, and examination requirements for licensure; and

(e) Hire clerical, administrative, and investigative staff as necessary to implement this chapter, and hire individuals licensed under this chapter to serve as examiners for any practical examinations.

(2) The Uniform Disciplinary Act, chapter 18.130 RCW, governs the issuance and denial of licenses and the disciplining of persons under this chapter. The secretary shall be the disciplining authority under this chapter.

(3) Any license issued under this chapter to a person who is or has been convicted of violating RCW 9A.88.030, 9A.88.070, 9A.88.080, or 9A.88.090 or equivalent local ordinances shall automatically be revoked by the secretary upon receipt of a certified copy of the court documents reflecting such conviction. No further hearing or procedure is required, and the secretary has no discretion with regard to the revocation of the license. The revocation shall be effective even though such conviction may be under appeal, or the time period for such appeal has not elapsed. However, upon presentation of a final appellate decision overturning such conviction (~~(or upon completion of a prostitution prevention and intervention program under RCW 43.63A.720 through 43.63A.740, 9.68A.105, and 9A.88.120)~~), the license shall be reinstated, unless grounds for disciplinary action have been found (~~(pursuant to)~~) under chapter 18.130 RCW. (~~(Unless an applicant demonstrates that he or she has completed a prostitution prevention and intervention program under RCW 43.63A.720 through 43.63A.740, 9.68A.105, and 9A.88.120;)~~) No license may be granted under this chapter to any person who has been convicted of violating RCW 9A.88.030, 9A.88.070, 9A.88.080, or 9A.88.090 or equivalent local ordinances within the eight years immediately preceding the date of application. For purposes of this subsection, "convicted" does not include a conviction that has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence, but does include convictions for offenses for which the defendant received a deferred or suspended sentence, unless the record has been expunged according to law.

(4) The secretary shall keep an official record of all proceedings under this chapter, a part of which record shall consist of a register of all applicants for licensure under this chapter, with the result of each application.

Passed the Senate March 2, 1996.

Passed the House February 27, 1996.

Approved by the Governor March 25, 1996.

Filed in Office of Secretary of State March 25, 1996.

CHAPTER 155

[Substitute Senate Bill 6169]

WASHINGTON BUSINESS CORPORATION ACT—PROVISIONS
REGARDING SIGNIFICANT BUSINESS TRANSACTIONS REVISED

AN ACT Relating to amending provisions regarding significant business transactions in the Washington business corporation act; amending RCW 23B.19.020, 23B.19.030, 23B.19.040, 23B.01.400, and 23B.02.020; and repealing RCW 23B.17.020.

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

Sec. 1. RCW 23B.19.020 and 1989 c 165 s 198 are each amended to read as follows:

The definitions in this section apply throughout this chapter.

(1) "Acquiring person" means a person or group of persons, other than the target corporation or a subsidiary of the target corporation, who beneficially owns ten percent or more of the outstanding voting shares of the target corporation. The term "acquiring person" does not include a person who (a) beneficially ~~((owns))~~ owned ten percent or more of the outstanding voting shares of the target corporation on March 23, 1988; (b) acquires its shares by gift, inheritance, or in a transaction in which no consideration is exchanged; ~~((or))~~ (c) exceeds the ten percent threshold as a result of action taken solely by the target corporation, such as redemption of shares, unless that person, by its own action, acquires additional shares of the target corporation; (d) beneficially was the owner of ten percent or more of the outstanding voting shares prior to the time the target corporation had a class of voting shares registered with the securities and exchange commission pursuant to section 12 or 15 of the exchange act; or (e) beneficially was the owner of ten percent or more of the outstanding voting shares prior to the time the target corporation amended its articles of incorporation to provide that the corporation shall be subject to the provisions of this chapter. An agent, bank, broker, nominee, or trustee for another person, if the other person is not an acquiring person, who acts in good faith and not for the purpose of circumventing this chapter, is not an acquiring person. For the purpose of determining whether a person is an acquiring person, the number of voting shares of the target corporation that are outstanding shall include shares beneficially owned by the person through application of subsection (4) of this section, but shall not include any other unissued voting shares of the target corporation which may be issuable pursuant to any agreement, arrangement, or understanding; or upon exercise of conversion rights, warrants, or options; or otherwise.

(2) "Affiliate" means a person who directly or indirectly controls, or is controlled by, or is under common control with, a person.

(3) "Announcement date," when used in reference to any significant business transaction, means the date of the first public announcement of the final, definitive proposal for such a significant business transaction.

(4) "Associate" means (a) a domestic or foreign corporation or organization of which a person is an officer, director, member, or partner or in which a person performs a similar function; (b) a direct or indirect beneficial owner of ten percent or more of any class of equity securities of a person; (c) a trust or estate in which a person has a beneficial interest or as to which a person serves as trustee or in a similar fiduciary capacity; and (d) ~~((if having the same residence as a person, the person's relative, spouse, or spouse's relative))~~ the spouse or a parent or sibling of a person or a child, grandchild, sibling, parent, or spouse of any thereof, of a person or an individual having the same home as a person.

~~((4))~~ (5) "Beneficial ownership," when used with respect to any shares, means ownership by a person:

(a) Who, individually or with or through any of its affiliates or associates, beneficially owns such shares, directly or indirectly; or

(b) Who, individually or with or through any of its affiliates or associates, has (i) the right to acquire the shares, whether the right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement, or understanding, whether or not in writing, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise. A person is not the beneficial owner of shares tendered pursuant to a tender or exchange offer made by the person or any of the person's affiliates or associates until the tendered shares are accepted for purchase or exchange; or (ii) the right to vote the shares pursuant to any agreement, arrangement, or understanding, whether or not in writing. A person is not the beneficial owner of any shares under (b)(ii) of this subsection if the agreement, arrangement, or understanding to vote the shares arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable rules and regulations under the exchange act and is not then reportable on schedule 13D under the exchange act, or any comparable or successor report; or

(c) Who has any agreement, arrangement, or understanding, whether or not in writing, for the purpose of acquiring, holding, voting, except voting pursuant to a revocable proxy or consent as described in (b)(ii) of this subsection, or disposing of the shares with any other person who beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, the shares.

~~((5))~~ (6) "Common shares" means any shares other than preferred shares.

(7) "Consummation date," with respect to any significant business transaction, means the date of consummation of such a significant business transaction, or, in the case of a significant business transaction as to which a shareholder vote is taken, the later of the business day prior to the vote or twenty days prior to the date of consummation of such a significant business transaction.

(8) "Control," "controlling," "controlled by," and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise. A person's beneficial

ownership of ten percent or more of a domestic or foreign corporation's outstanding voting shares shall create a rebuttable presumption that such person has control of such corporation. However, a person does not have control of a domestic or foreign corporation if the person holds voting shares, in good faith and not for the purpose of circumventing this chapter, as an agent, bank, broker, nominee, custodian, or trustee for one or more beneficial owners who do not individually or as a group have control of such corporation.

~~((6))~~ (9) "Domestic corporation" means an issuer of voting shares which is organized under chapter 23B.02 RCW or any predecessor provision.

(10) "Exchange act" means the federal securities exchange act of 1934, as amended.

~~((7))~~ (11) "Market value," in the case of property other than cash or shares, means the fair market value of the property on the date in question as determined by the board of directors of the target corporation in good faith.

~~((8))~~ (12) "Person" means an individual, domestic or foreign corporation, partnership, trust, unincorporated association, or other entity; an affiliate or associate of any such person; or any two or more persons acting as a partnership, syndicate, or other group for the purpose of acquiring, holding, or dispersing of securities of a domestic or foreign corporation.

~~((9))~~ (13) "Preferred shares" means any class or series of shares of a target corporation which under the bylaws or articles of incorporation of such a corporation is entitled to receive payment of dividends prior to any payment of dividends on some other class or series of shares, or is entitled in the event of any voluntary liquidation, dissolution, or winding up of the target corporation to receive payment or distribution of a preferential amount before any payments or distributions are received by some other class or series of shares.

(14) "Shares" means any:

(a) Shares or similar security, any certificate of interest, any participation in any profit sharing agreement, any voting trust certificate, or any certificate of deposit for shares; and

(b) Security convertible, with or without consideration, into shares, or any warrant, call, or other option or privilege of buying shares without being bound to do so, or any other security carrying any right to acquire, subscribe to, or purchase shares.

(15) "Significant business transaction" means:

(a) A merger, share exchange, or consolidation of a target corporation or a subsidiary of a target corporation with (i) an acquiring person, or (ii) any other domestic or foreign corporation which is, or after the merger, share exchange, or consolidation would be, an affiliate or associate of the acquiring person;

(b) A sale, lease, exchange, mortgage, pledge, transfer, or other disposition or encumbrance, whether in one transaction or a series of transactions, to or with an acquiring person or an affiliate or associate of an acquiring person of assets of a target corporation or a subsidiary of a target corporation (i) having an aggregate market value equal to five percent or more of the aggregate market

value of all the assets, determined on a consolidated basis, of the target corporation, (ii) having an aggregate market value equal to five percent or more of the aggregate market value of all the outstanding shares of the target corporation, or (iii) representing five percent or more of the earning power or net income, determined on a consolidated basis, of the target corporation;

(c) The termination, while the corporation has an acquiring person and as a result of the acquiring person's acquisition of ten percent or more of the shares of the corporation, of five percent or more of the employees of the target corporation or its subsidiaries employed in this state, whether at one time or over the five-year period following the share acquisition ~~((date))~~ time. For the purposes of (c) of this subsection, a termination other than an employee's death or disability or bona fide voluntary retirement, transfer, resignation, termination for cause under applicable common law principles, or leave of absence shall be presumed to be a termination resulting from the acquiring person's acquisition of shares, which presumption ~~((may be rebutted by clear and convincing evidence))~~ is rebuttable. A bona fide voluntary transfer of employees between the target corporation and its subsidiaries or between its subsidiaries is not a termination for the purposes of (c) of this subsection;

(d) The issuance, transfer, or redemption by a target corporation or a subsidiary of a target corporation, whether in one transaction or a series of transactions, of shares or of options, warrants, or rights to acquire shares of a target corporation or a subsidiary of a target corporation to or beneficially owned by an acquiring person or an affiliate or associate of an acquiring person except pursuant to the exercise of warrants or rights to purchase shares offered, or a dividend, distribution, or redemption paid or made pro rata to, all shareholders or holders of options, warrants, or rights to acquire shares of the target corporation, and except for involuntary redemptions permitted by the target corporation's charter or by the law of this state or the state of incorporation;

(e) The ~~((adoption of a plan or proposal for the sale of assets,))~~ liquidation~~((r))~~ or dissolution of a target corporation proposed by, or pursuant to an agreement, arrangement, or understanding, whether or not in writing, with an acquiring person or an affiliate or associate of an acquiring person;

(f) A reclassification of securities, including, without limitation, any ~~((stock))~~ shares split, ~~((stock))~~ shares dividend, or other distribution of ~~((stock))~~ shares in respect of stock, or any reverse ~~((stock))~~ shares split, or recapitalization of a target corporation, or a merger or consolidation of a target corporation with a subsidiary of the target corporation, or any other transaction, whether or not with or into or otherwise involving an acquiring person, proposed by, or pursuant to an agreement, arrangement, or understanding, whether or not in writing, with an acquiring person or an affiliate or associate of an acquiring person, that has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of a class or series of voting shares or securities convertible into voting shares of a target corporation or a subsidiary of the target corporation that is directly or indirectly owned by an acquiring person or an affiliate or

associate of an acquiring person, except as a result of immaterial changes due to fractional share adjustments; or

(g) A receipt by an acquiring person or an affiliate or associate of an acquiring person of the benefit, directly or indirectly, except proportionately as a shareholder of a target corporation, of loans, advances, guarantees, pledges, or other financial assistance or tax credits or other tax advantages provided by or through a target corporation(~~(, or~~

~~—(h) An agreement, contract, or other arrangement providing for any of the transactions in this subsection)).~~

~~((10))~~ (16) "Share acquisition ~~((date))~~ time" means the ~~((date on))~~ time at which a person first becomes an acquiring person of a target corporation.

~~((11))~~ (17) "Subsidiary" means a domestic or foreign corporation that has a majority of its outstanding voting shares owned, directly or indirectly, by another domestic or foreign corporation.

~~((12))~~ (18) "Tangible assets" means tangible real and personal property of all kinds. It shall also include leasehold interests in tangible real and personal property.

~~((13))~~ (19) "Target corporation" means:

(a) Every domestic corporation ~~((organized under chapter 23B.02 RCW or any predecessor provision if, as of the share acquisition date, the corporation's principal executive office is located in the state and either a majority of the corporation's employees, together with those of its subsidiaries, are residents of the state or the corporation, together with its subsidiaries, employs more than one thousand residents of the state)), if:~~

(i) The corporation has a class of voting shares registered with the securities and exchange commission pursuant to section 12 or 15 of the exchange act; or

(ii) The corporation's articles of incorporation have been amended to provide that such a corporation shall be subject to the provisions of this chapter, if the corporation did not have a class of voting shares registered with the securities and exchange commission pursuant to section 12 or 15 of the exchange act on the effective date of that amendment; and

(b) Every foreign corporation required to have a certificate of authority to transact business in this state pursuant to chapter 23B.15 RCW, ~~if((, as of the share acquisition date)):~~

(i) The corporation has a class of voting shares registered with the securities and exchange commission pursuant to section 12 or 15 of the exchange act;

(ii) The corporation's principal executive office is located in the state;

~~((14))~~ (iii) The corporation has: (A) More than ten percent of its shareholders of record resident in the state; or (B) more than ten percent of its shares owned of record by state residents; or (C) one thousand or more shareholders of record resident in the state;

~~((15))~~ (iv) A majority of the corporation's employees, together with those of its subsidiaries, are residents of the state or the corporation, together with its subsidiaries, employs more than one thousand residents of the state; and

~~((iv))~~ (v) A majority of the corporation's tangible assets, together with those of its subsidiaries, measured by market value, are located in the state or the corporation, together with its subsidiaries, has more than fifty million dollars' worth of tangible assets located in the state.

For purposes of this subsection, the record date for determining the percentages and numbers of shareholders and shares shall be the last shareholder record date before the event requiring that the determination be made. A shareholder record date shall be determined pursuant to ~~((RCW 23B.07.070 for a domestic corporation and))~~ the comparable provision to RCW 23B.07.070 of the law of the state in which a foreign corporation is incorporated. If a shareholder record date has not been fixed by the board of directors within the preceding four months, the determination shall be made as of the end of the ~~((domestic or foreign))~~ corporation's most recent fiscal quarter.

The residence of each shareholder is presumed to be the address appearing in the records of the ~~((domestic or foreign))~~ corporation. Shares held of record by brokers or nominees shall be disregarded for purposes of calculating the percentages and numbers specified in this subsection. Shares of a ~~((domestic or foreign))~~ corporation allocated to the account of an employee or former employee or beneficiaries of employees or former employees of a ~~((domestic or foreign))~~ corporation and held in a plan that is qualified under section 401(a) of the federal internal revenue code of 1986, as amended, and is a defined contribution plan within the meaning of section 414(i) of the code shall be deemed, for the purposes of this subsection, to be held of record by the employee to whose account such shares are allocated.

A domestic or foreign corporation shall be deemed to be a target corporation if the domestic or foreign corporation's failure to satisfy the requirements of this subsection is caused by the action of, or is the result of a proposal by, an acquiring person or affiliate or associate of an acquiring person.

(20) "Voting shares" means shares of a corporation entitled to vote generally in the election of directors.

Sec. 2. RCW 23B.19.030 and 1989 c 165 s 199 are each amended to read as follows:

This chapter does not apply to((

~~—(1) A significant business transaction of a target corporation that does not have a class of voting stock registered with the securities and exchange commission pursuant to section 12 of the exchange act [15 U.S.C. Sec. 78L]; or~~

~~—(2))~~ a significant business transaction of a target corporation with an acquiring person of the target corporation which became an acquiring person inadvertently, if the acquiring person ~~((a))~~ (1) as soon as practicable, divests itself of a sufficient amount of the voting shares of the target corporation so that it no longer is the beneficial owner, directly or indirectly, of ten percent or more of the outstanding voting shares of the target corporation, and ~~((b))~~ (2) would not at any time within the five-year period preceding the announcement date ~~((of~~

~~the first public announcement~~) of the significant business transaction have been an acquiring person but for the inadvertent acquisition.

Sec. 3. RCW 23B.19.040 and 1989 c 165 s 200 are each amended to read as follows:

(1)(a) ~~Notwithstanding ((any provision of this title)) anything to the contrary contained in this title, except under subsection (2) of this section and RCW 23B.19.030,~~ a target corporation shall not engage in any significant business transaction for a period of five years following the acquiring person's share acquisition ~~((date)) time~~ unless the significant business transaction or the purchase of shares made by the acquiring person ~~((on the share acquisition date))~~ is approved prior to the acquiring person's share acquisition ~~((date)) time~~ by a majority of the members of the board of directors of the target corporation.

(b) If a good faith proposal for a significant business transaction is made in writing to the board of directors of the target corporation prior to the significant business transaction or prior to the share acquisition ~~((date)) time~~, the board of directors shall respond in writing, within thirty days or such shorter period, if any, as may be required by the exchange act setting forth its reasons for its decision regarding the proposal. If a good faith proposal to purchase shares is made in writing to the board of directors of the target corporation, the board of directors, unless it responds affirmatively in writing within thirty days or a shorter period, if any, as may be required by the exchange act shall be deemed to have disapproved such share purchase.

(2) Notwithstanding anything to the contrary contained in this title, except under subsection (1) of this section and RCW 23B.19.030, a target corporation shall not engage at any time in any significant business transaction with any acquiring person of such a corporation other than a significant business transaction that meets all of the following conditions:

(a) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding common shares of such a target corporation in a significant business transaction is at least equal to the higher of the following:

(i) The highest per share price paid by such an acquiring person at a time when the person was the beneficial owner, directly or indirectly, of five percent or more of the outstanding voting shares of a target corporation, for any shares of common shares of the same class or series acquired by it: (A) Within the five-year period immediately prior to the announcement date with respect to a significant business transaction; or (B) within the five-year period immediately prior to, or in, the transaction in which the acquiring person became an acquiring person, whichever is higher plus, in either case, interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash,

per share of common shares since the earliest date, up to the amount of the interest; and

(ii) The market value per share of common shares on the announcement date with respect to a significant business transaction or on the date of the acquiring person's share acquisition time, whichever is higher; plus interest compounded annually from such a date through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of common shares since the date, up to the amount of the interest.

(b) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding shares of any class or series of shares, other than common shares, of the target corporation is at least equal to the highest of the following, whether or not the acquiring person has previously acquired any shares of such a class or series of shares:

(i) The highest per share price paid by an acquiring person at a time when the person was the beneficial owner, directly or indirectly, of five percent or more of the outstanding voting shares of a resident domestic corporation, for any shares of the same class or series of shares acquired by it: (A) Within the five-year period immediately prior to the announcement date with respect to a significant business transaction; or (B) within the five-year period immediately prior to, or in, the transaction in which the acquiring person became an acquiring person, whichever is higher; plus, in either case, interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of the same class or series of shares since the earliest date, up to the amount of the interest;

(ii) The highest preferential amount per share to which the holders of shares of the same class or series of shares are entitled in the event of any voluntary liquidation, dissolution, or winding up of the target corporation, plus the aggregate amount of any dividends declared or due as to which the holders are entitled prior to payment of dividends on some other class or series of shares, unless the aggregate amount of the dividends is included in the preferential amount; and

(iii) The market value per share of the same class or series of shares on the announcement date with respect to a significant business transaction or on the date of the acquiring person's share acquisition time, whichever is higher; plus interest compounded annually from such a date through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid and the market

value of any dividends paid other than in cash, per share of the same class or series of shares since the date, up to the amount of the interest.

(c) The consideration to be received by holders of a particular class or series of outstanding shares, including common shares, of the target corporation in a business combination is in cash or in the same form as the acquiring person has used to acquire the largest number of shares of the same class or series of shares previously acquired by the person, and the consideration shall be distributed promptly.

(3) Subsection (2) of this section does not apply to a target corporation that on the effective date of this act had a provision in its articles of incorporation, adopted under RCW 23B.17.020(3)(d), expressly electing not to be covered under RCW 23B.17.020, which is repealed by section 6 of this act.

(4) A ~~((target corporation that engages in a))~~ significant business transaction that ~~((violates))~~ is made in violation of subsection (1) or (2) of this section and that is not exempt under RCW ~~((23B.19.010 shall have its certificate of incorporation or certificate of authority to transact business in this state revoked under RCW 23B.14.200 or 23B.15.300 for domestic or foreign target corporations, respectively. In addition, such significant transaction shall be))~~ 23B.19.030 is void.

Sec. 4. RCW 23B.01.400 and 1995 c 47 s 1 are each amended to read as follows:

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

(1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.

(2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

(4) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this title.

(5) "Deliver" includes (a) mailing and (b) for purposes of delivering a demand, consent, or waiver to the corporation or one of its officers, transmission by facsimile equipment.

(6) "Distribution" means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect to any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a distribution in partial or complete liquidation, or upon voluntary or involuntary dissolution; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

- (7) "Effective date of notice" has the meaning provided in RCW 23B.01.410.
- (8) "Employee" includes an officer but not a director. A director may accept duties that make the director also an employee.
- (9) "Entity" includes a corporation and foreign corporation, not-for-profit corporation, profit and not-for-profit unincorporated association, business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest, and the state, United States, and a foreign government.
- (10) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.
- (11) "Foreign limited partnership" means a partnership formed under laws other than of this state and having as partners one or more general partners and one or more limited partners.
- (12) "Governmental subdivision" includes authority, county, district, and municipality.
- (13) "Includes" denotes a partial definition.
- (14) "Individual" includes the estate of an incompetent or deceased individual.
- (15) "Limited partnership" or "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.
- (16) "Means" denotes an exhaustive definition.
- (17) "Notice" has the meaning provided in RCW 23B.01.410.
- (18) "Person" includes an individual and an entity.
- (19) "Principal office" means the office, in or out of this state, so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located.
- (20) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.
- (21) "Public company" means a corporation that has a class of shares registered with the federal securities and exchange commission pursuant to section 12 or 15 of the securities exchange act of 1934, or section 8 of the investment company act of 1940, or any successor statute(~~(and that has more than three hundred holders of record of its shares)~~).
- (22) "Record date" means the date established under chapter 23B.07 RCW on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this title. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.
- (23) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under RCW 23B.08.400(3) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.
- (24) "Shares" means the units into which the proprietary interests in a corporation are divided.

(25) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(26) "State," when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States.

(27) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(28) "United States" includes a district, authority, bureau, commission, department, and any other agency of the United States.

(29) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this title are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this title to vote generally on the matter are for that purpose a single voting group.

Sec. 5. RCW 23B.02.020 and 1994 c 256 s 27 are each amended to read as follows:

(1) The articles of incorporation must set forth:

(a) A corporate name for the corporation that satisfies the requirements of RCW 23B.04.010;

(b) The number of shares the corporation is authorized to issue in accordance with RCW 23B.06.010 and 23B.06.020;

(c) The street address of the corporation's initial registered office and the name of its initial registered agent at that office in accordance with RCW 23B.05.010; and

(d) The name and address of each incorporator in accordance with RCW 23B.02.010.

(2) The articles of incorporation or bylaws must either specify the number of directors or specify the process by which the number of directors will be fixed, unless the articles of incorporation dispense with a board of directors pursuant to RCW 23B.08.010.

(3) Unless its articles of incorporation provide otherwise, a corporation is governed by the following provisions:

(a) The board of directors may adopt bylaws to be effective only in an emergency as provided by RCW 23B.02.070;

(b) A corporation has the purpose of engaging in any lawful business under RCW 23B.03.010;

(c) A corporation has perpetual existence and succession in its corporate name under RCW 23B.03.020;

(d) A corporation has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including itemized powers under RCW 23B.03.020;

(e) All shares are of one class and one series, have unlimited voting rights, and are entitled to receive the net assets of the corporation upon dissolution under RCW 23B.06.010 and 23B.06.020;

(f) If more than one class of shares is authorized, all shares of a class must have preferences, limitations, and relative rights identical to those of other shares of the same class under RCW 23B.06.010;

(g) If the board of directors is authorized to designate the number of shares in a series, the board may, after the issuance of shares in that series, reduce the number of authorized shares of that series under RCW 23B.06.020;

(h) The board of directors must authorize any issuance of shares under RCW 23B.06.210;

(i) Shares may be issued pro rata and without consideration to shareholders under RCW 23B.06.230;

(j) Shares of one class or series may not be issued as a share dividend with respect to another class or series, unless there are no outstanding shares of the class or series to be issued, or a majority of votes entitled to be cast by such class or series approve as provided in RCW 23B.06.230;

(k) A corporation may issue rights, options, or warrants for the purchase of shares of the corporation under RCW 23B.06.240;

(l) A shareholder has, and may waive, a preemptive right to acquire the corporation's unissued shares as provided in RCW 23B.06.300;

(m) Shares of a corporation acquired by it may be reissued under RCW 23B.06.310;

(n) The board may authorize and the corporation may make distributions not prohibited by statute under RCW 23B.06.400;

(o) The preferential rights upon dissolution of certain shareholders will be considered a liability for purposes of determining the validity of a distribution under RCW 23B.06.400;

(p) Unless this title requires otherwise, the corporation is required to give notice only to shareholders entitled to vote at a meeting and the notice for an annual meeting need not include the purpose for which the meeting is called under RCW 23B.07.050;

(q) A corporation that is a public company shall hold a special meeting of shareholders if the holders of at least ten percent of the votes entitled to be cast on any issue proposed to be considered at the meeting demand a meeting under RCW 23B.07.020;

(r) Subject to statutory exceptions, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting under RCW 23B.07.210;

(s) A majority of the votes entitled to be cast on a matter by a voting group constitutes a quorum, unless the title provides otherwise under RCW 23B.07.250 and 23B.07.270;

(t) Action on a matter, other than election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the

votes cast opposing the action, unless this title requires a greater number of affirmative votes under RCW 23B.07.250;

(u) All shares of one or more classes or series that are entitled to vote will be counted together collectively on any matter at a meeting of shareholders under RCW 23B.07.260;

(v) Directors are elected by cumulative voting under RCW 23B.07.280;

(w) Directors are elected by a plurality of votes cast by shares entitled to vote under RCW 23B.07.280;

(x) A corporation must have a board of directors under RCW 23B.08.010;

(y) All corporate powers must be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors under RCW 23B.08.010;

(z) The shareholders may remove one or more directors with or without cause under RCW 23B.08.080;

(aa) A vacancy on the board of directors may be filled by the shareholders or the board of directors under RCW 23B.08.100;

(bb) A corporation shall indemnify a director who was wholly successful in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding under RCW 23B.08.520;

(cc) A director of a corporation who is a party to a proceeding may apply for indemnification of reasonable expenses incurred by the director in connection with the proceeding to the court conducting the proceeding or to another court of competent jurisdiction under RCW 23B.08.540;

(dd) An officer of the corporation who is not a director is entitled to mandatory indemnification under RCW 23B.08.520, and is entitled to apply for court-ordered indemnification under RCW 23B.08.540, in each case to the same extent as a director under RCW 23B.08.570;

(ee) The corporation may indemnify and advance expenses to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director under RCW 23B.08.570;

(ff) A corporation may indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with law, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract under RCW 23B.08.570;

(gg) A corporation's board of directors may adopt certain amendments to the corporation's articles of incorporation without shareholder action under RCW 23B.10.020;

(hh) Unless the title or the board of directors require a greater vote or a vote by voting groups, an amendment to the corporation's articles of incorporation must be approved by each voting group entitled to vote on the proposed amendment by two-thirds, or, in the case of a public company, a majority, of all the votes entitled to be cast by that voting group under RCW 23B.10.030;

(ii) A corporation's board of directors may amend or repeal the corporation's bylaws unless this title reserves this power exclusively to the shareholders in whole or in part, or unless the shareholders in amending or repealing a bylaw provide expressly that the board of directors may not amend or repeal that bylaw under RCW 23B.10.200;

(jj) Unless this title or the board of directors require a greater vote or a vote by voting groups, a plan of merger or share exchange must be approved by each voting group entitled to vote on the merger or share exchange by two-thirds of all the votes entitled to be cast by that voting group under RCW 23B.11.030;

(kk) Approval by the shareholders of the sale, lease, exchange, or other disposition of all, or substantially all, the corporation's property in the usual and regular course of business is not required under RCW 23B.12.010;

(ll) Approval by the shareholders of the mortgage, pledge, dedication to the repayment of indebtedness, or other encumbrance of any or all of the corporation's property, whether or not in the usual and regular course of business, is not required under RCW 23B.12.010;

(mm) Unless the board of directors requires a greater vote or a vote by voting groups, a sale, lease, exchange, or other disposition of all or substantially all of the corporation's property, other than in the usual and regular course of business, must be approved by each voting group entitled to vote on such transaction by two-thirds of all votes entitled to be cast by that voting group under RCW 23B.12.020; and

(nn) Unless the board of directors requires a greater vote or a vote by voting groups, a proposal to dissolve must be approved by each voting group entitled to vote on the dissolution by two-thirds of all votes entitled to be cast by that voting group under RCW 23B.14.020(~~and~~

~~—(oo) A corporation with fewer than three hundred holders of record of its shares does not require special approval of interested shareholder transactions under RCW 23B.17.020)).~~

(4) Unless its articles of incorporation or its bylaws provide otherwise, a corporation is governed by the following provisions:

(a) The board of directors may authorize the issuance of some or all of the shares of any or all of the corporation's classes or series without certificates under RCW 23B.06.260;

(b) A corporation that is not a public company shall hold a special meeting of shareholders if the holders of at least ten percent of the votes entitled to be cast on any issue proposed to be considered at the meeting demand a meeting under RCW 23B.07.020;

(c) A director need not be a resident of this state or a shareholder of the corporation under RCW 23B.08.020;

(d) The board of directors may fix the compensation of directors under RCW 23B.08.110;

(e) Members of the board of directors may participate in a meeting of the board by any means of similar communication by which all directors participating can hear each other during the meeting under RCW 23B.08.200;

(f) Action permitted or required by this title to be taken at a board of directors' meeting may be taken without a meeting if action is taken by all members of the board under RCW 23B.08.210;

(g) Regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting under RCW 23B.08.220;

(h) Special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting, and the notice need not describe the purpose of the special meeting under RCW 23B.08.220;

(i) A quorum of a board of directors consists of a majority of the number of directors under RCW 23B.08.240;

(j) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors under RCW 23B.08.240;

(k) A board of directors may create one or more committees and appoint members of the board of directors to serve on them under RCW 23B.08.250; and

(l) Unless approved by the shareholders, a corporation may indemnify, or make advances to, a director for reasonable expenses incurred in the defense of any proceeding to which the director was a party because of being a director only to the extent such action is consistent with RCW 23B.08.500 through 23B.08.580.

(5) The articles of incorporation may contain the following provisions:

(a) The names and addresses of the individuals who are to serve as initial directors;

(b) The par value of any authorized shares or classes of shares;

(c) Provisions not inconsistent with law related to the management of the business and the regulation of the affairs of the corporation;

(d) Any provision that under this title is required or permitted to be set forth in the bylaws;

(e) Provisions not inconsistent with law defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

(f) If the articles of incorporation authorize dividing shares into classes, the election of all or a specified number of directors may be effected by the holders of one or more authorized classes of shares under RCW 23B.08.040;

(g) The terms of directors may be staggered under RCW 23B.08.060;

(h) Shares may be redeemable or convertible (i) at the option of the corporation, the shareholder, or another person, or upon the occurrence of a designated event; (ii) for cash, indebtedness, securities, or other property; or (iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events under RCW 23B.06.010; and

(i) A director's personal liability to the corporation or its shareholders for monetary damages for conduct as a director may be eliminated or limited under RCW 23B.08.320.

(6) The articles of incorporation or the bylaws may contain the following provisions:

(a) A restriction on the transfer or registration of transfer of the corporation's shares under RCW 23B.06.270;

(b) Shareholders may participate in a meeting of shareholders by any means of communication by which all persons participating in the meeting can hear each other under RCW 23B.07.080;

(c) A quorum of the board of directors may consist of as few as one-third of the number of directors under RCW 23B.08.240;

(d) If the corporation is registered as an investment company under the investment company act of 1940, a provision limiting the requirement to hold an annual meeting of shareholders as provided in RCW 23B.07.010(2); and

(e) If the corporation is registered as an investment company under the investment company act of 1940, a provision establishing terms of directors which terms may be longer than one year as provided in RCW 23B.05.050.

(7) The articles of incorporation need not set forth any of the corporate powers enumerated in this title.

NEW SECTION. Sec. 6. RCW 23B.17.020 and 1989 c 165 s 189 are each repealed.

Passed the Senate March 2, 1996.

Passed the House February 28, 1996.

Approved by the Governor March 25, 1996.

Filed in Office of Secretary of State March 25, 1996.

CHAPTER 156

[Substitute Senate Bill 6188]

COMMUNICATIONS BETWEEN VICTIMS OF SEXUAL ASSAULTS AND THEIR PERSONAL REPRESENTATIVES—CONDITIONAL PRIVILEGE ESTABLISHED

AN ACT Relating to communications between victims of sexual assaults and their personal representatives; and amending RCW 5.60.060.

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

Sec. 1. RCW 5.60.060 and 1995 c 240 s 1 are each amended to read as follows:

(1) A husband shall not be examined for or against his wife, without the consent of the wife, nor a wife for or against her husband without the consent of the husband; nor can either during marriage or afterward, be without the consent of the other, examined as to any communication made by one to the other during marriage. But this exception shall not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to a criminal action or proceeding against a spouse if the marriage occurred subsequent to the filing of formal charges against the defendant, nor to a criminal action or proceeding for

a crime committed by said husband or wife against any child of whom said husband or wife is the parent or guardian, nor to a proceeding under chapter 70.96A or 71.05 RCW: PROVIDED, That the spouse of a person sought to be detained under chapter 70.96A or 71.05 RCW may not be compelled to testify and shall be so informed by the court prior to being called as a witness.

(2) An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.

(3) A member of the clergy or a priest shall not, without the consent of a person making the confession, be examined as to any confession made to him or her in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs.

(4) Subject to the limitations under RCW 70.96A.140 or 71.05.250, a physician or surgeon or osteopathic physician or surgeon shall not, without the consent of his or her patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him or her to prescribe or act for the patient, except as follows:

(a) In any judicial proceedings regarding a child's injury, neglect, or sexual abuse or the cause thereof; and

(b) Ninety days after filing an action for personal injuries or wrongful death, the claimant shall be deemed to waive the physician-patient privilege. Waiver of the physician-patient privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as a court may impose pursuant to court rules.

(5) A public officer shall not be examined as a witness as to communications made to him or her in official confidence, when the public interest would suffer by the disclosure.

(6)(a) A peer support group counselor shall not, without consent of the law enforcement officer making the communication, be compelled to testify about any communication made to the counselor by the officer while receiving counseling. The counselor must be designated as such by the sheriff, police chief, or chief of the Washington state patrol, prior to the incident that results in counseling. The privilege only applies when the communication was made to the counselor while acting in his or her capacity as a peer support group counselor. The privilege does not apply if the counselor was an initial responding officer, a witness, or a party to the incident which prompted the delivery of peer support group counseling services to the law enforcement officer.

(b) For purposes of this section, "peer support group counselor" means a:

(i) Law enforcement officer, or civilian employee of a law enforcement agency, who has received training to provide emotional and moral support and counseling to an officer who needs those services as a result of an incident in which the officer was involved while acting in his or her official capacity; or

(ii) Nonemployee counselor who has been designated by the sheriff, police chief, or chief of the Washington state patrol to provide emotional and moral

support and counseling to an officer who needs those services as a result of an incident in which the officer was involved while acting in his or her official capacity.

(7) A sexual assault advocate may not, without the consent of the victim, be examined as to any communication made by the victim to the sexual assault advocate.

(a) For purposes of this section, "sexual assault advocate" means the employee or volunteer from a rape crisis center, victim assistance unit, program, or association, that provides information, medical or legal advocacy, counseling, or support to victims of sexual assault, who is designated by the victim to accompany the victim to the hospital or other health care facility and to proceedings concerning the alleged assault, including police and prosecution interviews and court proceedings.

(b) A sexual assault advocate may disclose a confidential communication without the consent of the victim if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person. Any sexual assault advocate participating in good faith in the disclosing of records and communications under this section shall have immunity from an liability, civil, criminal, or otherwise, that might result from the action. In any proceeding, civil or criminal, arising out of a disclosure under this section, the good faith of the sexual assault advocate who disclosed the confidential communication shall be presumed.

Passed the Senate February 6, 1996.

Passed the House February 28, 1996.

Approved by the Governor March 25, 1996.

Filed in Office of Secretary of State March 25, 1996.

CHAPTER 157

[Substitute Senate Bill 6214]

TEMPORARY GROWING STRUCTURES—STATE BUILDING CODE EXEMPTION

AN ACT Relating to horticultural facilities; amending RCW 19.27.015; adding a new section to chapter 19.27 RCW; and declaring an emergency.

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

Sec. 1. RCW 19.27.015 and 1985 c 360 s 1 are each amended to read as follows:

As used in this chapter:

(1) "City" means a city or town; ~~((and))~~

(2) "Multifamily residential building" means common wall residential buildings that consist of four or fewer units, that do not exceed two stories in height, that are less than five thousand square feet in area, and that have a one-hour fire-resistive occupancy separation between units; and

(3) "Temporary growing structure" means a structure that has the sides and roof covered with polyethylene, polyvinyl, or similar flexible synthetic material

and is used to provide plants with either frost protection or increased heat retention.

NEW SECTION. Sec. 2. A new section is added to chapter 19.27 RCW to read as follows:

The provisions of this chapter do not apply to temporary growing structures used solely for the commercial production of horticultural plants including ornamental plants, flowers, vegetables, and fruits. A temporary growing structure is not considered a building for purposes of this chapter.

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 shall take effect immediately.

Passed the Senate March 2, 1996.

Passed the House February 26, 1996.

Approved by the Governor March 25, 1996.

Filed in Office of Secretary of State March 25, 1996.

CHAPTER 158

[Substitute Senate Bill 6229]

INFANT CRIB SAFETY ACT

AN ACT Relating to infant crib safety; adding a new chapter to Title 70 RCW; and prescribing penalties.

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

NEW SECTION. Sec. 1. (1) The legislature finds all of the following:

(a) The disability and death of infants resulting from injuries sustained in crib accidents are a serious threat to the public health, welfare, and safety of the people of this state.

(b) Infants are an especially vulnerable class of people.

(c) The design and construction of a baby crib must ensure that it is safe to leave an infant unattended for extended periods of time. A parent or caregiver has a right to believe that the crib in use is a safe place to leave an infant.

(d) Over thirteen thousand infants are injured in unsafe cribs every year.

(e) In the past decade, six hundred twenty-two infants died (a rate of sixty-two infants each year) from injuries sustained in unsafe cribs.

(f) The United States consumer product safety commission estimates that the cost to society resulting from injuries and death due to unsafe cribs is two hundred thirty-five million dollars per year.

(g) Secondhand, hand-me-down, and heirloom cribs pose a special problem. There were four million infants born in this country last year, but only one million new cribs sold. As many as three out of four infants are placed in secondhand, hand-me-down, or heirloom cribs.

(h) Most injuries and deaths occur in secondhand, hand-me-down, or heirloom cribs.

(i) Existing state and federal legislation is inadequate to deal with this hazard.

(j) Prohibiting the remanufacture, retrofit, sale, contracting to sell or resell, leasing, or subletting of unsafe cribs, particularly unsafe secondhand, hand-me-down, or heirloom cribs, will prevent injuries and deaths caused by cribs.

(2) The purpose of this chapter is to prevent the occurrence of injuries and deaths to infants as a result of unsafe cribs by making it illegal to remanufacture, retrofit, sell, contract to sell or resell, lease, sublet, or otherwise place in the stream of commerce, after the effective date of this act, any full-size or nonfull-size crib that is unsafe for any infant using the crib.

(3) It is the intent of the legislature to encourage public and private collaboration in disseminating materials relative to the safety of baby cribs to parents, child care providers, and those who would be likely to place unsafe cribs in the stream of commerce. The legislature also intends that informational materials regarding baby crib safety be available to consumers through the department of health.

NEW SECTION. Sec. 2. This chapter may be known and cited as the infant crib safety act.

NEW SECTION. Sec. 3. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Infant" means any person less than thirty-five inches tall and less than three years of age.

(2) "Crib" means a bed or containment designed to accommodate an infant.

(3) "Full-size crib" means a full-size crib as defined in Section 1508.3 of Title 16 of the Code of Federal Regulations regarding the requirements for full-size cribs.

(4) "Nonfull-size crib" means a nonfull-size crib as defined in Section 1509.2(b) of Title 16 of the Code of the Federal Regulations regarding the requirements for nonfull-size cribs.

(5) "Person" means any natural person, firm, corporation, association, or agent or employee thereof.

(6) "Commercial user" means any person who deals in full-size or nonfull-size cribs of the kind governed by this chapter or who otherwise by one's occupation holds oneself out as having knowledge or skill peculiar to the full-size or nonfull-size cribs governed by this chapter, including child care facilities and family child care homes licensed by the department of social and health services under chapter 74.15 RCW, or any person who is in the business of remanufacturing, retrofitting, selling, leasing, subletting, or otherwise placing in the stream of commerce full-size or nonfull-size cribs.

NEW SECTION. Sec. 4. (1) No commercial user may remanufacture, retrofit, sell, contract to sell or resell, lease, sublet, or otherwise place in the stream of commerce, on or after the effective date of this act, a full-size or nonfull-size crib that is unsafe for any infant using the crib.

(2) A crib is presumed to be unsafe pursuant to this chapter if it does not conform to all of the following:

- (a) Part 1508 (commencing with Section 1508.1) of Title 16 of the Code of Federal Regulations;
- (b) Part 1509 (commencing with Section 1509.1) of Title 16 of the Code of Federal Regulations;
- (c) Part 1303 (commencing with Section 1303.1) of Title 16 of the Code of Federal Regulations;
- (d) American Society for Testing Materials Voluntary Standards F966-90;
- (e) American Society for Testing Materials Voluntary Standards F1169.88;
- (f) Any regulations that are adopted in order to amend or supplement the regulations described in (a) through (e) of this subsection.

(3) Cribs that are unsafe or fail to perform as expected pursuant to subsection (2) of this section include, but are not limited to, cribs that have any of the following dangerous features or characteristics:

- (a) Corner posts that extend more than one-sixteenth of an inch;
- (b) Spaces between side slats more than two and three-eighths inches;
- (c) Mattress support that can be easily dislodged from any point of the crib. A mattress segment can be easily dislodged if it cannot withstand at least a twenty-five pound upward force from underneath the crib;
- (d) Cutout designs on the end panels;
- (e) Rail height dimensions that do not conform to the following:
 - (i) The height of the rail and end panel as measured from the top of the rail or panel in its lowest position to the top of the mattress support in its highest position is at least nine inches;
 - (ii) The height of the rail and end panel as measured from the top of the rail or panel in its highest position to the top of the mattress support in its lowest position is at least twenty-six inches;
- (f) Any screws, bolts, or hardware that are loose and not secured;
- (g) Sharp edges, points, or rough surfaces, or any wood surfaces that are not smooth and free from splinters, splits, or cracks;
- (h) Nonfull-size cribs with tears in mesh or fabric sides.

NEW SECTION. Sec. 5. Any crib that is clearly not intended for use by an infant is exempt from the provisions of this chapter, provided that it is accompanied at the time of remanufacturing, retrofitting, selling, leasing, subletting, or otherwise placing in the stream of commerce, by a notice to be furnished by the commercial user declaring that it is not intended to be used for an infant and is dangerous to use for an infant. The commercial user is further exempt from claims for liability resulting from use of a crib contrary to the notice required in this section.

NEW SECTION. Sec. 6. On or after January 1, 1997, any commercial user who willfully and knowingly violates section 4 of this act is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars. Hotels,

motels, and similar transient lodging, child care facilities, and family child care homes are not subject to this section until January 1, 1999.

NEW SECTION. Sec. 7. Any person may maintain an action against any commercial user who violates section 4 of this act to enjoin the remanufacture, retrofit, sale, contract to sell, contract to resell, lease, or subletting of a full-size or nonfull-size crib that is unsafe for any infant using the crib, and for reasonable attorneys' fees and costs. This section does not apply to hotels, motels, and similar transient lodging, child care facilities, and family child care homes until January 1, 1999.

NEW SECTION. Sec. 8. Remedies available under this chapter are in addition to any other remedies or procedures under any other provision of law that may be available to an aggrieved party.

NEW SECTION. Sec. 9. 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. 10. Sections 1 through 8 of this act shall constitute a new chapter in Title 70 RCW.

Passed the Senate February 9, 1996.
Passed the House February 29, 1996.
Approved by the Governor March 25, 1996.
Filed in Office of Secretary of State March 25, 1996.

CHAPTER 159

[Engrossed Substitute Senate Bill 6241]

**LODGING TAXES FOR THE PURPOSES OF TOURISM PROMOTION,
PERFORMING AND VISUAL ARTS CENTER, AND
CONVENTION FACILITIES AUTHORIZED**

AN ACT Relating to hotel and motel taxes in certain cities and towns; amending RCW 67.28.210; and adding new sections to chapter 67.28 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 67.28 RCW to read as follows:

(1) The legislative body of a town with a population of at least three hundred twenty-five but less than five hundred fifty in a county that borders on the northeastern slope of the Cascade mountains with a population of at least thirty-six thousand but less than forty-two thousand may levy and collect a special excise tax not to exceed three percent on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of a similar license to use real property, as distinguished from the renting or leasing of real property. For the purposes of this tax, it is presumed that the occupancy of real property for a continuous period of one

month or more constitutes a rental or lease of real property and not a mere license to use or to enjoy the property.

(2) The tax authorized in subsection (1) of this section is in addition to any other tax authorized by law.

(3) A seller, as defined in RCW 82.08.010, who is required to collect a tax under this section, shall pay the tax to the town as provided in RCW 67.28.200. The deduction from state taxes under RCW 67.28.190 does not apply to taxes imposed under this section.

(4) The tax levied and collected under this section shall be credited to a special fund in the treasury of the town. The taxes may be levied only for the purpose of tourism promotion.

NEW SECTION. Sec. 2. A new section is added to chapter 67.28 RCW to read as follows:

(1) The legislative body of a city with a population of at least five hundred but less than one thousand in a county with a population of at least eighty thousand but less than one hundred fifteen thousand may levy and collect a special excise tax not to exceed two percent on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of a similar license to use real property, as distinguished from the renting or leasing of real property. For the purposes of this tax, it is presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or to enjoy the property.

(2) The tax authorized in subsection (1) of this section is in addition to any other tax authorized by law.

(3) A seller, as defined in RCW 82.08.010, who is required to collect a tax under this section, shall pay the tax to the city as provided in RCW 67.28.200. The deduction from state taxes under RCW 67.28.190 does not apply to taxes imposed under this section.

(4) The tax levied and collected under this section shall be credited to a special fund in the treasury of the city. The taxes may be levied only for the purpose of paying all or any part of the cost of acquisition, construction, or operation of a performing and visual arts center or to pay or secure the payment of all or any portion of general obligation bonds or revenue bonds issued for such purpose.

NEW SECTION. Sec. 3. A new section is added to chapter 67.28 RCW to read as follows:

(1) The legislative body of a city with a population of at least thirty thousand but less than sixty thousand in a county with a population of at least one hundred thousand but less than one hundred forty-five thousand may levy and collect a special excise tax not to exceed two percent on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of a similar license to use real

property, as distinguished from the renting or leasing of real property. For the purposes of this tax, it is presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or to enjoy the property.

(2) The tax authorized in subsection (1) of this section is in addition to any other tax authorized by law.

(3) A seller, as defined in RCW 82.08.010, who is required to collect a tax under this section, shall pay the tax to the city as provided in RCW 67.28.200. The deduction from state taxes under RCW 67.28.190 does not apply to the tax imposed under this section.

(4) The tax levied and collected under this section shall be credited to a special fund in the treasury of the city. The tax may be levied only for the purpose of paying all or any part of the cost of acquisition, construction, or operation of convention center facilities or to pay or secure the payment of all or any portion of general obligation bonds or revenue bonds issued for such purpose.

Sec. 4. RCW 67.28.210 and 1995 c 290 s 1 are each amended to read as follows:

All taxes levied and collected under RCW 67.28.180, 67.28.240, and 67.28.260 shall be credited to a special fund in the treasury of the county or city imposing such tax. Such taxes shall be levied only for the purpose of paying all or any part of the cost of acquisition, construction, or operating of stadium facilities, convention center facilities, performing arts center facilities, and/or visual arts center facilities or to pay or secure the payment of all or any portion of general obligation bonds or revenue bonds issued for such purpose or purposes under this chapter, or to pay for advertising, publicizing, or otherwise distributing information for the purpose of attracting visitors and encouraging tourist expansion when a county or city has imposed such tax for such purpose, or as one of the purposes hereunder, and until withdrawn for use, the moneys accumulated in such fund or funds may be invested in interest bearing securities by the county or city treasurer in any manner authorized by law. In addition such taxes may be used to develop strategies to expand tourism: PROVIDED, That any county, and any city within a county, bordering upon Grays Harbor may use the proceeds of such taxes for construction and maintenance of a movable tall ships tourist attraction in cooperation with a tall ships restoration society, except to the extent that such proceeds are used for payment of principal and interest on debt incurred prior to June 11, 1986: PROVIDED FURTHER, That any city or county may use the proceeds of such taxes for the refurbishing and operation of a steam railway or historic maritime vessels used primarily for passenger transportation for tourism promotion purposes: PROVIDED FURTHER, That any city bordering on the Pacific Ocean or on Baker Bay with a population of not less than eight hundred and the county in which such a city is located, a city bordering on the Skagit river with a population of not less than twenty thousand, or any city within a county made up entirely of islands may use

the proceeds of such taxes for funding special events or festivals, or for the acquisition, construction, or operation of publicly owned tourist promotional infrastructures, structures, or buildings including but not limited to an ocean beach boardwalk, public docks, and viewing towers: PROVIDED FURTHER, That any county which imposes a tax under RCW 67.28.182 or any city with a population less than fifty thousand in such county may use the proceeds of the tax levied and collected under RCW 67.28.180 to provide public restroom facilities available to and intended for use by visitors: PROVIDED FURTHER, That any county made up entirely of islands, and any city or town that has a population less than five thousand, may use the proceeds of the tax levied and collected under RCW 67.28.180 to provide public restroom facilities available to and intended for use by visitors: PROVIDED FURTHER, That any city or county may use the proceeds of such taxes for funding a civic festival, if the following conditions are met: The festival is a community-wide event held not more than once annually; the festival is approved by the city, town, or county in which it is held; the festival is sponsored by an exempt organization defined in section 501(c)(3), (4), or (6) of the federal internal revenue code; the festival provides family-oriented events suiting a broad segment of the community; and the proceeds of such taxes are used solely for advertising and promotional materials intended to attract overnight visitors: PROVIDED FURTHER, That any city may use the proceeds of such taxes for street banners to attract and welcome tourists.

Passed the Senate March 4, 1996.

Passed the House March 1, 1996.

Approved by the Governor March 25, 1996.

Filed in Office of Secretary of State March 25, 1996.

CHAPTER 160

[Engrossed Substitute Senate Bill 6266]

LOST AND UNCERTAIN BOUNDARIES—ESTABLISHMENT

AN ACT Relating to the establishment of lost and uncertain boundaries; amending RCW 58.04.020; adding new sections to chapter 58.04 RCW; repealing RCW 58.04.010; and prescribing penalties.

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

NEW SECTION. Sec. 1. The purpose of this chapter is to provide alternative procedures for fixing boundary points or lines when they cannot be determined from the existing public record and landmarks or are otherwise in dispute. This chapter does not impair, modify, or supplant any other remedy available at law or equity.

NEW SECTION. Sec. 2. As used in this chapter, "surveyor" means every person authorized to practice the profession of land surveying under the provisions of chapter 18.43 RCW.

NEW SECTION. Sec. 3. Whenever a point or line determining the boundary between two or more parcels of real property cannot be identified from the existing public record, monuments, and landmarks, or is in dispute, the landowners affected by the determination of the point or line may resolve any dispute and fix the boundary point or line by one of the following procedures:

(1) If all of the affected landowners agree to a description and marking of a point or line determining a boundary, they shall document the agreement in a written instrument, using appropriate legal descriptions and including a survey map, filed in accordance with chapter 58.09 RCW. The written instrument shall be signed and acknowledged by each party in the manner required for a conveyance of real property. The agreement is binding upon the parties, their successors, assigns, heirs and devisees and runs with the land. The agreement shall be recorded with the real estate records in the county or counties in which the affected parcels of real estate or any portion of them is located;

(2) If all of the affected landowners cannot agree to a point or line determining the boundary between two or more parcels of real estate, any one of them may bring suit for determination as provided in RCW 58.04.020.

NEW SECTION. Sec. 4. Any surveyor authorized by the court and the surveyor's employees may, without liability for trespass, enter upon any land or waters and remain there while performing the duties as required in sections 1 through 4 of this act. The persons named in this section may, without liability for trespass, investigate, construct, or place a monument or reference monuments for the position of any land boundary mark or general land office corner or mark and subdivisional corners thereof. Persons entering lands under the authority of sections 1 through 4 of this act must exercise due care not to damage property while on land or waters performing their duties, and are liable for property damage, if any, caused by their negligence or willful misconduct. Where practical, the persons named in this section must announce and identify themselves and their intention before entering upon private property in the performance of their duties.

NEW SECTION. Sec. 5. A person who intentionally disturbs a survey monument placed by a surveyor in the performance of the surveyor's duties is guilty of a gross misdemeanor and is liable for the cost of the reestablishment.

NEW SECTION. Sec. 6. RCW 58.04.010 and 1895 c 77 s 9 are each repealed.

NEW SECTION. Sec. 7. Sections 1 through 5 of this act are each added to chapter 58.04 RCW.

Sec. 8. RCW 58.04.020 and 1886 p 104 s 1 are each amended to read as follows:

(1) Whenever the boundaries of lands between two or more adjoining proprietors ((shall)) have been lost, or by time, accident or any other cause, ((shall)) have become obscure, or uncertain, and the adjoining proprietors cannot agree to establish the same, one or more of ((said)) the adjoining proprietors may

bring ((his)) a civil action in equity, in the superior court, for the county in which such lands, or part of them are situated, and ((such)) that superior court, as a court of equity, may upon ((such)) the complaint, order such lost or uncertain boundaries to be erected and established and properly marked.

(2) The superior court may order the parties to utilize mediation before the civil action is allowed to proceed.

Passed the Senate March 2, 1996.

Passed the House February 28, 1996.

Approved by the Governor March 25, 1996.

Filed in Office of Secretary of State March 25, 1996.

CHAPTER 161

[Senate Bill 6403]

FIRE INVESTIGATIONS—RESPONSIBILITIES REVISED

AN ACT Relating to fire investigation; and amending RCW 48.48.060.

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

Sec. 1. RCW 48.48.060 and 1995 c 369 s 28 are each amended to read as follows:

~~(((1) The chief of each organized fire department, the sheriff or other designated county official, and the designated city or town official shall investigate the cause and origin, and document extent of damage of all fires occurring within their respective jurisdictions, as determined by this subsection, and shall forthwith notify the chief of the Washington state patrol, through the director of fire protection, of all fires of criminal, suspected, or undetermined cause occurring within their respective jurisdictions. The county fire marshal shall also be notified of and investigate all such fires occurring in unincorporated areas of the county. Fire departments shall have the responsibility imposed by this subsection for areas within their jurisdictions. Sheriffs or other designated county officials shall have responsibility imposed by this subsection for county areas not within the jurisdiction of a fire department, unless such areas are within the boundaries of a city or town, in which case the designated city or town official shall have the responsibility imposed by this subsection. For the purposes of this subsection, county officials shall be designated by the county legislative authority, and city or town officials shall be designated by the appropriate city or town legislative or executive authority. In addition to the responsibility imposed by this subsection, any sheriff or chief of police may assist in the investigation of the cause and origin, and document extent of damage of all fires occurring within his or her respective jurisdiction.)) (1) The responsibility for investigating the origin, cause, circumstances, and extent of loss of all fires shall be assigned as follows:~~

(a) Within any city or town, the chief of the fire department;

(b) Within unincorporated areas of a county, the county fire marshal, or other fire official so designated by the county legislative authority.

(2) No fire marshal, or other person, may enter the scene of an emergency until permitted by the officer in charge of the emergency incident.

(3) Nothing shall prevent any city, town, county, or fire protection district, or any combination thereof, from entering into interlocal agreements to meet the responsibility required by this section.

(4) When any fire investigation indicates that the cause of the fire is determined to be suspicious or criminal in nature, the person responsible for the fire investigation shall immediately report the results of said investigation to the local law enforcement agency and the chief of the Washington state patrol, through the state fire marshal.

(5) In addition to the responsibility imposed by this section, any law enforcement agency, sheriff, or chief of police may assist in the investigation of the origin, cause, circumstances, and extent of loss of all fires within his or her respective jurisdiction.

~~((2))~~ (6) The chief of the Washington state patrol, through the director of fire protection or his or her deputy, may investigate any fire for the purpose of determining its cause, origin, and the extent of the loss. The chief of the Washington state patrol, through the director of fire protection or his or her deputy, shall assist in the investigation of those fires of criminal, suspected, or undetermined cause when requested by the reporting agency. In the investigation of any fire of criminal, suspected, or undetermined cause, the chief of the Washington state patrol and the director of fire protection or his or her deputy, are vested with police powers to enforce the laws of this state. To exercise these powers, authorized deputies must receive prior written authorization from the chief of the Washington state patrol, through the director of fire protection, and shall have completed a course of training prescribed by the Washington state criminal justice training commission.

Passed the Senate March 2, 1996.

Passed the House February 29, 1996.

Approved by the Governor March 25, 1996.

Filed in Office of Secretary of State March 25, 1996.

CHAPTER 162

[Senate Bill 6526]

MEDICINES PRESCRIBED BY NATUROPATHS—TAX EXEMPTIONS

AN ACT Relating to tax exemptions for medicines prescribed by naturopaths; amending RCW 82.08.0283 and 82.12.0277; and providing an effective date.

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

Sec. 1. RCW 82.08.0283 and 1991 c 250 s 2 are each amended to read as follows:

The tax levied by RCW 82.08.020 shall not apply to sales of insulin; prosthetic and orthotic devices prescribed for an individual by a person licensed under chapters 18.25, 18.57, or 18.71 RCW or dispensed or fitted by a person

licensed under chapter 18.35 RCW; medicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW; ostomic items; and medically prescribed oxygen. For the purposes of this section, "medically prescribed oxygen" includes, but is not limited to, sale or rental of oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems to an individual under a prescription issued by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual.

Sec. 2. RCW 82.12.0277 and 1991 c 250 s 3 are each amended to read as follows:

The provisions of this chapter shall not apply in respect to the use of insulin; prosthetic and orthotic devices prescribed for an individual by a person licensed under chapters 18.25, 18.57, or 18.71 RCW or dispensed or fitted by a person licensed under chapter 18.35 RCW; medicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW; ostomic items; and medically prescribed oxygen. For the purposes of this section, "medically prescribed oxygen" includes, but is not limited to, sale or rental of oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems to an individual under a prescription issued by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual.

NEW SECTION. Sec. 3. This act shall take effect July 1, 1996.

Passed the Senate March 7, 1996.

Passed the House March 7, 1996.

Approved by the Governor March 25, 1996.

Filed in Office of Secretary of State March 25, 1996.

CHAPTER 163

[Substitute Senate Bill 6551]

AGRICULTURAL GRAZING ON STATE-OWNED AND MANAGED LANDS—MANAGEMENT

AN ACT Relating to agricultural grazing on state-owned and managed lands; adding a new section to chapter 79.01 RCW; and adding section 1, chapter 4, Laws of 1993 sp. sess. (uncodified) to chapter 79.01 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 79.01 RCW to be codified between RCW 79.01.295 and 79.01.296 to read as follows:

(1) It is the purpose of chapter . . . , Laws of 1996 (this act) that all state agricultural lands, grazing lands, and grazeable woodlands shall be managed in keeping with the statutory and constitutional mandates under which each agency

operates. Chapter . . . , Laws of 1996 (this act) is consistent with section 1, chapter 4, Laws of 1993 sp. sess.

(2) The ecosystem standards developed under chapter 4, Laws of 1993 sp. sess. for state-owned agricultural and grazing lands are defined as desired ecological conditions. The standards are not intended to prescribe practices. For this reason, land managers are encouraged to use an adaptive management approach in selecting and implementing practices that work towards meeting the standards based on the best available science and evaluation tools.

(3) For as long as the chapter 4, Laws of 1993 sp. sess. ecosystem standards remain in effect, they shall be applied through a collaborative process that incorporates the following principles:

(a) The land manager and lessee or permittee shall look at the land together and make every effort to reach agreement on management and resource objectives for the land under consideration;

(b) They will then discuss management options and make every effort to reach agreement on which of the available options will be used to achieve the agreed-upon objectives;

(c) No land manager or owner ever gives up his or her management prerogative;

(d) Efforts will be made to make land management plans economically feasible for landowners, managers, and lessees and to make the land management plan compatible with the lessee's entire operation;

(e) Coordinated resource management planning is encouraged where either multiple ownerships, or management practices, or both, are involved;

(f) The department of fish and wildlife shall consider multiple use, including grazing, on lands owned or managed by the department of fish and wildlife where it is compatible with the management objectives of the land; and

(g) The department of natural resources shall allow multiple use on lands owned or managed by the department of natural resources where multiple use can be demonstrated to be compatible with RCW 79.68.010, 79.68.020, and 79.68.050.

(4) The ecosystem standards are to be achieved by applying appropriate land management practices on riparian lands and on the uplands in order to reach the desired ecological conditions.

(5) The legislature urges that state agencies that manage grazing lands make planning and implementation of this act, using the coordinated resource management and planning process, a high priority, especially where either multiple ownerships, or multiple use resources objectives, or both, are involved. In all cases, the choice of using the coordinated resource management planning process will be a voluntary decision by all concerned parties including agencies, private landowners, lessees, permittees, and other interests.

NEW SECTION. Sec. 2. Section 1, chapter 4, Laws of 1993 sp. sess. (uncodified) is added to chapter 79.01 RCW to be codified between RCW 79.01.295 and 79.01.296.

Passed the Senate March 2, 1996.
 Passed the House February 27, 1996.
 Approved by the Governor March 25, 1996.
 Filed in Office of Secretary of State March 25, 1996.

CHAPTER 164

[Engrossed Senate Bill 6566]

SNOWMOBILE REGISTRATION FEES—INCREASES

AN ACT Relating to snowmobile registration fees; and amending RCW 46.10.040.

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

Sec. 1. RCW 46.10.040 and 1986 c 16 s 2 are each amended to read as follows:

Application for registration shall be made to the department in ~~((such))~~ the manner and upon ~~((such))~~ forms ~~((as))~~ the department ~~((shall))~~ 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 ~~((at no more than fifteen dollars))~~ and any state-wide snowmobile user groups. ~~((However,))~~ The fee shall be ~~((ten))~~ fifteen dollars pending action by the commission to increase the fee. ~~((Any increase in the fee shall not exceed two dollars and fifty cents annually, up to the registration fee limit of fifteen dollars))~~ The commission shall increase the fee by two dollars and fifty cents effective September 30, 1996, and the commission shall increase the fee by another two dollars and fifty cents effective September 30, 1997. After the fee increase effective September 30, 1997, the commission shall not increase the fee. Upon receipt of the application and the application fee, ~~((such))~~ 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.

The registration provided in this section shall be valid for a period of one year. At the end of ~~((such))~~ the period of registration, every owner of a snowmobile in this state shall renew his or her registration in ~~((such))~~ the manner ~~((as))~~ the department ~~((shall))~~ prescribes, for an additional period of one year, upon payment of the annual registration fee as determined by the commission.

Any person acquiring a snowmobile already validly registered under the provisions of this chapter must, within ten days of the acquisition or purchase of ~~((such))~~ the snowmobile, make application to the department for transfer of ~~((such))~~ the registration, and ~~((such))~~ the application shall be accompanied by a transfer fee of one dollar.

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 ~~((such-a))~~ 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 (~~(the)~~) 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.

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.

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 (~~(herein)~~) in this section the department shall charge each applicant for registration the actual cost of (~~(said)~~) the decal. The department shall make available replacement decals for a fee equivalent to the actual cost of the decals.

- Passed the Senate March 2, 1996.
- Passed the House February 29, 1996.
- Approved by the Governor March 25, 1996.
- Filed in Office of Secretary of State March 25, 1996.

CHAPTER 165

[Engrossed Substitute House Bill 2343]

TRANSPORTATION BUDGET

AN ACT Relating to transportation funding and appropriations; amending RCW 46.16.313; amending 1995 2nd sp.s. c 14 ss 103, 203, 204, 205, 207, 208, 209, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 225, 226, 227, 228, 301, 302, 303, 401, 402, 403, 404, and 408 (uncodified); adding new sections to 1995 2nd sp.s. c 14 (uncodified); repealing 1995 2nd sp.s. c 14 s 224 (uncodified); and declaring an emergency.

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

PART I

GENERAL GOVERNMENT AGENCIES—OPERATING

Sec. 101. 1995 2nd sp.s. c 14 s 103 (uncodified) is amended to read as follows:

FOR THE LEGISLATIVE EVALUATION AND ACCOUNTABILITY PROGRAM

Motor Vehicle Fund—State Appropriation	\$	(205,000)
		<u>410,000</u>

The appropriation in this section is subject to the following conditions and limitations and specified amounts are provided solely for that activity: The legislative evaluation and accountability program committee shall enter into a service level agreement with the legislative transportation committee by September 30, 1995, which shall be reviewed annually thereafter.

**PART II
TRANSPORTATION AGENCIES**

Sec. 201. 1995 2nd sp.s. c 14 s 203 (uncodified) is amended to read as follows:

FOR THE COUNTY ROAD ADMINISTRATION BOARD

Motor Vehicle Fund—Rural Arterial Trust		
Account—State Appropriation	\$	((37,553,000))
		<u>57,553,000</u>
Motor Vehicle Fund—State Appropriation	\$	1,340,000
Motor Vehicle Fund—Private/Local Appropriation . . .	\$	508,000
Motor Vehicle Fund—County Arterial Preservation		
Account—State Appropriation	\$	26,023,000
TOTAL APPROPRIATION	\$	((65,424,000))
		<u>85,424,000</u>

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity: The county road administration board shall conduct an analysis of gravel roads under county jurisdictions and provide a report to the legislative transportation committee consisting of recommendations for implementing a state-wide program for paving county gravel roads. The recommendations will include prioritizing methodology and legislative changes required for implementation of the program. The report and a list of high priority projects will be provided to the legislative transportation committee by December 31, 1996.

***Sec. 202.** 1995 2nd sp.s. c 14 s 204 (uncodified) is amended to read as follows:

FOR THE TRANSPORTATION IMPROVEMENT BOARD

Motor Vehicle Fund—Urban Arterial Trust		
Account—State Appropriation	\$	((38,997,000))
		<u>43,297,000</u>
Motor Vehicle Fund—Transportation Improvement		
Account—State Appropriation	\$	((143,061,000))
		<u>173,061,000</u>
Motor Vehicle Fund—City Hardship Assistance		
Account—State Appropriation	\$	((1,904,000))
		<u>2,404,000</u>
<u>Central Puget Sound Public Transportation Account—</u>		
<u>State Appropriation</u>	<u>\$</u>	<u>14,509,000</u>
<u>Public Transportation Systems Account—State</u>		
<u>Appropriation</u>	<u>\$</u>	<u>2,882,000</u>
Motor Vehicle Fund—Small City Account—		
State Appropriation	\$	5,702,000
TOTAL APPROPRIATION	\$	((189,664,000))
		<u>241,855,000</u>

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) The transportation improvement account—state appropriation includes \$50,000,000 in proceeds from the sale of bonds authorized in RCW 47.26.500. However, the transportation improvement board may authorize the use of current revenues available in lieu of bond proceeds.

(2) The appropriations in this section include \$9,000,000 for the Mill Plain extension project.

(3) The appropriations in this section include sufficient funds for any costs associated with the implementation of Substitute Senate Bill No. 6761.

(4) \$225,000 from the central Puget Sound public transportation account—state appropriation is provided for the South Hill park and ride lot project.

(5) Prior to July 1, 1997, no applications for grants from the central Puget Sound public transportation account may be accepted from, nor may funds from that account be granted to, the regional transit authority.

(6) The public transportation systems account—state appropriation provided in this section includes \$800,000 that is in addition to the appropriation under 1995 2nd sp.s. c 14. This additional \$800,000 may not be used for studies or planning purposes.

*Sec. 202 was partially vetoed. See message at end of chapter.

Sec. 203. 1995 2nd sp.s. c 14 s 205 (uncodified) is amended to read as follows:

FOR THE LEGISLATIVE TRANSPORTATION COMMITTEE

Motor Vehicle Fund—State Appropriation	\$	2,528,000
<u>Transportation Fund—State Appropriation</u>	<u>\$</u>	<u>125,000</u>
<u>High Capacity Transportation Account—</u>		
<u>State Appropriation</u>	<u>\$</u>	<u>125,000</u>
<u>TOTAL APPROPRIATION</u>	<u>\$</u>	<u>2,778,000</u>

The appropriation in this section is subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) The legislative transportation committee shall convene representatives from the department of transportation, Washington state patrol, department of licensing, and any other agency receiving an appropriation in this act, as necessary, to establish performance measures that are associated with the ~~((final legislative appropriation))~~ budget for the 1997-1999 biennium. The performance measures are to be established and will be tracked within the transportation executive information system.

(2) The legislative transportation committee shall convene one or more groups to address activities that result in the loss of transportation tax revenue. The groups shall present their findings to the legislative transportation committee and the office of financial management. One of the groups shall study and submit to the legislature by December 31, 1996, draft legislation to move the special fuel tax point of collection from the special fuel dealer level to the bulk

transfer/terminal system. The group may also study the feasibility of moving the point of collection for motor vehicle fuel.

~~(3) ((The legislative transportation committee shall study the governance and operations of the ports.))~~ The legislative transportation committee shall undertake an assessment of the methods and technology currently available to create a driver's license and identicard that cannot be fraudulently obtained from the department of licensing, thereby providing the public, businesses, and agencies with a more secure driver's license. A consultant may be hired to assist in the assessment. A final report is due by January 15, 1997.

(4) By December 31, 1996, the legislative transportation committee, in consultation with the department of licensing, Washington state patrol, and vendors of license plate materials and technologies, shall develop recommendations regarding motor vehicle license plates.

(5) The legislative transportation committee shall conduct an assessment of those public transportation issues identified for further examination by the 1995 subcommittee on transit of the house of representatives transportation committee. These issues include the funding and use of state transit related accounts the level of transit system reserves, transit governance and direct accountability, methods to improve transit efficiency, improving the productivity of transit expenditures, and an assessment of the appropriate level of state subsidy and improved accountability for state funds. The committee shall also assess transit services provided across jurisdictional boundaries including the efficient use of resources and the avoidance of empty backhauls; and may address any other issue related to public transportation it deems necessary. The committee shall also evaluate the need for addressing specialized transportation needs in areas where public transportation systems have not been established. The committee shall report its findings and recommendations to the 1997 legislature and prepare legislation necessary to implement those recommendations. \$125,000 of the transportation fund—state appropriation and \$125,000 of the high capacity transportation account—state appropriation are provided solely for this assessment.

Sec. 204. 1995 2nd sp.s. c 14 s 207 (uncodified) is amended to read as follows:

FOR THE TRANSPORTATION COMMISSION

Transportation Fund—State Appropriation	\$	((677,000))
		<u>764,000</u>

~~((The appropriation in this section is subject to the following conditions and limitations and specified amounts are provided solely for that activity.))~~

Sec. 205. 1995 2nd sp.s. c 14 s 208 (uncodified) is amended to read as follows:

FOR THE WASHINGTON STATE PATROL—FIELD OPERATIONS

Motor Vehicle Fund—State Patrol Highway		
Account—State Appropriation	\$	((140,251,000))
		<u>141,697,000</u>
Motor Vehicle Fund—State Patrol Highway		
Account—Federal Appropriation	\$	3,196,000
Motor Vehicle Fund—State Appropriation	\$	747,000
Marine Operating Fund—State Appropriation	\$	927,000
TOTAL APPROPRIATION	\$	((145,121,000))
		<u>146,567,000</u>

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) The state patrol shall have a staffing level of not less than ~~((735))~~ 741 commissioned officers at the end of the 1995-97 biennium. This compares to a level of 700 commissioned officers that was established in the 1993-95 biennium. To achieve these levels: A class of not less than 30 cadets shall begin in July of 1995 ~~((and))~~; a class of not less than 40 cadets shall begin in January of 1996; and a class of not less than 40 shall begin in September 1996.

(2) Management levels, lieutenants and above, are redirected to perform direct traffic law enforcement activities equivalent to five field force FTE staff years. Management personnel engaged in management activity shall not exceed 55 FTE staff years. This level compares to 76 FTE management level staff years in January of 1993.

(3) Any user of Washington state patrol aircraft shall reimburse the Washington state patrol for its pro rata share of all operating and maintenance costs including capitalization.

~~((5)) By January 1, 1996, the chief of the state patrol shall submit to the legislative transportation committee a plan to incorporate safety education officer functions into field force activities. In development of the plan, the chief may consult with various constituent groups including the Washington traffic safety commission, schools, businesses, and local traffic entities. Up to \$200,000 of the motor vehicle fund—state patrol highway account—state appropriation provided for in this section may be used for these purposes.~~

~~—((6))~~ (4) The \$747,000 motor vehicle fund—state appropriation in this section is provided for the following traditional general fund purposes: The Governor’s air travel, the license fraud program, and the special services unit. This motor vehicle fund—state appropriation shall not be recognized as a permanent funding source for these purposes, but rather as a temporary funding source subject to renewed evaluation during the 1997 legislative session.

*Sec. 206. 1995 2nd sp.s. c 14 s 209 (uncodified) is amended to read as follows:

FOR THE WASHINGTON STATE PATROL—SUPPORT SERVICES BUREAU

Motor Vehicle Fund—State Patrol Highway		
Account—State Appropriation	\$	((52,229,000))
		<u>53,319,000</u>
<u>Highway Safety Fund—State Appropriation</u>	\$	<u>440,000</u>
Motor Vehicle Fund—State Appropriation	\$	((1,491,000))
		<u>2,811,000</u>
Transportation Fund—State Appropriation	\$	2,636,000
TOTAL APPROPRIATION	\$	((57,356,000))
		<u>59,206,000</u>

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) ~~((The office of the chief of the state patrol shall prepare a strategic plan that represents the future of the Washington state patrol and how management envisions meeting the challenges identified in the plan. The plan shall address the future responsibilities of commissioned and non-commissioned personnel, and the use of technology in law enforcement. It will focus on maximizing joint services and projects with other transportation agencies such as communication systems, computer systems, and facilities. Additionally, the state patrol shall include any other issues it deems necessary and will provide a six-year financial plan to address the future challenges identified in the strategic plan. The plan outline shall be delivered to the legislative transportation committee by August 1, 1995, and the final plan delivered to the legislature by January 1, 1996.~~

~~—(2))~~ \$1,241,000 of the motor vehicle fund—state appropriation and \$2,363,000 of the transportation fund—state appropriation provided for in this section are for the following traditional general fund purposes: The executive protection unit, revolving fund charges, budget and fiscal services, computer services, personnel, human resources, administrative services, and property management. These appropriations shall not be recognized as permanent funding sources for these purposes, but rather as temporary funding sources subject to renewed evaluation during the 1997 legislative session.

(2) The Washington state patrol shall develop and recommend policies and cost neutral procedures to facilitate the dissemination of driver’s license status data to private sector entities that satisfactorily demonstrate an operational need for such information. The Washington state patrol shall report its findings to the legislative transportation committee not later than July 1, 1996.

*Sec. 206 was partially vetoed. See message at end of chapter.

Sec. 207. 1995 2nd sp.s. c 14 s 211 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF LICENSING—MANAGEMENT AND SUPPORT SERVICES

Highway Safety Fund—Motorcycle Safety Education		
Account—State Appropriation	\$	((78,000))
		<u>68,000</u>

State Wildlife Account—State Appropriation	\$	((69,000)) <u>53,000</u>
Highway Safety Fund—State Appropriation	\$	((5,090,000)) <u>5,460,000</u>
Motor Vehicle Fund—State Appropriation	\$	((4,338,000)) <u>4,045,000</u>
Transportation Fund—State Appropriation	\$	((791,000)) <u>808,000</u>
TOTAL APPROPRIATION	\$	((10,366,000)) <u>10,434,000</u>

Sec. 208. 1995 2nd sp.s. c 14 s 212 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF LICENSING—INFORMATION SYSTEMS

Highway Safety Fund—Motorcycle Safety Education

<u>Account—State Appropriation</u>	\$	<u>2,000</u>
General Fund—Wildlife Account—State Appropriation	\$	((118,000)) <u>114,000</u>
Highway Safety Fund—State Appropriation	\$	((7,820,000)) <u>12,761,000</u>
Motor Vehicle Fund—State Appropriation	\$	((12,871,000)) <u>21,154,000</u>
Transportation Fund—State Appropriation	\$	((1,302,000)) <u>2,532,000</u>
TOTAL APPROPRIATION	\$	((22,111,000)) <u>36,563,000</u>

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) ~~((15,223,000))~~ \$30,143,000 is for the licensing application migration project (LAMP), of which ~~((9,134,000))~~ \$17,240,000 is motor vehicle account—state, ~~((6,089,000))~~ \$11,493,000 is highway safety fund—state, and \$1,400,000 is transportation account—state. The increase in this subsection represents the second year funding for the LAMP project in the 1995-97 biennium.

Of the ~~((15,223,000))~~ \$30,143,000 LAMP appropriation ~~((761,150))~~ \$1,507,150 is provided solely as a contingency amount.

(2) The licensing application migration project (LAMP) shall comply with section 49, chapter 23, Laws of 1993 ex. sess.

(3) The steering committee specified in the licensing application migration project (LAMP) feasibility study, dated July 7, 1992, shall meet monthly. In addition to the existing steering committee membership established in the feasibility study, the LAMP project director, the LAMP contractor's project manager, the LAMP quality assurance consultant, and a representative of the

Washington state patrol shall be ex officio members of the LAMP steering committee.

(4) The licensing application migration project (LAMP) quality assurance consultant shall provide the LAMP steering committee with bimonthly reports on the status of the LAMP project. The bimonthly reports shall be on alternate months from the bimonthly reports provided by the department of information services. The reports required in this subsection shall also be delivered to the senate and house of representatives transportation committee chairs.

~~((5) No moneys are provided in this act for the inclusion of general fund activities in the LAMP project.))~~

Sec. 209. 1995 2nd sp.s. c 14 s 213 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF LICENSING—VEHICLE SERVICES

General Fund—Marine Fuel Tax Refund Account—		
State Appropriation	\$	26,000
General Fund—Wildlife Account—State		
Appropriation	\$	534,000
Motor Vehicle Fund—State Appropriation	\$	((46,554,000))
		<u>47,606,000</u>
Department of Licensing Services Account—		
State Appropriation	\$	((2,944,000))
		<u>3,544,000</u>
TOTAL APPROPRIATION	\$	((50,058,000))
		<u>51,710,000</u>

The appropriations in this section are subject to the following conditions and limitations: If any of the following bills are not enacted by June 30, 1996, the amounts specified for those bills from the motor vehicle fund—state appropriation shall lapse:

- (1) Substitute House Bill No. 2520: \$20,000;
- (2) Substitute Senate Bill No. 6673: \$64,000;
- (3) Substitute Senate Bill No. 6271: \$24,000;
- (4) Senate Bill No. 6476: \$20,000;
- (5) Engrossed Senate Bill No. 6566: \$11,000; and
- (6) Substitute Senate Bill No. 5250: \$258,000.

Sec. 210. 1995 2nd sp.s. c 14 s 214 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF LICENSING—DRIVER SERVICES

Highway Safety Fund—Motorcycle Safety Education		
Account—State Appropriation	\$	1,150,000
Highway Safety Fund—State Appropriation	\$	((56,759,000))
		<u>56,145,000</u>
Transportation Fund—State Appropriation	\$	4,914,000

TOTAL APPROPRIATION	\$	((62,823,000))
		<u>62,209,000</u>

The appropriations in this section are subject to the following conditions and limitations: If the following bills are not enacted by June 30, 1996, the amounts specified from the highway safety fund—state appropriation shall lapse:

- (1) Engrossed Substitute House Bill No. 2150: \$298,000;
- (2) Substitute Senate Bill No. 6487: \$61,000;
- (3) Engrossed Third Substitute Senate Bill No. 6062: \$133,000.

Sec. 211. 1995 2nd sp.s. c 14 s 215 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—HIGHWAY MANAGEMENT AND FACILITIES—PROGRAM D—OPERATING

Motor Vehicle Fund—State Appropriation	\$	((24,194,000))
		<u>24,394,000</u>
Motor Vehicle Fund—Federal Appropriation	\$	400,000
Motor Vehicle Fund—Transportation Capital		
Facilities Account—State Appropriation	\$	21,974,000
TOTAL APPROPRIATION	\$	((46,568,000))
		<u>46,768,000</u>

Sec. 212. 1995 2nd sp.s. c 14 s 216 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—AVIATION—PROGRAM F

Transportation Fund—Aeronautics Account—State		
Appropriation	\$	3,780,000
Transportation Fund—Aeronautics Account—Federal		
Appropriation	\$	500,000
<u>Transportation Fund—Aircraft Search and Rescue,</u>		
<u>Safety, and Education Account—State</u>		
Appropriation	\$	((132,000))
		<u>172,000</u>
TOTAL APPROPRIATION	\$	((4,412,000))
		<u>4,452,000</u>

The appropriations in this section are subject to the following conditions and limitations:

The aircraft search and rescue, safety, and education account appropriation includes \$40,000 of additional funding for search and rescue missions and to expand the education program for search and rescue volunteers, flight instructors, mechanics, and the aviation public pursuant to RCW 47.68.233.

Sec. 213. 1995 2nd sp.s. c 14 s 217 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—
IMPROVEMENTS—PROGRAM I**

Motor Vehicle Fund—Economic Development Account—	
State Appropriation	\$ 2,000,000
Motor Vehicle Fund—State Appropriation	\$ ((235,055,000))
	<u>242,900,000</u>
Motor Vehicle Fund—Federal Appropriation	\$ ((296,774,000))
	<u>300,052,000</u>
Motor Vehicle Fund—Private/Local	
Appropriation	\$ ((47,750,000))
	<u>49,166,000</u>
Special Category C Account—State Appropriation . . .	\$ 177,600,000
Special Category C Account—Local	
Appropriation	\$ 50,000
Transportation Fund—State Appropriation	\$ ((60,000,000))
	<u>72,220,000</u>
<u>Central Puget Sound Public Transportation Account—</u>	
State Appropriation	\$ 8,500,000
<u>High Capacity Transportation Account—State</u>	
Appropriation	\$ 8,680,000
Puyallup Tribal Settlement Account—State	
Appropriation	\$ ((21,000,000))
	<u>21,800,000</u>
Puyallup Tribal Settlement Account—Federal	
Appropriation	\$ 1,000,000
Puyallup Tribal Settlement Account—Private/Local	
Appropriation	\$ 2,300,000
TOTAL APPROPRIATION	\$ ((853,841,000))
	<u>886,268,000</u>

The appropriations in this section are provided for the location, design, right of way acquisition, and construction of state highway projects designated as improvements under RCW 47.05.030. The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) Up to \$32,204,000 of the motor vehicle fund—federal appropriation in this section is provided for construction of demonstration projects specified in the federal intermodal surface transportation efficiency act (P.L. 101-240; 105 Stat. 1914). The motor vehicle fund—state appropriation includes \$7,525,000 in proceeds from the sale of bonds authorized in RCW 47.10.819(1) for the federal match requirements. However, the transportation commission may authorize the use of current revenues available to the department of transportation in lieu of bond proceeds for any part of the state appropriation. No bond proceeds shall be used to pay for a federal demonstration study project.

(2) The special category C account—state appropriation of \$177,600,000 includes \$160,000,000 in proceeds from the sale of bonds authorized by RCW 47.10.812 through 47.10.817. The appropriation includes \$75,746,000 for the 1st avenue south bridge in Seattle, \$15,254,000 for North-South Corridor/Division street improvements in Spokane, and \$86,600,000 for selected sections of state route 18. However, the transportation commission may revise the allocation of the appropriation for these projects with the concurrence of the legislative transportation committee. The transportation commission may authorize the use of current revenues available to the department of transportation in lieu of bond proceeds for any part of the state appropriation.

(3) The motor vehicle fund—state appropriation includes (~~(\$8,710,000)~~) \$9,500,000 in proceeds from the sale of bonds authorized by RCW 47.10.761 and 47.10.762. These funds shall be expended for the following projects:

- (a) Sea Tac International Blvd;
- (b) SR 99 to SR 5 - HOV Lanes;
- (c) SR 3 to Bremerton Ferry Terminal;
- (d) Leavenworth Intermodal Improvement;
- (e) Olympic Interchange;
- (f) Sunset Dr. I/C - I/C Modifications;
- (g) 94th Ave. E. Interchange;
- (h) 164th Ave. Interchange; and
- (i) NE 160th I/C Modifications (CN only).

These projects are not necessarily in prioritized order and are not subject to the provisions of chapter 490, Laws of 1993.

(4) (~~(\$44,685,000)~~) \$47,087,000 appropriated in this section, which includes: (~~(\$3,212,000)~~) \$5,614,000 of the motor vehicle fund—state appropriation; \$39,886,000 of the transportation fund—state appropriation; \$1,328,000 of the motor vehicle fund—local appropriation; and \$259,000 of the economic development account—state appropriation, is to be expended on the following projects:

- (a) Spring St. to Johnson Rd;
- (b) W. Lk. Samm. Pkwy. to SR 202;
- (c) Diamond Lake Channelization;
- (d) 15th SW to SR 161 U-Xing;
- (e) Andresen Road to SR 503;
- (f) NE 144th St. to Battleground;
- (g) Steamboat Island Rd I/C;
- (h) Graham Hill Vicinity;
- (i) North of Winslow - Stage 1;
- (j) SR 5 to Blandford Drive;
- (k) North Sumner Interchange; and
- (l) Sunnyslope I/C - Stage 2.

These projects are not necessarily in prioritized order and are not subject to the provisions of chapter 490, Laws of 1993.

(5) ~~(((\$69,111,000))~~ \$78,586,000 appropriated in this section, which includes: ~~(((\$35,060,000))~~ \$37,935,000 of the motor vehicle fund—state appropriation; ~~(((\$18,948,000))~~ \$25,548,000 of the transportation fund—state appropriation; and \$15,103,000 of the motor vehicle fund—federal appropriation, is to be expended on the following projects:

- (a) SO 360th St/Milton Rd SO to SR 18 - Stage 1;
- (b) SR 522 to 228th St. SE - Stage 1;
- (c) 104th Ave NE to 124th Ave NE I/C;
- (d) 124th NE I/C to W. Lake Samm. Pkwy.;
- (e) Lewis Street Interchange;
- (f) SR 202 Interchange;
- (g) SR 82 to Selah;
- (h) O'Brien to Lewis Rd;
- (i) NE 147th to 80th NE - HOV Lanes;
- (j) Old Cascade Hwy - to Deception CR - Stage 1;
- (k) Prophets point to Old Cascade Hwy - Stage 2; and
- (l) Sequim Bypass.

These projects are not necessarily in prioritized order and are not subject to the provisions of chapter 490, Laws of 1993.

~~(6) ((The motor vehicle fund—state appropriation in this section includes))~~ \$47,072,000 appropriated in this section, which includes \$44,772,000 from the motor vehicle fund—state appropriation and \$2,300,000 from the central Puget Sound public transportation account—state appropriation, is for the following high occupancy vehicle lane projects:

- (a) 15th St SW to 84th Ave. SO - Stage 2; and
- (b) Pierce C.L. to Tukwila I/C - Stage 1.

~~((Construction of the projects under this subsection is subject to the availability of revenue from the repeal of the gasoline exemption and credit.))~~

(7) When the projects identified in subsections (4) through (6) of this section are complete, the legislature will have fulfilled the commitments made in 1990 associated with the passage of the 1990 transportation revenue package.

(8) \$5,400,000 appropriated in this section, which includes: \$880,000 of the high capacity transportation account—state and \$4,520,000 of the transportation fund—state is provided for the following economic development projects:

(a) Mill Plain extension provided that the port of Vancouver contributes \$3,600,000 to the project and a written agreement is reached that upon completion of the project, the city of Vancouver will transfer jurisdiction of Mill Plain Boulevard to the department and the department will transfer jurisdiction of Fourth Plain to the city of Vancouver without further obligation; and

(b) NE 40th Street Interchange (SR 520).

(9) The central Puget Sound public transportation account appropriation and the high capacity transportation account appropriation in this section include \$14,000,000 for the following high-occupancy vehicle mobility projects:

- (a) 164th to SR 526 HOV Lanes - NB and SB (SR 5);

(b) Woodinville Interchange (SR 405); and

(c) Bothell to Swamp Creek I/C STAGE I (SR 405).

(10) The motor vehicle fund appropriation in this section includes \$17,800,000 for new preconstruction activities to include additional projects on SR 18. Up to \$2,100,000 of the appropriation in this subsection is to be expended for preconstruction activities on the following project: 196th Street SW/SR 524 I/C.

~~((9))~~ (11) The department shall report annually to the legislative transportation committee on the status of the projects funded by the special category C appropriations contained in this section. The report shall be submitted by January 1 of each year.

~~((40))~~ (12) If chapter . . . (Substitute House Bill No. 1597), Laws of 1995 is enacted by the 1995 legislature, the department of transportation shall assess the impacts of the bill upon the department of transportation and provide a report on such impacts to the legislative transportation committee by January 1, 1997.

~~((11))~~ (13) The legislature needs to determine all possible causes for changes in a project's cost from the time the cost is identified in the transportation commission's budget recommendation provided to the governor and legislature in support of the proposed highway construction budget, through completion of project construction.

The department shall provide a historical data report showing changes throughout the life of selected projects. The historical data report shall quantify the reasons for project increases or decreases and include department of transportation actions taken to minimize such changes. The department is directed to assess whether construction cost efficiencies can be achieved by ensuring continuity between design efforts and construction administrative activities.

The department shall explicitly identify in its 1997-99 agency budget submittal any project for which funding is being requested as part of two or more budget items or programs. For each such project, the department shall identify the relevant budget items, the programs in which the budget items are contained, the amount being requested for the project in each budget item, and the total amount being requested for the project.

~~((12))~~ (14) The motor vehicle fund—state appropriation in this section includes \$2,700,000 solely for state match for the Blaine border crossing project to be used only if federal demonstration project funding is authorized for this project.

~~((12))~~ (15) The motor vehicle fund—state appropriation in this section includes \$600,000 solely for a rest area and information facility in the Nisqually gateway area to Mt. Rainier, provided that at least forty percent of the total project costs are provided from federal, local, or private sources. The contributions from the nonstate sources may be in the form of in-kind contributions including, but not limited to, donations of property and services.

~~((14))~~ (16) The economic development account—state appropriation in this section includes \$1,000,000 for state highway projects associated with the development of a horse racetrack in western Washington. With the funding of these projects, funding from the economic development account for state highway projects is fully obligated. The community economic revitalization board and the transportation commission shall not select any new projects pursuant to RCW 43.160.074 and 47.01.280, notwithstanding projects selected to fulfill the provisions of this subsection.

~~((15))~~ (17) The motor vehicle fund—state appropriation in this section includes \$2,500,000 solely for the department of transportation match for transportation improvement board projects ready for construction in fiscal year 1996.

~~((16))~~ (18) The motor vehicle fund—state appropriation in this section includes \$6,533,000 solely for additional all-weather highway projects.

~~((18))~~ (19) The motor vehicle fund—state appropriation in this section includes \$4,870,000 to be expended on the following project: SR 82, SR 823 UC to SR 12 UC. This project will complete the Selah project identified in subsection (5) of this section.

~~((19))~~ (20) \$93,000 of the appropriation in this section, including \$74,000 of the motor vehicle fund—federal appropriation and \$19,000 of the motor vehicle fund—state appropriation, is provided solely for the Aurora avenue bicycle/pedestrian overpass at Galer Street. The motor vehicle fund—federal appropriation in this subsection is to be provided from transportation enhancement moneys.

~~((20))~~ (21) The motor vehicle fund—state appropriation in this section includes \$3,300,000 for safety work associated with additional pavement preservation projects.

~~((21))~~ (22) The motor vehicle fund—state appropriation in this section includes \$400,000 for additional fish barrier removal projects on state highways.

~~((22))~~ (23) The motor vehicle fund—state appropriation in this section includes up to \$2,160,000 from the sale of bonds authorized in RCW 47.10.834.

(24) \$924,000 of the motor vehicle fund—state appropriation in this section is provided for the SR 522/SR 527/Main Street project.

(25) \$475,000 of the motor vehicle fund—state appropriation in this section is provided for the SR 305/SR 3 to Bond Road vicinity project.

(26) \$50,000 of the motor vehicle fund—state appropriation in this section is provided for the Belfair Bypass corridor analysis.

(27) \$500,000 of the motor vehicle fund—state appropriation in this section is provided for the I-90 Sunset Interchange modifications project.

(28) \$1,000,000 of the motor vehicle fund—state appropriation in this section is provided for the Sprague Avenue to Argonne Road project.

(29) \$200,000 of the motor vehicle fund—state appropriation in this section is provided for the 192nd Avenue Interchange (Brady Road) project.

(30) \$1,100,000 of the transportation fund—state appropriation in this section is provided for the port of Tacoma Road grade separation project.

(31) \$3,000,000 of the motor vehicle fund—state appropriation is provided for additional safety projects such as SR 12, SR 395, and SR 507.

(32) \$150,000 of the motor vehicle fund—state appropriation is provided solely for implementation of Substitute Senate Bill No. 6322. If the bill is not enacted by June 30, 1996, this amount shall lapse.

NEW SECTION. Sec. 214. A new section is added to 1995 2nd sp.s. c 14 (uncodified) to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—
TRANSPORTATION ECONOMIC PARTNERSHIPS—PROGRAM K**

Transportation Fund—State Appropriation	\$	1,238,000
Motor Vehicle Account—State Appropriation	\$	17,442,000
TOTAL APPROPRIATION	\$	18,680,000

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) The motor vehicle fund—state appropriation includes \$17,442,000 in proceeds from the sale of bonds authorized in RCW 47.10.834 for all forms of cash contributions, or the payment of other costs incident to the location, development, design, right of way, and construction of only the SR 16 corridor improvements and park and ride projects selected under the public-private transportation initiative program authorized under chapter 47.46 RCW; support costs of the public-private transportation initiatives program, including the program and fiscal audit required under RCW 47.46.030(2) and subsection (3) of this section; and development of the replacement project process required under RCW 47.46.030(2). \$2,160,000 of the bond proceeds are to be deposited in the motor vehicle fund—state to pay back the loan recommended by the transportation commission and the legislative transportation committee.

(2) Any additional FTEs required to support the public-private initiatives in the transportation program established under chapter 47.46 RCW shall be funded from program management and administration fees paid by private entities participating in the program.

(3) The department of transportation shall provide quarterly reports to the legislative transportation committee and the office of financial management on the status of the public-private initiatives in the transportation program. The department shall conduct a program and fiscal review of the public-private initiatives in the transportation program, authorized under chapter 47.46 RCW, for the biennium ending June 30, 1997. Such review shall include, at a minimum, the extent to which the program has operated in the public interest and fulfilled its statutory obligation; the extent to which the program is operating in an efficient, effective, and economical manner; and the extent to which continuation of the program maintains, improves, or adversely impacts the transportation system of the state of Washington. The department shall provide

a progress report on its program and fiscal review of the public-private initiatives in transportation program by June 30, 1996.

*Sec. 215. 1995 2nd sp.s. c 14 s 218 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—HIGHWAY MAINTENANCE—PROGRAM M

Motor Vehicle Fund—State Appropriation	\$	((221,368,000))
		<u>222,274,000</u>
Motor Vehicle Fund—Federal Appropriation	\$	461,000
Motor Vehicle Fund—Private/Local Appropriation . . .	\$	3,305,000
TOTAL APPROPRIATION	\$	((225,134,000))
		<u>226,040,000</u>

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) If portions of the appropriations in this section are required to fund maintenance work resulting from major disasters not covered by federal emergency funds such as fire, flooding, and major slides, supplemental appropriations will be requested to restore state funding for ongoing maintenance activities.

~~(2) ((If projected snow and ice expenditures exceed the plan of \$40,000,000, the department will continue service delivery as planned within the other major maintenance groups, and will request a supplemental appropriation in the following legislative session to fund the additional snow and ice expenditures.~~

(3)) The department shall deliver the highway maintenance program according to the plans for each major maintenance group to the extent practical. However, if projected snow and ice expenditures exceed the plan of \$40,000,000, the department will, after prior consultation with the legislative transportation committee, adopt one or both of the following courses of action:

(a) Reduce planned maintenance activities in other groups to offset the necessary increases for snow and ice control and detail these expenditures; or

(b) Continue service delivery as planned within the other major maintenance groups and access up to \$2,000,000 in the snow and ice reserve to cover increased snow and ice expenditures provided for in section 505 of this act.

(3) The department shall provide recommendations to the legislative transportation committee by ~~((December 15, 1995))~~ June 30, 1996, on: (a) The feasibility of developing a maintenance management system; (b) methods for providing a consistent maintenance level of service throughout the state; (c) options for centralized versus decentralized management of the program; (d) improving accountability and oversight of the maintenance program; and (e) improving accountability and oversight of the transportation equipment fund program.

(4) The motor vehicle fund—state appropriation in this section includes \$250,000 solely for augmentation of the adopt-a-highway program, under Engrossed Substitute House Bill No. 1512.

(5) The motor vehicle fund—state appropriation in this section includes ~~(\$906,000)~~ \$1,812,000 for payment of local stormwater assessment fees ~~(for fiscal year 1996. Funding for the remainder of the biennium is withheld pending the results of a legislative transportation committee review of local stormwater assessment fees charged to the department of transportation).~~

(6) The department of transportation shall participate with the Grant county noxious weed board in a demonstration project to examine ways to accomplish weed control in a more cost effective manner.

*Sec. 215 was partially vetoed. See message at end of chapter.

Sec. 216. 1995 2nd sp.s. c 14 s 219 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—PRESERVATION—PROGRAM P

Motor Vehicle Fund—State Appropriation	\$	((95,544,000)) <u>100,050,000</u>
Motor Vehicle Fund—Federal Appropriation	\$	74,600,000
Motor Vehicle Fund—Private/Local Appropriation . . .	\$	8,100,000
Transportation Fund—State Appropriation	\$	119,600,000
Transportation Fund—Federal Appropriation	\$	143,400,000
Transportation Fund—Private/Local Appropriation . . .	\$	3,000,000
TOTAL APPROPRIATION	\$	((444,244,000)) <u>448,750,000</u>

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) The motor vehicle fund—state appropriation includes \$8,300,000 in proceeds from the sale of bonds authorized in RCW 47.10.761 and 47.10.762 for emergency purposes. However, the transportation commission may authorize the use of current revenues available to the department of transportation in lieu of bond proceeds for any part of the state appropriation.

(2) The appropriations in this section include \$10,034,000 for seismic retrofit activities.

(3) The department shall not reduce its commitment to sexual harassment training and diversity training, notwithstanding the reduction in this section for training.

(4) \$36,000,000 of the appropriation in this section, including \$21,000,000 of the transportation fund—state appropriation and \$15,000,000 of the motor vehicle fund—state appropriation, is provided for additional pavement preservation projects.

(5) The appropriations in this section include \$6,879,000 for Washington state’s share to replace the deck on the Lewis and Clark bridge. If the Oregon

state legislature enacts a public/private partnership program and the Washington state transportation commission, in consultation with the legislative transportation committee, negotiates and enters into an agreement between Washington and Oregon to place the bridge into Oregon's public/private partnership program, up to \$1,000,000 of this amount shall be used for Washington's share of emergency deck repairs to extend the service life of the bridge. The remaining funds may be used as Washington's contribution toward the design of the project pursuant to the agreement between Washington and Oregon. Any additional contributions shall be subject to Washington state legislative appropriations and approvals. The department shall provide a status report on this project to the legislative transportation committee by January 15, 1996.

(6) \$3,700,000 of the motor vehicle fund—state appropriation in this section is provided for the Susie creek bridge (112/38) replacement project.

(7) \$150,000 of the motor vehicle fund—state appropriation is provided solely for implementation of Substitute Senate Bill No. 6322. If the bill is not enacted by June 30, 1996, this amount shall lapse.

Sec. 217. 1995 2nd sp.s. c 14 s 220 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—
TRANSPORTATION SYSTEMS MANAGEMENT—PROGRAM Q**

Motor Vehicle Fund—State Appropriation	\$	((10,241,000))
		<u>21,735,000</u>

The appropriations in this section are subject to the following conditions and limitations ~~((and specified amounts are provided solely for that activity)):~~

~~(((1) The appropriation contained in this section provides funding for fiscal year 1996 only.~~

~~—(2)))~~ By December 31, 1995, the department shall increase the motorist information sign annual permit fee from ten dollars to fifty dollars, increase the motorist information sign initial application fee from seventy-five dollars to one hundred dollars, and provide recommendations to the legislative transportation committee for making the motorist information sign program and the billboard program fully self-supporting within three years. For the purposes of achieving a self-supporting program, the erection, maintenance, and replacement of backpanels shall not be considered part of the department's program costs.

Sec. 218. 1995 2nd sp.s. c 14 s 221 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—SALES AND
SERVICES TO OTHERS—PROGRAM R**

Motor Vehicle Fund—State Appropriation	\$	((368,000))
		<u>490,000</u>
Motor Vehicle Fund—Federal Appropriation	\$	400,000
Motor Vehicle Fund—Private/Local Appropriation . . .	\$	((2,232,000))
		<u>7,232,000</u>

TOTAL APPROPRIATION	\$	((3,000,000))
		<u>8,122,000</u>

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

~~((1) By December 1, 1995, the department of transportation is to provide the legislative transportation committee an analysis and recommended policy modifications, where appropriate, regarding the following regional practices:~~

- ~~—(a) Recovery of full costs for reimbursable services; and~~
- ~~—(b) Consistency of charging for reimbursable services across the department's regions.~~

~~—(2)) It is the intent of the legislature to continue the state's partnership with the federal government, local government, and the private sector in transportation construction and operations in the most cost-effective manner. The ((program is established)) office of financial management, in cooperation with the department of transportation, is directed to establish an efficient and effective process to increase the expenditure and work force authority for this program to allow the department the ability to provide services on nonappropriated, outside requests ~~((through the unanticipated receipt process including both dollar and full-time equivalent staff increases)).~~~~

Sec. 219. 1995 2nd sp.s. c 14 s 222 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—
TRANSPORTATION MANAGEMENT AND SUPPORT—PROGRAM S**

Motor Vehicle Fund—Puget Sound Capital Construction		
Account—State Appropriation	\$	1,109,000
Motor Vehicle Fund—State Appropriation	\$	((60,781,000))
		<u>52,436,000</u>
Motor Vehicle Fund—Puget Sound Ferry Operations		
Account—State Appropriation	\$	1,105,000
Transportation Fund—State Appropriation	\$	((2,002,000))
		<u>898,000</u>
TOTAL APPROPRIATION	\$	((64,997,000))
		<u>55,548,000</u>

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) ~~((The motor vehicle fund state appropriation includes \$8,370,000 in proceeds from the sale of bonds authorized in RCW 47.10.834 for all forms of cash contributions, or the payment of other costs incident to the location, development, design, right of way, and construction of projects selected under the public-private transportation initiative program. \$2,160,000 of the bond proceeds are to be deposited in the motor vehicle fund state to pay back the loan recommended by the transportation commission and the legislative transportation committee.~~

~~(2) Any additional FTEs required to support the public-private initiatives in the transportation program established under chapter 47.46 RCW shall be funded from program management and administration fees paid by private entities participating in the program.~~

~~(3) The department of transportation shall provide quarterly reports to the legislative transportation committee and the office of financial management on the status of the public-private initiatives in the transportation program. The department shall conduct a program and fiscal review of the public-private initiatives in the transportation program, authorized under chapter 47.46 RCW, for the biennium ending June 30, 1997. Such review shall include, at a minimum, the extent to which the program has operated in the public interest and fulfilled its statutory obligation; the extent to which the program is operating in an efficient, effective, and economical manner; and the extent to which continuation of the program maintains, improves, or adversely impacts the transportation system of the state of Washington. The department shall provide a progress report on its program and fiscal review of the public-private initiatives in transportation program by June 30, 1996.~~

~~(4)) It is the intent of the legislature that the department reduce the amount of money spent on nonessential training programs for its employees.~~

~~((5) One of the two full-time employees funded in this section for enhanced public involvement shall be responsible for improving communications between the department and the public. His or her responsibilities shall include: (a) Developing a more efficient and effective system for replying to inquiries from the public and (b) supporting new and existing programs related to public involvement.~~

~~(6) By December 1, 1995, the department of transportation shall implement: (a) Modifications to the construction administration system that promote prudent project management and standards that ensure state-wide consistency of approach among all departmental regions; and (b) modifications to the preconstruction system that streamline processes, reduce the number of internal reviews, and eliminate duplicative documentation.~~

~~(7) To assure that maximum resources are available for the construction programs, the finance and administration division shall assess the financial condition of the transportation equipment fund programs and report to the legislative transportation committee and the office of financial management by December 1, 1995. The evaluation should address lower operating cash balances and reductions in the purchase of highway and computer equipment, and where possible, should identify any surplus equipment to match the downsizing of the department's work force.)~~ (2) The department in conjunction with the legislative transportation committee, office of financial management, and the state treasurer is to evaluate the feasibility of implementing a fiduciary fund for processing one hundred percent reimbursable local and federally funded activities and submit recommendations that shall be forwarded to the legislative transportation committee and the governor by August 31, 1996.

(3) \$25,000 of the motor vehicle fund—state appropriation in this section is provided for the implementation of toll-free telecommunications to provide mountain pass reports. The department of transportation shall seek methods to make this service self-supporting.

Sec. 220, 1995 2nd sp.s. c 14 s 223 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—TRANSIT RESEARCH AND INTERMODAL PLANNING—PROGRAM T

((Essential Rail Assistance Account—State	
Appropriation	\$ 1,036,000)
Motor Vehicle Fund—State Appropriation	\$ ((13,653,000))
	<u>14,395,000</u>
Motor Vehicle Fund—Federal Appropriation	\$ ((16,198,000))
	<u>15,647,000</u>
((High Capacity Transportation Account—	
State Appropriation	\$ 2,475,000
Essential Rail Banking Account—State	
Appropriation	\$ 52,000)
Transportation Fund—State Appropriation	\$ ((37,770,000))
	<u>1,345,000</u>
((Transportation Fund—Federal Appropriation	\$ 11,643,000
Transportation Fund—Private/Local	
Appropriation	\$ 105,000
Central Puget Sound Public Transportation	
Account—State Appropriation	\$ 11,009,000
Public Transportation Systems Account—State	
Appropriation	\$ 3,082,000)
TOTAL APPROPRIATION	\$ ((97,023,000))
	<u>31,387,000</u>

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

~~((1) Up to \$33,845,000 of the transportation fund—state appropriation and \$700,000 of the transportation fund—federal appropriation is provided for intercity rail passenger service including up to \$12,000,000 for lease purchase of two advanced technology train sets with total purchase costs not to exceed \$20,000,000, subsidies for operating costs not to exceed \$10,000,000, to maintain service of one state contracted round trip between Seattle and Portland and Seattle and Vancouver, British Columbia, and capital projects necessary to provide Seattle-Vancouver, British Columbia, train operating times of under 4 hours. The lease purchase of the train sets is predicated on the condition that the manufacturer of the trains has the obligation of establishing a corporate office in Washington state. The manufacturer is also obligated to spend a minimum of~~

~~twenty five percent of the total purchase price of the train sets on the assembly and manufacture of parts of the train sets in Washington state.~~

~~—(2)) Up to \$2,400,000 of the motor vehicle fund—state appropriation is provided for regional transportation planning organizations, with allocations for participating counties maintained at the 1993-1995 biennium levels for those counties not having metropolitan planning organizations within their boundaries.~~

~~((3) The appropriations from the central Puget Sound public transportation account and the public transportation systems account are transferred to the transportation improvement board should either chapter . . . (Engrossed Substitute House Bill No. 1107), Laws of 1995 or chapter . . . (Substitute Senate Bill No. 5199), Laws of 1995 be enacted, and contain provisions transferring responsibility for administration of these accounts from the department of transportation to the transportation improvement board, except \$1,000,000 of the appropriation from the public transportation systems account shall be utilized for the rural mobility program and be administered by the department of transportation. Priority for grants provided from these accounts shall be given to projects and programs that can be accomplished in the 1995-1997 biennium and that are not primarily intended for the planning of facilities. Prior to July 1, 1996, no applications for grants from the central Puget Sound public transportation account may be accepted from, nor may funds from that account be granted to, the regional transit authority. The public transportation systems account funds provided to the rural mobility program are for the 1995-97 biennium and are not intended for grants which will have ongoing costs to this program.~~

~~—(4) Up to \$700,000 of the high capacity transportation account—state appropriation is reappropriated for regional transit authority grants. However, this amount shall not exceed the amount of unexpended regional transit authority grants in the 1993-95 biennium.~~

~~—(5) None of the high capacity transportation account—state appropriation or reappropriation may be used to disseminate information in a manner that attempts to persuade, rather than inform or educate, area residents regarding the adopted system plan. The appropriation and reappropriation also may not be used to lobby or advertise, or distribute free promotional materials.~~

~~—(6) The department of transportation may not transfer high capacity transportation account—state funds to a regional transportation authority during the 1995-1997 biennium, unless the authority has provided a detailed report to the department of transportation and the house of representatives and senate transportation committees regarding its use of those funds during preceding biennia and how it proposes to spend additional state funds.~~

~~—(7) The motor vehicle fund—state appropriation includes \$558,000 for the office of urban mobility. This appropriation is for fiscal year 1996 only, pending a legislative transportation committee review of the office of urban mobility's activities in relation to the planning functions of the department's regional offices:))~~

Sec. 221. 1995 2nd sp.s. c 14 s 225 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—CHARGES FROM OTHER AGENCIES—PROGRAM U

(1) FOR PAYMENT OF COSTS OF ATTORNEY GENERAL TORT CLAIMS SUPPORT

Motor Vehicle Fund—State Appropriation \$ 4,646,000

(2) FOR PAYMENT OF COSTS OF THE OFFICE OF THE STATE AUDITOR

Motor Vehicle Fund—State Appropriation \$ 832,000

(3) FOR PAYMENT OF COSTS OF DEPARTMENT OF GENERAL ADMINISTRATION FACILITIES AND SERVICES AND CONSOLIDATED MAIL SERVICES

Motor Vehicle Fund—State Appropriation \$ 3,374,000

(4) FOR PAYMENT OF COSTS OF THE DEPARTMENT OF PERSONNEL

Motor Vehicle Fund—State Appropriation \$ 2,240,000

(5) FOR PAYMENT OF SELF-INSURANCE LIABILITY PREMIUMS AND ADMINISTRATION

Motor Vehicle Fund—State Appropriation \$ ((5,049,000))
7,749,000

~~((The motor vehicle fund state appropriation of \$5,049,000 in this subsection is provided for the self insurance premium and for risk management administrative costs. The department of general administration, the office of financial management, and the department of transportation shall develop funding proposals for: (a) Participation by the department of transportation in the state-wide liability self insurance program in fiscal year 1997, and (b) alternative methods for funding the department of transportation's tort claim payments, if appropriate. A report shall be made to the legislative transportation committee and the governor no later than October 31, 1995.))~~

(6) FOR PAYMENT OF SELF-INSURANCE LIABILITY PREMIUMS AND ADMINISTRATION

Motor Vehicle Fund—Puget Sound Ferry Operations
Account—State Appropriation \$ 2,000,000

(7) FOR PAYMENT OF COSTS OF THE OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES

Motor Vehicle Fund—State Appropriation \$ 508,000

(8) FOR PAYMENT OF COSTS OF THE DEPARTMENT OF GENERAL ADMINISTRATION STATE PARKING SERVICES

Motor Vehicle Fund—State Appropriation \$ 95,000

(9) FOR PAYMENT OF THE DEPARTMENT OF GENERAL ADMINISTRATION CAPITAL PROJECTS SURCHARGE

Motor Vehicle Fund—State Appropriation \$ 361,000

(10) FOR ARCHIVES AND RECORDS MANAGEMENT

Motor Vehicle Fund—State Appropriation \$ ((230,000))
280,000

Sec. 222. 1995 2nd sp.s. c 14 s 226 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—MARINE CONSTRUCTION—PROGRAM W

Motor Vehicle Fund—Puget Sound Capital Construction		
Account—State Appropriation	\$	244,659,000
Motor Vehicle Fund—Puget Sound Capital Construction		
Account—Federal Appropriation	\$	22,172,000
Transportation Fund—Passenger Ferry Account—State		
Appropriation	\$	1,250,000
Motor Vehicle Fund—Puget Sound Capital Construction		
Account—Private/Local Appropriation	\$	765,000
TOTAL APPROPRIATION	\$	268,846,000

The appropriations in this section are provided for improving the Washington state ferry system, including, but not limited to, vessel acquisition, vessel construction, major and minor vessel improvements, and terminal construction and improvements. The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) The appropriations in this section are provided to carry out only the projects presented to the legislature (version 3) for the 1995-97 budget. The department shall reconcile the 1993-95 capital expenditures within ninety days of the end of the biennium and submit a final report to the legislative transportation committee and office of financial management.

(2) The Puget Sound capital construction account—state appropriation includes \$15,000,000 in proceeds from the sale of bonds authorized by RCW 47.60.560 and \$155,000,000 in proceeds from the sale of bonds authorized by RCW 47.60.800 for construction of new jumbo ferry vessels in accordance with the requirements of RCW 47.60.770 through 47.60.778. However, the department of transportation may use current revenues available to the Puget Sound capital construction account in lieu of bond proceeds for any part of the state appropriation.

(3) The appropriations contained in this section shall not be expended for the development of park facilities at the Seattle Colman dock ferry terminal.

(4) The Washington state ferries shall acquire an appropriate passenger-only vessel. If permissible under regulations governing the procurement of necessary federal funds, construction and assembly of any passenger-only vessels shall take place within Washington state. If the vessel is procured through the use of state funds, the construction and assembly of any passenger-only vessels shall take place within Washington state.

(5) The department of transportation shall provide to the legislative transportation committee and office of financial management a quarterly financial report concerning the status of the capital program authorized in this section.

(6) Washington state ferries is authorized to reimburse up to \$3,000,000 from the Puget Sound capital construction account—state to the city of Bremerton and the port of Bremerton for Washington state ferries' financial participation in the development of a Bremerton multimodal transportation terminal, port of Bremerton passenger-only terminal expansion, and ferry vehicular connections to downtown traffic circulation improvements. The reimbursement shall specifically support the construction of the following components: Appropriate passenger-only ferry terminal linkages to accommodate bow-loading catamaran type vessels and the needed transit connections; and the Washington state ferries' component of the Bremerton multimodal transportation terminal as part of the downtown Bremerton redevelopment project, including appropriate access to the new downtown traffic circulation road network.

Sec. 223. 1995 2nd sp.s. c 14 s 227 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—MARINE—PROGRAM X

Marine Operating Fund—State Appropriation \$ ((244,187,000))
244,227,000

The appropriation in this section is subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) The appropriation is based on the budgeted expenditure of \$30,297,190 for vessel operating fuel in the 1995-97 biennium. If the actual cost of fuel is less than this budgeted amount, the excess amount may not be expended. If the actual cost exceeds this amount, the department shall request a supplemental appropriation.

(2) The appropriation contained in this section provides for the compensation of ferry employees. The expenditures for compensation paid to ferry employees during the 1995-97 biennium may not exceed \$159,990,000 plus a dollar amount, as prescribed by the office of financial management, that is equal to any insurance benefit increase granted general government employees in excess of \$305.32 a month annualized per eligible marine employee multiplied by the number of eligible marine employees for the respective fiscal year, a dollar amount as prescribed by the office of financial management for costs associated with pension amortization charges, and a dollar amount prescribed by the office of financial management for salary increases during the 1995-97 biennium. For the purposes of this section, the expenditures for compensation paid to ferry employees shall be limited to salaries and wages and employee benefits as defined in the office of financial management's policies, regulations, and procedures named under objects of expenditure "A" and "B" (7.2.6.2).

The prescribed salary and insurance benefit increase or decrease dollar amount that shall be allocated from the governor's compensation appropriations is in addition to the appropriation contained in this section and may be used to increase or decrease compensation costs, effective July 1, 1995, and ((thereafter)) July 1, 1996, as established in the 1995-97 general fund operating budget and 1996 operating supplemental budget.

(3) The appropriation in this section includes \$614,000 for the automated ticket vending program. These funds shall be expended only in accordance with the implementation of the automated ticket vending program.

(4) The department of transportation shall provide to the legislative transportation committee and office of financial management a quarterly financial report concerning the status of the operating program authorized in this section.

(5) If Second Engrossed House Bill No. 1016 becomes law, as provided in that legislation, \$3,000,000 is appropriated from the Puget Sound ferry operations account to Washington state ferries to reimburse Kitsap county and the port of Bremerton for the construction of facilities supporting the permanent placement of and access to the USS Missouri in the city of Bremerton.

NEW SECTION. Sec. 224. A new section is added to 1995 2nd sp.s. c 14 (uncodified) to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—PUBLIC TRANSPORTATION AND RAIL—PROGRAM Y

Essential Rail Assistance Account—State		
Appropriation	\$	1,088,000
Motor Vehicle Account—State Appropriation	\$	138,000
Motor Vehicle Account—Federal Appropriation	\$	551,000
High Capacity Transportation Account—State		
Appropriation	\$	4,275,000
Air Pollution Control Account—State Appropriation	\$	3,145,000
Transportation Fund—State Appropriation	\$	34,480,000
Transportation Fund—Federal Appropriation	\$	11,643,000
Transportation Fund—Private Local Appropriation	\$	105,000
Public Transportation Systems Account—State		
Appropriation	\$	1,000,000
TOTAL APPROPRIATION	\$	56,425,000

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) Up to \$31,845,000 of the transportation fund—state appropriation and \$700,000 of the transportation fund—federal appropriation is provided for intercity rail passenger service including up to \$12,000,000 for lease purchase of two advanced technology train sets with total purchase costs not to exceed \$20,000,000, subsidies for operating costs not to exceed \$8,000,000, to maintain service of one state contracted round trip between Seattle and Portland and Seattle and Vancouver, British Columbia, and capital projects necessary to

provide Seattle-Vancouver, British Columbia, train operating times of under 4 hours. The lease purchase of the train sets is predicated on the condition that the manufacturer of the trains has the obligation of establishing a corporate office in Washington state. The manufacturer is also obligated to spend a minimum of twenty-five percent of the total purchase price of the train sets on the assembly and manufacture of parts of the train sets in Washington state.

(2) The appropriations from the central Puget Sound public transportation account and the public transportation systems account are transferred to the transportation improvement board should either chapter . . . (Engrossed Substitute House Bill No. 1107), Laws of 1995 or chapter . . . (Substitute Senate Bill No. 5199), Laws of 1995 be enacted, and contain provisions transferring responsibility for administration of these accounts from the department of transportation to the transportation improvement board, except \$1,000,000 of the appropriation from the public transportation systems account shall be utilized for the rural mobility program and be administered by the department of transportation. Priority for grants provided from these accounts shall be given to projects and programs that can be accomplished in the 1995-1997 biennium and that are not primarily intended for the planning of facilities. Prior to July 1, 1996, no applications for grants from the central Puget Sound public transportation account may be accepted from, nor may funds from that account be granted to, the regional transit authority. The public transportation systems account funds provided to the rural mobility program are for the 1995-97 biennium and are not intended for grants which will have ongoing costs to this program.

(3) Up to \$700,000 of the high capacity transportation account—state appropriation is reappropriated for regional transit authority grants. However, this amount shall not exceed the amount of unexpended regional transit authority grants in the 1993-95 biennium.

(4) None of the high capacity transportation account—state appropriation or reappropriation may be used to disseminate information in a manner that attempts to persuade, rather than inform or educate, area residents regarding the adopted system plan. The appropriation and reappropriation also may not be used to lobby or advertise, or distribute free promotional materials.

(5) The department of transportation may not transfer high capacity transportation account—state funds to a regional transportation authority during the 1995-1997 biennium, unless the authority has provided a detailed report to the department of transportation and the house of representatives and senate transportation committees regarding its use of those funds during preceding biennia and how it proposes to spend additional state funds.

(6) \$1,800,000 of the high capacity transportation account—state appropriation is provided for the regional transit authority.

(7) The air pollution control account appropriation is provided solely for operation of the commute trip reduction program created under chapter 70.94 RCW and transferred to the department of transportation by Senate Bill No. 6451

or House Bill No. 2009. If Senate Bill No. 6451 or House Bill No. 2009 is not enacted by June 30, 1996, this subsection is null and void.

(8) If Engrossed Substitute House Bill No. 2832 is not enacted by June 30, 1996, \$189,000 of the transportation fund—state appropriation shall lapse.

Sec. 225. 1995 2nd sp.s. c 14 s 228 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—LOCAL PROGRAMS—PROGRAM Z

<u>General Fund—State Appropriation</u>	\$	<u>1,400,000</u>
Motor Vehicle Fund—State Appropriation	\$	((4,567,000))
		<u>15,167,000</u>
Motor Vehicle Fund—Federal Appropriation	\$	((468,179,000))
		<u>167,879,000</u>
<u>Transportation Fund—State Appropriation</u>	\$	<u>356,000</u>
Motor Vehicle Fund—Private/Local Appropriation . . .	\$	5,087,000
Transfer Relief Account—State Appropriation	\$	307,000
TOTAL APPROPRIATION	\$	((488,140,000))
		<u>190,196,000</u>

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) Up to \$13,100,000 of the motor vehicle fund—federal appropriation in this section is provided for construction of demonstration projects specified in the federal intermodal surface transportation efficiency act (P.L. 101-240; 105 Stat. 1914). The motor vehicle fund—state appropriation includes \$3,275,000 in proceeds from the sale of bonds authorized in RCW 47.10.819(1) for the federal match requirements. However, the transportation commission may authorize the use of current revenues available to the department of transportation in lieu of bond proceeds for any part of the state appropriation.

~~((3))~~ (2) The motor vehicle fund—state appropriation in this section includes \$1,750,000 solely to fund the state's share of the east marine view drive project. This amount represents a reappropriation of the funding first provided for Everett homeport transportation projects in 1987. With this reappropriation, the legislature has fulfilled its commitment for funding of special transportation projects associated with the Everett homeport.

~~((5))~~ (3) ~~\$((4,000,000))~~ 2,600,000 of the motor vehicle fund—state appropriation and \$1,400,000 of the general fund—state appropriation in this section is provided solely for one-time capital infrastructure investment associated with development of a horse racetrack in western Washington. With this appropriation, the state has fulfilled its commitment to ~~((provide funding for infrastructure associated with development of a horse racetrack in western Washington))~~ this project.

(4) Up to \$1,100,000 of the motor vehicle fund—state appropriation and \$300,000 of the transportation fund—state appropriation contained in this section

shall be used for evaluations that mutually benefit the state department of transportation, counties, and cities. The evaluations may include fuel tax evasion; license fraud; and the development of an implementation plan for the financing and construction of state, local, and private transportation improvements in south downtown Seattle. The implementation plan shall address the safety needs of the Spokane street viaduct, but shall not include any projects that would be financed and constructed under the public-private transportation initiatives program established in chapter 47.46 RCW. The evaluations shall include port mobility issues and other issues as determined by the legislative transportation committee.

(5) \$700,000 of the motor vehicle fund—federal appropriation for the surface transportation program enhancements program is provided for storm water control grants as provided for in Second Substitute House Bill No. 2031. If Second Substitute House Bill No. 2031 is not enacted by June 30, 1996, this subsection is null and void.

(6) \$1,000,000 of the motor vehicle fund—federal appropriation for the surface transportation program enhancements program is provided to the state parks and recreation commission to be used for trail development. The amount provided represents partial consideration for cross-state trail development necessitated under Engrossed Substitute House Bill No. 2832.

(7) \$6,000 of the transportation fund—state appropriation is provided as the state match on the Colfax paving project.

(8) \$25,000 of the transportation fund—state appropriation in this section is provided to evaluate and determine which agency or organization should be authorized to manage and operate the aerial search and rescue program.

(9) \$50,000 of the motor vehicle fund—state appropriation and \$25,000 of the transportation fund—state appropriation in this section are provided solely for an evaluation of the impacts of rail transportation through the city of Auburn, to be conducted by the city of Auburn. "Evaluation" for the purpose of this subsection does not include litigation. This evaluation shall be coordinated with the Port of Tacoma, the cities of Tacoma, Federal Way, and Algona, and other affected jurisdictions participating in the Tacoma tideflat truck and rail circulation analysis provided for in subsection (4) of this section. The city of Auburn shall complete its analysis no later than October 31, 1996, and report its findings to the Tacoma tideflat truck and rail circulation study group.

PART III CAPITAL

Sec. 301. 1995 2nd sp.s. c 14 s 301 (uncodified) is amended to read as follows:

In addition to the transfer language in section 303 of this act, the appropriations in this section ((is)) are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) JOINT PROJECTS

(a) FOR THE WASHINGTON STATE PATROL, DEPARTMENT OF LICENSING, AND DEPARTMENT OF TRANSPORTATION—TRANSPORTATION SERVICE CENTER—PARKLAND

Motor Vehicle Fund—State Patrol Highway Account—	
State Appropriation	\$ 486,000
Motor Vehicle Fund—State Appropriation	\$ 71,000
Highway Safety Fund—State Appropriation	\$ 71,000
TOTAL APPROPRIATION	\$ 628,000

(b) FOR THE WASHINGTON STATE PATROL AND DEPARTMENT OF LICENSING—UNION GAP

Motor Vehicle Fund—State Patrol Highway Account—	
State Appropriation	\$ 789,000

(c) FOR THE WASHINGTON STATE PATROL AND DEPARTMENT OF TRANSPORTATION—NORTH SPOKANE

Motor Vehicle Fund—State Patrol Highway Account—	
State Appropriation	\$ 215,000

(d) FOR THE DEPARTMENT OF TRANSPORTATION AND WASHINGTON STATE PATROL—BELLINGHAM

((Motor Vehicle Fund—)) Transportation Capital	
Facilities Account—State Appropriation	\$ ((6,480,000))
	<u>6,080,000</u>

Motor Vehicle Fund—State Patrol Highway Account—	
State Appropriation	\$ 1,800,000
TOTAL APPROPRIATION	\$ ((8,280,000))
	<u>7,880,000</u>

(2) The agency listed first in the appropriation in subsection (1) of this section is designated as the lead agency responsible for management of the projects and shall receive the entire appropriation.

(3) The state patrol, the department of licensing, and the department of transportation shall coordinate their activities when siting facilities. This coordination shall result in the collocation of driver and vehicle licensing, vehicle inspection service facilities, and other transportation services whenever possible.

The department of licensing, the department of transportation, and the state patrol shall explore alternative state services, such as vehicle emission testing, that would be feasible to collocate in these joint facilities. All services provided at these transportation service facilities shall be provided at cost to the participating agencies.

(4) The department of licensing may lease develop with option to purchase or lease purchase new customer service centers to be paid for from operating revenues. The Washington state patrol shall provide project management for the department of licensing. Alternatively, a financing contract may be entered into

on behalf of the department of licensing in the amounts indicated plus financing expenses and reserves pursuant to chapter 39.94 RCW. The locations and amounts for projects covered under this section are as follows:

(a) A new customer service center in Vancouver for ((~~\$2,629,700~~)) 3,709,700;

(b) A new customer service center in West Spokane for ((~~\$3,083,600~~)) \$3,467,600;

(c) A new customer service center in Lacey for ((~~\$3,152,500~~)) \$4,641,200;

(d) A new customer service center in Union Gap for ((~~\$3,026,500~~)) \$3,642,000; and

(e) A new customer service center in Wenatchee for ((~~\$2,078,800~~)) \$1,987,800.

(5) The Washington state patrol, department of licensing, and department of transportation shall provide bimonthly progress reports on the capital facilities receiving an appropriation in this act.

Sec. 302. 1995 2nd sp.s. c 14 s 302 (uncodified) is amended to read as follows:

FOR THE WASHINGTON STATE PATROL—CAPITAL PROJECTS

The appropriations in this section are provided for the following projects:

(1) ACADEMY DRIVE COURSE—SHELTON

Motor Vehicle Fund—State Patrol Highway Account—
State Appropriation \$ 500,000

(2) MINOR WORKS: PRESERVATION

Motor Vehicle Fund—State Patrol Highway Account—
State Appropriation \$ 890,000

(3) MINOR WORKS: PROGRAM

Motor Vehicle Fund—State Patrol Highway Account—
State Appropriation \$ 506,000

(4) SOUTH SEATTLE DETACHMENT

Motor Vehicle Fund—State Patrol Highway Account—
State Appropriation \$ 151,000

(5) WASHINGTON STATE PATROL OFFICE—SILVER LAKE REST AREA

Motor Vehicle Fund—State Patrol Highway Account—
State Appropriation \$ 197,000

(6) BELLEVUE COMMUNICATIONS CENTER IMPROVEMENT

Motor Vehicle Fund—State Patrol Highway Account—
State Appropriation \$ 358,000

(7) STATE-WIDE MICROWAVE COMMUNICATIONS REPLACEMENT AND UPGRADE

Motor Vehicle Fund—State Patrol Highway Account—

State Appropriation \$ 5,000,000

Sec. 303. 1995 2nd sp.s. c 14 s 303 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—PROGRAM D (DEPARTMENT OF TRANSPORTATION-ONLY PROJECTS)—CAPITAL

All projects in this section are funded from the motor vehicle fund—transportation capital facilities account—state.

(1) OKANOGAN AREA MAINTENANCE FACILITY

Motor Vehicle Fund—Transportation Capital
Facilities Account—State Appropriation \$ ((2,801,000))
3,201,000

(2) CHEHALIS AREA MAINTENANCE FACILITY

Motor Vehicle Fund—Transportation Capital
Facilities Account—State Appropriation \$ 4,865,000

(3) WOODLAND SECTION MAINTENANCE FACILITY

Motor Vehicle Fund—Transportation Capital
Facilities Account—State Appropriation \$ 1,163,000

(4) CONNELL SECTION MAINTENANCE FACILITY

Motor Vehicle Fund—Transportation Capital
Facilities Account—State Appropriation \$ 150,000

(5) WILBUR SECTION MAINTENANCE FACILITY

Motor Vehicle Fund—Transportation Capital
Facilities Account—State Appropriation \$ 1,036,000

(6) MINOR REGIONAL PROJECTS

Motor Vehicle Fund—Transportation Capital
Facilities Account—State Appropriation \$ 1,525,000

(7) STATE-WIDE ADMINISTRATION AND SUPPORT

Motor Vehicle Fund—Transportation Capital
Facilities Account—State Appropriation \$ 1,525,000

(8) The department of transportation shall provide to the legislative transportation committee: (a) Prior notice and the latest project information at least two weeks in advance of the bid process for transportation capital facilities projects going to bid in the 1995-97 biennium, and (b) bimonthly progress reports on all transportation capital facilities projects receiving appropriations in this act.

(9) The office of financial management, following a review and recommendation by the legislative transportation committee, may authorize a transfer of appropriation authority provided for a capital project in sections 301 and 303 of

this act that is in excess of the biennial expenditure needs of such project to another capital project funded by an appropriation in these sections for which the biennial appropriation is insufficient. No such transfer may be used to expand the capacity of any facility beyond that intended by the legislature in making the appropriation. Such transfers may be made only between appropriations from the transportation capital facilities account for projects included in sections 301 and 303 of this act.

**PART IV
TRANSFERS AND DISTRIBUTIONS**

Sec. 401. 1995 2nd sp.s. c 14 s 401 (uncodified) is amended to read as follows:

FOR THE STATE TREASURER—BOND RETIREMENT AND INTEREST, AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES; FOR BOND SALES DISCOUNTS AND DEBT TO BE PAID BY MOTOR VEHICLE FUND AND TRANSPORTATION FUND REVENUE

Motor Vehicle Fund—Puget Sound Capital Construction Account	
Appropriation	\$ 4,250,000
Motor Vehicle Fund Appropriation	\$ ((695,000))
	<u>903,000</u>
Transportation Improvement Account	
Appropriation	\$ 1,250,000
((Transportation Fund Appropriation	\$ 208,000))
Special Category C Account Appropriation	\$ 4,000,000
Highway Bond Retirement Account Appropriation . . .	\$ 195,814,000
Ferry Bond Retirement Account Appropriation	\$ 36,788,000
TOTAL APPROPRIATION	\$ 243,005,000

Sec. 402. 1995 2nd sp.s. c 14 s 402 (uncodified) is amended to read as follows:

FOR THE STATE TREASURER—BOND RETIREMENT AND INTEREST, AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES; FOR BOND SALE EXPENSES AND FISCAL AGENT CHARGES

Motor Vehicle Fund—Puget Sound Capital Construction	
Account Appropriation	\$ 850,000
Motor Vehicle Fund Appropriation	\$ ((139,000))
	<u>181,000</u>
Motor Vehicle Fund—Urban Arterial Trust Account	
Appropriation	\$ 5,000
Motor Vehicle Fund—Transportation Improvement	
Account Appropriation	\$ 250,000
Special Category C Account Appropriation	\$ 800,000
((Transportation Fund Appropriation	\$ 42,000))

Transportation Capital Facilities Account

Appropriation	\$	1,000
TOTAL APPROPRIATION	\$	2,087,000

Sec. 403. 1995 2nd sp.s. c 14 s 403 (uncodified) is amended to read as follows:

FOR THE STATE TREASURER—STATE REVENUES FOR DISTRIBUTION

Motor Vehicle Fund Appropriation for motor vehicle fuel tax and overload penalties

distribution	\$	452,180,000
Transportation Fund Appropriation	\$	((2,352,000))
		<u>2,482,000</u>
TOTAL APPROPRIATION	\$	((454,532,000))
		<u>454,662,000</u>

NEW SECTION. Sec. 404. A new section is added to 1995 2nd sp.s. c 14 (uncodified) to read as follows:

FOR THE STATE TREASURER—DISTRIBUTION FOR CITIES AND TOWNS

City Hardship Assistance Account—State Appropriation for Distribution to the Cities and Towns \$ 2,600,000

The appropriation in this section is valid only if House Bill No. . . . (Z-1097.1/96) or Senate Bill No. . . . (Z-1097.1/96) is enacted and contains provisions for returning excess funds to cities and towns.

Sec. 405. 1995 2nd sp.s. c 14 s 404 (uncodified) is amended to read as follows:

FOR THE GOVERNOR—COMPENSATION—SALARY AND INSURANCE INCREASE REVOLVING ACCOUNT

Motor Vehicle Fund—State Patrol Highway Account

Appropriation	\$	((8,947,000))
		<u>5,433,000</u>

The appropriation in this section is subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1)(a) Commissioned officers, commercial vehicle enforcement officers, and communication officers of the state patrol shall receive a five percent salary increase on July 1, 1995.

(b) Commissioned officers, commercial vehicle enforcement officers, and communication officers of the state patrol shall receive an additional four percent salary increase on July 1, 1996, if the state patrol vehicle inspection program is decommissioned by September 1, 1995.

(2) The salary increases provided for in subsection (1) of this section supersede any salary increases provided for in Engrossed Substitute House Bill No. 1410, the omnibus budget, for commissioned officers, commercial vehicle

enforcement officers, and communication officers of the state patrol. The appropriation in this section is not in addition to the salary increases provided for in Engrossed Substitute House Bill No. 1410; therefore, the appropriation in this section shall be reduced by any amount provided for commissioned officers, commercial vehicle enforcement officers, and communication officers of the state patrol in Engrossed Substitute House Bill No. 1410.

(3) The appropriation in this section includes \$1,350,000 to implement shift differential pay and educational incentive pay for commissioned officers effective July 1, 1996.

Sec. 406. 1995 2nd sp.s. c 14 s 408 (uncodified) is amended to read as follows:

FOR THE STATE TREASURER—TRANSFERS

(1) R V Account—State Appropriation:

For transfer to the Motor Vehicle Fund—State	\$	((454,000))
		<u>754,000</u>

The transfer in this subsection is subject to the following conditions and limitations: If Substitute Senate Bill No. 6322 is not enacted by June 30, 1996, \$300,000 of the RV account—state appropriation shall lapse.

(2) Transfer Relief Account—State Appropriation:

For transfer to the Motor Vehicle Fund—State	\$	1,329,000
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The transfer in this subsection is subject to the following conditions and limitations: The secretary of transportation shall notify the office of the state treasurer to close out the transfer relief account and transfer the cash balance into the motor vehicle fund.

(3) Motor Vehicle Fund—State Appropriation:

For transfer to the Transportation Capital Facilities Account—State	\$	((41,762,000))
		<u>40,178,000</u>

(4) Small City Account—State Appropriation:

For transfer to the Urban Arterial Trust Account—State	\$	2,544,000
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(5) Small City Account—State Appropriation:

For transfer to the Transportation Improvement Account—State	\$	7,500,000
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(6) High Capacity Transportation Account—
State Appropriation:

For transfer to the Passenger Ferry Account	\$	760,000
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(7) Public Transportation Systems Account—
State Appropriation:

For transfer to the Transportation Fund—State	\$	178,000
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(8) Transportation Fund—State Appropriation:

For transfer to the Marine Operating Fund—

State \$ 2,500,000

The appropriation in this subsection is subject to the following conditions and limitations: \$1,000,000 of the appropriation in this subsection shall be transferred in fiscal year 1996. \$1,500,000 of the appropriation in this subsection shall be transferred in fiscal year 1997, provided, however, that the transfer for fiscal year 1997 is null and void if Engrossed Substitute House Bill No. 1016 is enacted by July 1, 1996.

(9) Transportation Equipment Fund—State

Appropriation:

For transfer to the Motor Vehicle Fund—State \$ 3,300,000

(10) Transportation Fund—State Appropriation:

For transfer to the Cross-state Trail Account—State . . . \$ 1,000,000

The transfer in this subsection is subject to the following conditions and limitations: If Engrossed Substitute House Bill No. 2832 is not enacted by June 30, 1996, this appropriation shall lapse.

NEW SECTION. Sec. 407. A new section is added to 1995 2nd sp.s. c 14 (uncodified) to read as follows:

FOR THE STATE TREASURER—TRANSFERS. The secretary of transportation shall notify the office of the state treasurer to close out the gasohol holding and exemption account and transfer the cash balance into the motor vehicle account.

**PART V
MISCELLANEOUS**

NEW SECTION. Sec. 501. 1995 2nd sp.s. c 14 s 224 (uncodified) is repealed.

*NEW SECTION. Sec. 502. A new section is added to 1995 2nd sp.s. c 14 (uncodified) to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION

Transportation Fund—State Appropriation \$ 2,000,000

The appropriation in this section is subject to the following conditions and limitations:

Savings in passenger rail service operating cost subsidies are to be placed in unallotted status. Upon approval of the legislative transportation committee, the department of transportation may allot up to \$2,000,000 to provide additional expenditure authority for revised estimates of operating cost subsidies, lease purchase costs, capital projects costs, and to secure other funds for the rail program.

*Sec. 502 was partially vetoed. See message at end of chapter.

NEW SECTION. Sec. 503. A new section is added to 1995 2nd sp.s. c 14 (uncodified) to read as follows:

The department of transportation and the state patrol are appropriated \$150,000 from the state patrol highway account—state and \$150,000 from the motor vehicle fund—state to jointly contract for consultant services to do a feasibility study in cooperation with the department of licensing on the potential to consolidate mainframe computer hardware and software, the maintenance and servicing of data and voice transmissions systems, and the supporting information technology infrastructure of the three transportation agencies. In performing this analysis, the agencies and consultants should consider information and advice from the department of information services as well as the current directions of colocating outlying offices of the three transportation agencies. While the study needs to consider long-term information technology needs of the agencies, the focus should be on technology currently in use by the agencies or anticipated within the next few years. Both the operational and financial aspects of any consolidation will be addressed by the consultant. If the consultants recommend consolidation based on their analysis, a specific time frame for implementation must be provided. The state patrol and the department of transportation, in cooperation with the department of licensing, are to report findings and recommendations to the house of representatives and senate transportation committees by November 15, 1996.

NEW SECTION. Sec. 504. A new section is added to 1995 2nd sp.s. c 14 (uncodified) to read as follows:

Pursuant to the report of the house of representatives subcommittee on state aircraft:

(1) In order to facilitate comparison between agencies, the department of transportation's aviation division, in consultation with the state patrol, department of fish and wildlife, and department of natural resources, shall initiate action to develop standard aircraft activity records for all four state agencies. While the records should continue to meet the mission-specific needs of each agency, to the extent possible, operational, maintenance, inspection, and cost records should be standardized.

(2) Each state agency owning and operating aircraft shall prepare a plan for acquisition and disposition of aircraft. The initial plan shall be submitted to the legislative transportation committee no later than January 1, 1997. The plan shall include, but is not limited to:

(a) Descriptions of how each agency aircraft fulfills the mission objectives of the agency or college;

(b) Actual and projected use;

(c) Target aircraft replacement dates; and

(d) Proposed funding options for aircraft acquisition, including state surplus.

(3) Until such time as the state patrol has prepared its aircraft acquisition and disposition plan, it shall retain ownership of the beechjet. The plan should document the mission appropriateness of the agency's entire aircraft fleet. Thus, any plans to dispose of the beechjet and/or acquire another plane in lieu of the beechjet should be documented and substantiated in the plan.

***NEW SECTION.** Sec. 505. A new section is added to 1995 2nd sp.s. c 14 (uncodified) to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—SNOW AND ICE—PROGRAM M

Motor Vehicle Fund—State Appropriation \$ 2,000,000

The appropriation in this section is subject to the following conditions and limitations:

This appropriation is to be placed in reserve status for emergency relief should snow and ice expenditures exceed the \$40,000,000 plan for this activity. The legislative transportation committee shall notify the office of financial management to transfer the appropriation authority from reserve to active status.

*Sec. 505 was partially vetoed. See message at end of chapter.

Sec. 506. RCW 46.16.313 and 1995 3rd sp.s. c 1 s 103 are each amended to read as follows:

(1) The department may establish a fee for each type of special license plates issued under RCW 46.16.301(1) (a), (b), or (c) in an amount calculated to offset the cost of production of the special license plates and the administration of this program. The fee shall not exceed thirty-five dollars and 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, registration, and renewal registration of a motor vehicle, 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, minus the cost of plate production, 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) Except as set forth under subsection (4) of this section, in addition to all fees and taxes required to be paid upon application, registration, and renewal registration of a motor vehicle, 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, 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.

(4) Until June 30, 1997, in addition to all fees and taxes required to be paid upon application, registration, and renewal registration of a motor vehicle, the holder of a special baseball stadium license plate shall pay a fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for license plate 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 count 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.

NEW SECTION. Sec. 507. A new section is added to 1995 2nd sp.s. c 14 (uncodified) to read as follows:

\$5,000,000 from the motor vehicle fund—state and \$1,500,000 from the transportation fund—state are appropriated to the department of transportation for damage resulting from winter storms and floods. This appropriation will be allotted in programs p-preservation, m-maintenance, and y-public transportation and rail as determined by the department of transportation. Priority for use of transportation fund dollars shall be for rail projects. Remaining funds may be used for flood prevention projects along highways prone to flooding.

NEW SECTION. Sec. 508. A new section is added to 1995 2nd sp.s. c 14 (uncodified) to read as follows:

The appropriations contained in sections 201 and 202 of this act include funding to assist cities and counties in providing match for federal emergency funding for winter storm and flood damage as determined by the county road administration board and the transportation improvement board. The county road administration board and the transportation improvement board will report to the legislative transportation committee and the office of financial management by September 30, 1996, on the projects selected to receive match funding.

NEW SECTION. Sec. 509. A new section is added to 1995 2nd sp.s. c 14 (uncodified) to read as follows:

The department of transportation shall develop a plan for considering the accommodation of telecommunication facilities within limited access rights of way. In developing the plan, the department shall include, at a minimum, the legislative transportation committee, the information services board, and telecommunication providers. The plan shall be delivered to the legislative transportation committee on or before December 31, 1996, and shall include recommendations on statutory changes, if applicable, and reasonable consideration for accommodation.

NEW SECTION. **Sec. 510.** 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. 511.** 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 shall take effect immediately.

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Passed the House February 14, 1996.

Passed the Senate March 1, 1996.

Approved by the Governor March 28, 1996, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 28, 1996.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 202(5); 202(6); 206(2); 215(6); 502(lines 9-16); and 505(lines 3-9), Engrossed Substitute House Bill No. 2343 entitled:

"AN ACT Relating to transportation funding and appropriations;"

This 1996 Transportation Supplemental Budget is similar to the one that I proposed in that it provides funding for several important initiatives in economic development, safety, and mobility. At the same time, however, this budget also assumes an unfortunate shift in policy regarding fund sources. While this funding is necessary to maintain a number of important transportation programs, I cannot approve it without expressing reservations about certain provisions.

My first concern is that this budget continues to move funding away from multimodal transportation solutions and focuses mainly on highway construction. This, I believe, is a short-sighted approach that will only add to problems of traffic congestion in the future. Our local transit agencies are a vital link in any successful long-term solution to mobility and congestion. Yet, the legislature used fund balances from two local transit grant accounts to construct highway projects. Unfortunately, without these transit account appropriations, several high capacity improvement projects will not be constructed as planned. It is important that use of these local transit accounts be considered a one-time shift and not a long-term policy change. It is essential that revenue sources for transit not be eroded further.

I am also concerned that this budget starts several new highway projects even though there are no specific future revenues to finish the work in the next biennium. Using other funds to complete the work could jeopardize the existing programming and prioritization process which provides a coordinated approach to long-term system planning.

Finally, I disagree with the legislature's designation of one-third of the federal enhancement grant money for projects outside the citizen project selection process. This competitive process has proved to be a successful tool in funding alternative modes of transportation. While I strongly support the trail development project and the stormwater grants designated by the legislature, I must state my objection to the fund source selected for these projects.

Despite its shortcomings, this budget contains funding critical to the continuation of important agency operations in the second year of the biennium and provides assistance to state and local agencies to repair damage from the February floods. These

projects must go forward despite my disagreement with the funding sources used and the policy shift away from multimodal solutions.

In order to protect specific local transit funding sources and clarify legislative direction, I am vetoing six provisos in this budget. My reasons for these vetoes are as follows:

Section 202(5), lines 31-34, page 3, Regional Transit Authority (Transportation Improvement Board)

This proviso prohibits the Regional Transit Authority (RTA) from receiving any grants in Fiscal Year 1997 from the Central Puget Sound Public Transportation Account established specifically to provide support for regional transit projects. I am vetoing this proviso because it is overly restrictive. The RTA needs the flexibility to apply for these grant funds should this organization be successful in receiving approval for its multimodal regional transportation plan at the ballot this fall. The RTA should not be singled out as the only regional transit authority prohibited from applying for funds that it may otherwise be qualified to receive.

Section 202(6), lines 35-38, page 3, Transit Planning Funds (Transportation Improvement Board)

This proviso specifies that an \$800,000 increase in appropriations for the Public Transportation System Account (PTSA) cannot be used for grants to pay for studies or planning activities by local transit agencies. I am vetoing this proviso because it is overly restrictive and inconsistent with the current policies regarding the use of PTSA funds. Local transit agencies need the flexibility to apply for these grant funds within consistent guidelines set by the project selection committee. Without access to these funds for planning, transit agencies would lose an important source of funding needed to complete system planning efforts in a timely and efficient manner.

Section 206(2), lines 4-9, page 8, Driver's License Information (Washington State Patrol)

This proviso language is unclear and could be interpreted to require access to driver's license data by the private sector in addition to requiring the Washington State Patrol (WSP) to conduct a study regarding such access. I have concerns about the issue of privacy and other matters regarding the use of driver's license data that need to be addressed prior to implementation. For this reason, I am vetoing this proviso, but I will direct the WSP and the Department of Licensing to conduct a study regarding the feasibility and privacy implications of providing driver's license data to private entities. I expect this study to be reported to the Office of Financial Management and the Legislative Transportation Committee no later than September 1, 1996.

Section 215(6), lines 36-38, page 20, Grant County Noxious Weed Demonstration Project (Department of Transportation-Highway Maintenance-Program M)

This proviso directs the Department of Transportation to participate with the Grant County Noxious Weed Board in a demonstration project to examine weed control methods on state road rights of way. I am not opposed to a demonstration project of this type. However, I am vetoing this proviso because cooperative development of such a pilot project has not yet occurred among all the affected parties. Also, there is confusion regarding how this pilot project is to be undertaken within the parameters of current civil service law.

Section 502, lines 9-16, page 47, and section 505, lines 3-9, page 49, Appropriations in Unallotted Reserve (Department of Transportation-Program M)

Section 502 appropriates \$2,000,000 in savings from the passenger rail program and section 505 appropriates \$2,000,000 in the highway maintenance program to provide contingency funds for snow and ice removal. Both sections include provisos requiring that the appropriations be placed in reserve. They also state that the Department of Transportation is not allowed to spend the funds until approval is given from the Legislative Transportation Committee. I am vetoing these provisos because they are not in accordance with established allotment practices. I will direct the Department of Transportation to place these two appropriations in reserve status and if and when expenditure is necessary, seek a recommendation from the Legislative Transportation Committee before bringing the request to the Office of Financial Management for approval of an allotment revision.

For these reasons, I am vetoing sections 202(5); 202(6); 206(2); 215(6); 502 (lines 9-16); and 505 (lines 3-9), Engrossed Substitute House Bill No. 2343.

With the exception of sections 202(5); 202(6); 206(2); 215(6); 502 (lines 9-16); and 505 (lines 3-9), Engrossed Substitute House Bill No. 2343 is approved."

CHAPTER 166

[House Bill 2290]

WIND ENERGY AND SOLAR ELECTRIC GENERATION

FACILITIES—SALES AND USE TAX EXEMPTIONS FOR CONSTRUCTION

AN ACT Relating to exempting construction of wind energy and solar electric generating facilities from sales and use tax; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; providing an effective date; and providing expiration dates.

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

NEW SECTION. Sec. 1. A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax levied by RCW 82.08.020 shall not apply to sales of machinery and equipment used directly in generating electricity using the wind or sun energy as the principal source of power, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, but only if the purchaser develops with such machinery, equipment, and labor a facility capable of generating not less than two hundred kilowatts of electricity and provides the seller with an exemption certificate in a form and manner prescribed by the department by rule, and the purchaser provides the department with a duplicate of the certificate or a summary of exempt sales as the department may require. The seller shall retain a copy of the certificate for the seller's files.

(2) For purposes of this section and section 2 of this act:

(a) "Machinery and equipment" means industrial fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using the wind or sun energy as the principal source of power;

(b) "Machinery and equipment" does not include: (i) Hand tools; (ii) property with a useful life of less than one year; (iii) repair parts required to restore machinery and equipment to normal working order; (iv) replacement parts that do not increase productivity, improve efficiency, or extend the useful life of machinery and equipment; (v) buildings; or (vi) building fixtures that are not

integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building;

(c) Machinery and equipment is "used directly" in generating electricity by wind or solar power if it provides any part of the process that captures the energy of the wind or sun, converts that energy to electricity, and transforms or transmits that electricity for entry into electric transmission and distribution systems.

(3) This section expires June 30, 2005.

NEW SECTION. Sec. 2. A new section is added to chapter 82.12 RCW to read as follows:

(1) The provisions of this chapter shall not apply with respect to machinery and equipment used directly in generating not less than two hundred kilowatts of electricity using the wind or sun as the principal source of power, but only when the user provides the department with:

(a) An exemption certificate in a form and manner prescribed by the department within sixty days of the first use of such machinery and equipment in this state; or

(b) An annual summary listing the machinery and equipment by January 31st of the year following the calendar year in which the machinery and equipment is first used in this state.

(2) The definitions in section 1 of this act apply to this section.

(3) This section expires June 30, 2005.

NEW SECTION. Sec. 3. This act shall take effect July 1, 1996.

Passed the House March 7, 1996.

Passed the Senate March 7, 1996.

Approved by the Governor March 28, 1996.

Filed in Office of Secretary of State March 28, 1996.

CHAPTER 167

[House Bill 2467]

MAJOR INDUSTRIAL DEVELOPMENT UNDER GROWTH MANAGEMENT PLANNING PROVISIONS

AN ACT Relating to industrial developments; adding a new section to chapter 36.70A 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 1995 the legislature addressed the demand for siting of major industrial facilities by passage of Engrossed Senate Bill No. 5019, implementing a process for siting such activities outside urban growth areas. The legislature recognizes that the 1995 act requires consideration of numerous factors necessary to ensure that the community can reasonably accommodate a major industrial development outside an urban growth area.

The legislature finds that the existing case-by-case procedure for evaluating and approving such a site under the 1995 act may operate to a community's economic disadvantage when a firm, for business reasons, must make a business location decision expeditiously. The legislature therefore finds that it would be useful to authorize, on a limited basis, and evaluate a process for identifying locations for major industrial activity in advance of specific proposals by an applicant.

It is the purpose of this act (1) to authorize a pilot project under which a bank of major industrial development locations outside urban growth areas is created for use in expeditiously siting such a development; (2) to evaluate the impact of this process on the county's compliance with chapter 36.70A RCW; and (3) to encourage consolidation and planning, and environmental review procedures under chapter 36.70B RCW.

NEW SECTION. Sec. 2. A new section is added to chapter 36.70A RCW to read as follows:

(1) In addition to the major industrial development allowed under RCW 36.70A.365, a county required or choosing to plan under RCW 36.70A.040 that has a population greater than two hundred fifty thousand and that is part of a metropolitan area that includes a city in another state with a population greater than two hundred fifty thousand may establish, in consultation with cities consistent with provisions of RCW 36.70A.210, a process for designating a bank of no more than two master planned locations for major industrial activity outside urban growth areas.

(2) A master planned location for major industrial developments outside an urban growth area may be included in the urban industrial land bank for the county if criteria including, but not limited to, the following are met:

(a) New infrastructure is provided for and/or applicable impact fees are paid;

(b) Transit-oriented site planning and traffic demand management programs are implemented;

(c) Buffers are provided between the major industrial development and adjacent nonurban areas;

(d) Environmental protection including air and water quality has been addressed and provided for;

(e) Development regulations are established to ensure that urban growth will not occur in adjacent nonurban areas;

(f) Provision is made to mitigate adverse impacts on designated agricultural lands, forest lands, and mineral resource lands;

(g) The plan for the major industrial development is consistent with the county's development regulations established for protection of critical areas; and

(h) An inventory of developable land has been conducted as provided in RCW 36.70A.365.

(3) In selecting master planned locations for inclusion in the urban industrial land bank, priority shall be given to locations that are adjacent to, or in close proximity to, an urban growth area.

(4) Final approval of inclusion of a master planned location in the urban industrial land bank shall be considered an adopted amendment to the comprehensive plan adopted pursuant to RCW 36.70A.070, except that RCW 36.70A.130(2) does not apply so that inclusion or exclusion of master planned locations may be considered at any time.

(5) Once a master planned location has been included in the urban industrial land bank, manufacturing and industrial businesses that qualify as major industrial development under RCW 36.70A.365 may be located there.

(6) Nothing in this section may be construed to alter the requirements for a county to comply with chapter 43.21C RCW.

(7) The authority of a county to engage in the process of including or excluding master planned locations from the urban industrial land bank shall terminate on December 31, 1998. However, any location included in the urban industrial land bank on December 31, 1998, shall remain available for major industrial development as long as the criteria of subsection (2) of this section continue to be met.

(8) For the purposes of this section, "major industrial development" means a master planned location suitable for manufacturing or industrial businesses that: (a) Requires a parcel of land so large that no suitable parcels are available within an urban growth area; or (b) is a natural resource-based industry requiring a location near agricultural land, forest land, or mineral resource land upon which it is dependent. The major industrial development may not be for the purpose of retail commercial development or multitenant office parks.

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 shall take effect immediately.

Passed the House March 4, 1996.

Passed the Senate February 29, 1996.

Approved by the Governor March 28, 1996.

Filed in Office of Secretary of State March 28, 1996.

CHAPTER 168

[Engrossed Substitute House Bill 2657]

PUBLIC WORKS PROJECTS

AN ACT Relating to the definition of public works projects; and amending RCW 43.155.010, 43.155.020, 43.155.070, 43.160.212, and 43.131.386.

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

Sec. 1. RCW 43.155.010 and 1985 c 446 s 7 are each amended to read as follows:

The legislature finds that there exists in the state of Washington over four billion dollars worth of critical projects for the planning, acquisition, construction, repair, replacement, rehabilitation, or improvement of streets and roads, bridges, water systems, and storm and sanitary sewage systems. The December,

1983 Washington state public works report prepared by the planning and community affairs agency documented that local governments expect to be capable of financing over two billion dollars worth of the costs of those critical projects but will not be able to fund nearly half of the documented needs.

The legislature further finds that Washington's local governments have unmet financial needs for solid waste disposal, including recycling, and encourages the board to make an equitable geographic distribution of the funds.

It is the policy of the state of Washington to encourage self-reliance by local governments in meeting their public works needs and to assist in the financing of critical public works projects by making loans, financing guarantees, and technical assistance available to local governments for these projects.

Sec. 2. RCW 43.155.020 and 1995 c 399 s 85 are each amended to read as follows:

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

(1) "Board" means the public works board created in RCW 43.155.030.

(2) "Department" means the department of community, trade, and economic development.

(3) "Financing guarantees" means the pledge of money in the public works assistance account, or money to be received by the public works assistance account, to the repayment of all or a portion of the principal of or interest on obligations issued by local governments to finance public works projects.

(4) "Local governments" means cities, towns, counties, special purpose districts, and any other municipal corporations or quasi-municipal corporations in the state excluding school districts and port districts.

(5) "Public works project" means a project of a local government for the planning, acquisition, construction, repair, reconstruction, replacement, rehabilitation, or improvement of streets and roads, bridges, water systems, or storm and sanitary sewage systems and solid waste facilities, including recycling facilities.

(6) "Solid waste or recycling project" means remedial actions necessary to bring abandoned or closed landfills into compliance with regulatory requirements and the repair, restoration, and replacement of existing solid waste transfer, recycling facilities, and landfill projects limited to the opening of landfill cells that are in existing and permitted landfills.

(7) "Technical assistance" means training and other services provided to local governments to: (a) Help such local governments plan, apply, and qualify for loans and financing guarantees from the board, and (b) help local governments improve their ability to plan for, finance, acquire, construct, repair, replace, rehabilitate, and maintain public facilities.

Sec. 3. RCW 43.155.070 and 1995 c 363 s 3 are each amended to read as follows:

(1) To qualify for loans or pledges under this chapter the board must determine that a local government meets all of the following conditions:

(a) The city or county must be imposing a tax under chapter 82.46 RCW at a rate of at least one-quarter of one percent;

(b) The local government must have developed a long-term plan for financing public works needs;

(c) The local government must be using all local revenue sources which are reasonably available for funding public works, taking into consideration local employment and economic factors; and

(d) A county, city, or town that is required or chooses to plan under RCW 36.70A.040 must have adopted a comprehensive plan in conformance with the requirements of chapter 36.70A RCW, after it is required that the comprehensive plan be adopted, and must have adopted development regulations in conformance with the requirements of chapter 36.70A RCW, after it is required that development regulations be adopted.

(2) The board shall develop a priority process for public works projects as provided in this section. The intent of the priority process is to maximize the value of public works projects accomplished with assistance under this chapter. The board shall attempt to assure a geographical balance in assigning priorities to projects. The board shall consider at least the following factors in assigning a priority to a project:

(a) Whether the local government receiving assistance has experienced severe fiscal distress resulting from natural disaster or emergency public works needs;

(b) Whether the project is critical in nature and would affect the health and safety of a great number of citizens;

(c) The cost of the project compared to the size of the local government and amount of loan money available;

(d) The number of communities served by or funding the project;

(e) Whether the project is located in an area of high unemployment, compared to the average state unemployment;

(f) Whether the project is the acquisition, expansion, improvement, or renovation by a local government of a public water system that is in violation of health and safety standards, including the cost of extending existing service to such a system;

(g) The relative benefit of the project to the community, considering the present level of economic activity in the community and the existing local capacity to increase local economic activity in communities that have low economic growth; and

(h) Other criteria that the board considers advisable.

(3) Existing debt or financial obligations of local governments shall not be refinanced under this chapter. Each local government applicant shall provide documentation of attempts to secure additional local or other sources of funding

for each public works project for which financial assistance is sought under this chapter.

(4) Before November 1 of each year, the board shall develop and submit to the appropriate fiscal committees of the senate and house of representatives a description of the loans made under RCW 43.155.065, 43.155.068, and subsection (7) of this section during the preceding fiscal year and a prioritized list of projects which are recommended for funding by the legislature, including one copy to the staff of each of the committees. The list shall include, but not be limited to, a description of each project and recommended financing, the terms and conditions of the loan or financial guarantee, the local government jurisdiction and unemployment rate, demonstration of the jurisdiction's critical need for the project and documentation of local funds being used to finance the public works project. The list shall also include measures of fiscal capacity for each jurisdiction recommended for financial assistance, compared to authorized limits and state averages, including local government sales taxes; real estate excise taxes; property taxes; and charges for or taxes on sewerage, water, garbage, and other utilities.

(5) The board shall not sign contracts or otherwise financially obligate funds from the public works assistance account before the legislature has appropriated funds for a specific list of public works projects. The legislature may remove projects from the list recommended by the board. The legislature shall not change the order of the priorities recommended for funding by the board.

(6) Subsection (5) of this section does not apply to loans made under RCW 43.155.065, 43.155.068, and subsection (7) of this section.

(7)(a) Loans made for the purpose of capital facilities plans shall be exempted from subsection (5) of this section. In no case shall the total amount of funds utilized for capital facilities plans and emergency loans exceed the limitation in RCW 43.155.065.

(b) For the purposes of this section "capital facilities plans" means those plans required by the growth management act, chapter 36.70A RCW, and plans required by the public works board for local governments not subject to the growth management act.

(8) To qualify for loans or pledges for solid waste or recycling facilities under this chapter, a city or county must demonstrate that the solid waste or recycling facility is consistent with and necessary to implement the comprehensive solid waste management plan adopted by the city or county under chapter 70.95 RCW.

Sec. 4. RCW 43.160.212 and 1995 c 226 s 6 are each amended to read as follows:

(1) For the period beginning July 1, 1991, and ending June 30, 1997, in rural natural resources impact areas the public works board may award low-interest or interest-free loans to local governments for construction of new or expanded public works facilities that stimulate economic growth or diversification.

(2) For the period beginning on the effective date of this act and ending June 30, 1997, areas in zip codes immediately adjacent and contiguous to rural natural resource impact areas within the same county are eligible for loans under this section if a significant benefit can be shown for underemployed or unemployed workers living in rural natural resource impact areas, and there is projected to be at least eight hundred million dollars in private sector investment within six years in a project benefitting from such loans.

(3) For the purposes of this section and section 27, chapter 314, Laws of 1991:

(a) "Public facilities" means bridge, road and street, domestic water, sanitary sewer, and storm sewer systems.

(b) "Rural natural resources impact area" means:

(i) A nonmetropolitan county, as defined by the 1990 decennial census, that meets two of the five criteria set forth in subsection (~~((3))~~) (4) of this section; or

(ii) A nonurbanized area, as defined by the 1990 decennial census, that is located in a metropolitan county that meets two of the five criteria set forth in subsection (~~((3))~~) (4) of this section.

~~((3))~~ (4) 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 that is located wholly or partially in an urbanized area or within two miles of an urbanized area is considered urbanized. 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.

~~((4))~~ (5) The loans may have a deferred payment of up to five years but shall be repaid within twenty years. The public works board may require other terms and conditions and may charge such rates of interest on its loans as it deems appropriate to carry out the purposes of this section. Repayments shall be made to the public works assistance account.

~~((5))~~ (6) The board may make such loans irrespective of the annual loan cycle and reporting required in RCW 43.155.070.

Sec. 5. RCW 43.131.386 and 1995 c 226 s 35 are each amended to read as follows:

The following acts or parts of acts are each repealed, effective June 30, 1999:

- (1) RCW 43.31.601 and 1995 c 226 s 1, 1992 c 21 s 2, & 1991 c 314 s 2;
- (2) RCW 43.31.641 and 1995 c 226 s 4, 1993 c 280 s 50, & 1991 c 314 s 7;
- (3) RCW 50.22.090 and 1995 c 226 s 5, 1993 c 316 s 10, 1992 c 47 s 2, & 1991 c 315 s 4;
- (4) RCW 43.160.212 and 1996 c . . . s 4 (section 4 of this act), 1995 c 226 s 6, & 1993 c 316 s 5;
- (5) RCW 43.31.651 and 1995 c 226 s 10, 1993 c 280 s 51, & 1991 c 314 s 9;
- (6) RCW 43.63A.021 and 1995 c 226 s 11;
- (7) RCW 43.63A.600 and 1995 c 226 s 12, 1994 c 114 s 1, 1993 c 280 s 77, & 1991 c 315 s 23;
- (8) RCW 43.63A.440 and 1995 c 226 s 13, 1993 c 280 s 74, & 1989 c 424 s 7;
- (9) RCW 43.160.200 and 1995 c 226 s 16, 1993 c 320 s 7, 1993 c 316 s 4, & 1991 c 314 s 23;
- (10) RCW 28B.50.258 and 1995 c 226 s 18 & 1991 c 315 s 16;
- (11) RCW 28B.50.262 and 1995 c 226 s 19 & 1994 c 282 s 3;
- (12) RCW 28B.80.570 and 1995 c 226 s 20, 1992 c 21 s 6, & 1991 c 315 s 18;
- (13) RCW 28B.80.575 and 1995 c 226 s 21 & 1991 c 315 s 19;
- (14) RCW 28B.80.580 and 1995 c 226 s 22, 1993 sp.s. c 18 s 34, 1992 c 231 s 31, & 1991 c 315 s 20;
- (15) RCW 28B.80.585 and 1995 c 226 s 23 & 1991 c 315 s 21;
- (16) RCW 43.17.065 and 1995 c 226 s 24, 1993 c 280 s 37, 1991 c 314 s 28, & 1990 1st ex.s. c 17 s 77;
- (17) RCW 43.20A.750 and 1995 c 226 s 25, 1993 c 280 s 38, 1992 c 21 s 4, & 1991 c 153 s 28;
- (18) RCW 43.168.140 and 1995 c 226 s 28 & 1991 c 314 s 20;
- (19) RCW 50.12.270 and 1995 c 226 s 30 & 1991 c 315 s 3;
- (20) RCW 50.70.010 and 1995 c 226 s 31, 1992 c 21 s 1, & 1991 c 315 s 5; and
- (21) RCW 50.70.020 and 1995 c 226 s 32 & 1991 c 315 s 6.

Passed the House February 13, 1996.

Passed the Senate March 1, 1996.

Approved by the Governor March 28, 1996.

Filed in Office of Secretary of State March 28, 1996.

CHAPTER 169

[Senate Bill 6312]

TUITION EXEMPTIONS FOR VETERANS

AN ACT Relating to tuition exemptions for veterans; amending RCW 28B.15.628; amending 1994 c 208 s 4 (uncodified); and providing an expiration date.

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

Sec. 1. RCW 28B.15.628 and 1994 c 208 s 2 are each amended to read as follows:

(1) The legislature finds that military and naval veterans who have served their country in wars on foreign soil have risked their own lives to defend both the lives of all Americans and the freedoms that define and distinguish our nation. It is the intent of the legislature to honor Persian Gulf combat zone veterans for the public service they have provided to their country. It is the further intent of the legislature that for eligible Persian Gulf combat zone veterans, institutions of higher education waive tuition and fee increases that have occurred after the 1990-91 academic year.

(2) Subject to the limitations of RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges may exempt veterans of the Persian Gulf combat zone from all or a portion of increases in tuition and fees that occur after the 1990-91 academic year, if(=

—(a)) the veteran could have qualified as a Washington resident student under RCW 28B.15.012(2), had he or she been enrolled as a student on August 1, 1990(=

—(b) ~~The veteran is enrolled for seven or more quarter credits per academic term or their equivalent, except summer term and not including community service courses; and~~

—(c) ~~The veteran's adjusted gross family income as most recently reported to the internal revenue service does not exceed Washington state's median family income as established by the federal bureau of the census).~~

(3) For the purposes of this section, "a veteran of the Persian Gulf combat zone" means a person who ~~((during any portion of calendar year 1991, served in active federal service as a member of the armed military or naval forces of the United States in a combat zone as designated by the president of the United States by executive order))~~ served on active duty in the armed forces of the United States during any portion of the 1991 calendar year in the Persian Gulf combat zone as designated by executive order of the president of the United States.

(4) This section expires June 30, 1999.

Sec. 2. 1994 c 208 s 4 (uncodified) is amended to read as follows:

Section((s)) 13 ~~((and 14))~~ of this act shall expire on June 30, 1997.

Passed the Senate March 2, 1996.
 Passed the House February 28, 1996.
 Approved by the Governor March 28, 1996.
 Filed in Office of Secretary of State March 28, 1996.

CHAPTER 170

[Senate Bill 6401]

CARBON THAT BECOMES AN INGREDIENT OR COMPONENT OF ANODES OR CATHODES USED IN PRODUCING ALUMINUM FOR SALE—SALES AND USE TAX EXEMPTIONS

AN ACT Relating to sales and use taxation of carbon that becomes an ingredient or component of anodes or cathodes used in producing aluminum for sale; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 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 82.08 RCW to read as follows:

The tax levied by RCW 82.08.020 shall not apply to sales of carbon, petroleum coke, coal tar, pitch, and similar substances that become an ingredient or component of anodes or cathodes used in producing aluminum for sale.

NEW SECTION. Sec. 2. A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter shall not apply in respect to the use of carbon, petroleum coke, coal tar, pitch, and similar substances that become an ingredient or component of anodes or cathodes used in producing aluminum for sale.

NEW SECTION. Sec. 3. This act shall take effect July 1, 1996.

Passed the Senate March 7, 1996.
 Passed the House March 7, 1996.
 Approved by the Governor March 28, 1996.
 Filed in Office of Secretary of State March 28, 1996.

CHAPTER 171

[Engrossed Second Substitute Senate Bill 6556]

PUBLIC ELECTRONIC ACCESS TO GOVERNMENT RECORDS AND INFORMATION

AN ACT Relating to public electronic access to government records and information; amending RCW 27.04.045, 43.105.041, 43.105.041, 43.105.160, 43.105.170, and 43.105.180; adding new sections to chapter 43.105 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. Based upon the recommendations of the public information access policy task force, the legislature finds that government records and information are a vital resource to both government operations and to the public that government serves. Broad public access to state and local government records and information has potential for expanding citizen access

to that information and for improving government services. Electronic methods for locating and transferring information can improve linkages between and among citizens, organizations, businesses, and governments. Information must be managed with great care to meet the objectives of citizens and their governments.

It is the intent of the legislature to encourage state and local governments to develop, store, and manage their public records and information in electronic formats to meet their missions and objectives. Further, it is the intent of the legislature for state and local governments to set priorities for making public records widely available electronically to the public.

NEW SECTION. Sec. 2. DEFINITIONS. Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Local government" means every county, city, town, and every other municipal or quasi-municipal corporation.

(2) "Public record" means as defined in RCW 42.17.020 and chapter 40.14 RCW, and includes legislative records and court records that are available for public inspection.

(3) "State agency" includes every state office, department, division, bureau, board, and commission of the state, and each state elected official who is a member of the executive department.

NEW SECTION. Sec. 3. A new section is added to chapter 2.68 RCW to read as follows:

The supreme court, the court of appeals and all superior and district courts, through the judicial information system committee, shall:

(1) Continue to plan for and implement processes for making judicial information available electronically;

(2) Promote and facilitate electronic access to the public of judicial information and services;

(3) Establish technical standards for such services;

(4) Consider electronic public access needs when planning new information systems or major upgrades of information systems;

(5) Develop processes to determine which judicial information the public most wants and needs;

(6) Increase capabilities to receive information electronically from the public and transmit forms, applications and other communications and transactions electronically;

(7) Use technologies that allow continuous access twenty-four hours a day, seven days per week, involve little or no cost to access, and are capable of being used by persons without extensive technology ability; and

(8) Consider and incorporate wherever possible ease of access to electronic technologies by persons with disabilities.

NEW SECTION. Sec. 4. A new section is added to chapter 44.68 RCW to read as follows:

The legislature and legislative agencies through the joint legislative systems committee, shall:

(1) Continue to plan for and implement processes for making legislative information available electronically;

(2) Promote and facilitate electronic access to the public of legislative information and services;

(3) Establish technical standards for such services;

(4) Consider electronic public access needs when planning new information systems or major upgrades of information systems;

(5) Develop processes to determine which legislative information the public most wants and needs;

(6) Increase capabilities to receive information electronically from the public and transmit forms, applications and other communications and transactions electronically;

(7) Use technologies that allow continuous access twenty-four hours a day, seven days per week, involve little or no cost to access, and are capable of being used by persons without extensive technology ability; and

(8) Consider and incorporate wherever possible ease of access to electronic technologies by persons with disabilities.

NEW SECTION. **Sec. 5. PLANNING FOR INCREASED PUBLIC ELECTRONIC ACCESS.** Within existing resources, state agencies shall plan for and implement processes for making information available electronically. Public demand and agencies' missions and goals shall drive the selection and priorities for government information to be made available electronically. When planning for increased public electronic access, agencies should determine what information the public wants and needs most. Widespread public electronic access does not mean that all government information is able to be made available electronically.

(1) In planning for and implementing electronic access, state agencies shall:

(a) Where appropriate, plan for electronic public access and two-way electronic interaction when acquiring, redesigning, or rebuilding information systems;

(b) Focus on providing electronic access to current information, leaving archival material to be made available digitally as resources allow or as a need arises;

(c) Coordinate technology planning across agency boundaries in order to facilitate electronic access to vital public information;

(d) Develop processes to determine which information the public most wants and needs;

(e) Develop and employ methods to readily withhold or mask nondisclosable data.

(2) In planning or implementing electronic access and two-way electronic interaction and delivery technologies, state agencies and local governments are encouraged to:

(a) Increase their capabilities to receive information electronically from the public and to transmit forms, applications, and other communications and transactions electronically;

(b) Use technologies allowing public access throughout the state that allow continuous access twenty-four hours a day, seven days per week, involve little or no cost to access, and are capable of being used by persons without extensive technological ability; and

(c) Consider and incorporate wherever possible ease of access to electronic technologies by persons with disabilities. In planning and implementing new public electronic access projects, agencies should consult with people who have disabilities, with disability access experts, and the general public.

(3) The final report of the public information access policy task force, "Encouraging Widespread Public Electronic Access to Public Records and Information Held by State and Local Governments," shall serve as a major resource for state agencies and local governments in planning and providing increased access to electronic public records and information.

Sec. 6. RCW 27.04.045 and 1989 c 96 s 7 are each amended to read as follows:

The state library commission shall be responsible for the following functions:

(1) Maintaining a library at the state capitol grounds to effectively provide library and information services to members of the legislature, state officials, and state employees in connection with their official duties;

(2) Acquiring and making available information, publications, and source materials that pertain to the history of the state;

(3) Serving as the depository for newspapers published in the state of Washington thus providing a central location for a valuable historical record for scholarly, personal, and commercial reference and circulation;

(4) Promoting and facilitating electronic access to public information and services;

(5) Establishing content-related standards for common formats and agency indexes for state agency produced information. In developing these standards, the commission is encouraged to include the state archives, the department of information services, and public and academic libraries;

(6) Collecting and distributing copies of state publications by ensuring that:

(a) The state library collects and makes available as part of its collection copies of any state publication, as defined in RCW 40.06.010, prepared by any state agency whenever fifteen or more copies are prepared for distribution. The state library commission, on recommendation of the state librarian, may provide by rule for deposit with the state library of up to three copies of such publication; and

(b) The state library maintains a division to serve as state publications distribution center, as provided in chapter 40.06 RCW;

~~((5))~~ (7) Providing advisory services to state agencies regarding their information needs;

~~((6))~~ (8) Providing for library and information service to residents and staff of state-supported residential institutions;

~~((7))~~ (9) Providing for library and information services to persons throughout the state who are blind and/or physically handicapped;

~~((8))~~ (10) Assisting individuals and groups such as libraries, library boards, governing bodies, and citizens throughout the state toward the establishment and development of library services;

~~((9))~~ (11) Making studies and surveys of library needs in order to provide, expand, enlarge, and otherwise improve access to library facilities and services throughout the state;

~~((10))~~ (12) Serving as a primary interlibrary loan, information, reference, and referral center for all libraries in the state;

~~((11))~~ (13) Assisting in the provision of direct library and information services to individuals;

~~((12))~~ (14) Overseeing of the Washington library network in accordance with chapters 27.26 and 43.105 RCW. This subsection shall expire on June 30, 1997.

Sec. 7. RCW 43.105.041 and 1995 2nd sp.s. c 14 s 512 are each amended to read as follows:

(1) The board shall have the following powers and duties related to information services:

~~((1))~~ (a) To develop standards governing the acquisition and disposition of equipment, proprietary software and purchased services, and confidentiality of computerized data;

~~((2))~~ (b) To purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services, or to delegate to other agencies and institutions of state government, under appropriate standards, the authority to purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services: PROVIDED, That, agencies and institutions of state government, except as provided in RCW 43.105.017(5) and section 507, chapter 14, Laws of 1995 2nd sp. sess., are expressly prohibited from acquiring or disposing of equipment, proprietary software, and purchased services without such delegation of authority. The acquisition and disposition of equipment, proprietary software, and purchased services is exempt from RCW 43.19.1919 and, as provided in RCW 43.19.1901, from the provisions of RCW 43.19.190 through 43.19.200. This subsection (1)(b) does not apply to the legislative branch;

~~((3))~~ (c) To develop state-wide or interagency technical policies, standards, and procedures;

~~((4))~~ (d) To assure the cost-effective development and incremental implementation of a state-wide video telecommunications system to serve: Public schools; educational service districts; vocational-technical institutes;

community colleges; colleges and universities; state and local government; and the general public through public affairs programming;

~~((5))~~ (e) To provide direction concerning strategic planning goals and objectives for the state. The board shall seek input from the legislature and the judiciary;

~~((6))~~ (f) To develop and implement a process for the resolution of appeals by:

~~((a))~~ (i) Vendors concerning the conduct of an acquisition process by an agency or the department; or

~~((b))~~ (ii) A customer agency concerning the provision of services by the department or by other state agency providers;

~~((7))~~ (g) To establish policies for the periodic review by the department of agency performance which may include but are not limited to analysis of:

~~((a))~~ (i) Planning, management, control, and use of information services;

~~((b))~~ (ii) Training and education; and

~~((a))~~ (iii) Project management;

~~((8))~~ (h) To set its meeting schedules and convene at scheduled times, or meet at the request of a majority of its members, the chair, or the director; and

~~((9))~~ (i) To review and approve that portion of the department's budget requests that provides for support to the board.

(2) State-wide technical standards to promote and facilitate electronic information sharing and access are an essential component of acceptable and reliable public access service and complement content-related standards designed to meet those goals. The board shall:

(a) Establish technical standards to facilitate electronic access to government information and interoperability of information systems. Local governments are strongly encouraged to follow the standards established by the board; and

(b) Require agencies to consider electronic public access needs when planning new information systems or major upgrades of systems.

In developing these standards, the board is encouraged to include the state library, state archives, and appropriate representatives of state and local government.

Sec. 8. RCW 43.105.041 and 1990 c 208 s 6 are each amended to read as follows:

(1) The board shall have the following powers and duties related to information services:

~~((4))~~ (a) To develop standards governing the acquisition and disposition of equipment, proprietary software and purchased services, and confidentiality of computerized data;

~~((2))~~ (b) To purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services, or to delegate to other agencies and institutions of state government, under appropriate standards, the authority to purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services:

PROVIDED, That, agencies and institutions of state government are expressly prohibited from acquiring or disposing of equipment, proprietary software, and purchased services without such delegation of authority. The acquisition and disposition of equipment, proprietary software, and purchased services is exempt from RCW 43.19.1919 and, as provided in RCW 43.19.1901, from the provisions of RCW 43.19.190 through 43.19.200. This subsection (1)(b) does not apply to the legislative branch;

~~((3))~~ (c) To develop state-wide or interagency technical policies, standards, and procedures;

~~((4))~~ (d) To assure the cost-effective development and incremental implementation of a state-wide video telecommunications system to serve: Public schools; educational service districts; vocational-technical institutes; community colleges; colleges and universities; state and local government; and the general public through public affairs programming;

~~((5))~~ (e) To provide direction concerning strategic planning goals and objectives for the state. The board shall seek input from the legislature and the judiciary;

~~((6))~~ (f) To develop and implement a process for the resolution of appeals by:

~~((a))~~ (i) Vendors concerning the conduct of an acquisition process by an agency or the department; or

~~((b))~~ (ii) A customer agency concerning the provision of services by the department or by other state agency providers;

~~((7))~~ (g) To establish policies for the periodic review by the department of agency performance which may include but are not limited to analysis of:

~~((a))~~ (i) Planning, management, control, and use of information services;

~~((b))~~ (ii) Training and education; and

~~((c))~~ (iii) Project management;

~~((8))~~ (h) To set its meeting schedules and convene at scheduled times, or meet at the request of a majority of its members, the chair, or the director; and

~~((9))~~ (i) To review and approve that portion of the department's budget requests that provides for support to the board.

(2) State-wide technical standards to promote and facilitate electronic information sharing and access are an essential component of acceptable and reliable public access service and complement content-related standards designed to meet those goals. The board shall:

(a) Establish technical standards to facilitate electronic access to government information and interoperability of information systems. Local governments are strongly encouraged to follow the standards established by the board; and

(b) Require agencies to consider electronic public access needs when planning new information systems or major upgrades of systems.

In developing these standards, the board is encouraged to include the state library, state archives, and appropriate representatives of state and local government.

Sec. 9. RCW 43.105.160 and 1992 c 20 s 1 are each amended to read as follows:

(1) The department shall prepare a state strategic information technology plan which shall establish a state-wide mission, goals, and objectives for the use of information technology, including goals for electronic access to government records, information, and services. The plan shall be developed in accordance with the standards and policies established by the board and shall be submitted to the board for review, modification as necessary, and approval. The department shall seek the advice of the board in the development of this plan.

The plan approved under this section shall be updated as necessary and submitted to the governor and the chairs and ranking minority members of the appropriations committees of the senate and the house of representatives.

(2) The department shall prepare a biennial state performance report on information technology based on agency performance reports required under RCW 43.105.170 and other information deemed appropriate by the department. The report shall include, but not be limited to:

(a) An evaluation of performance relating to information technology;

(b) An assessment of progress made toward implementing the state strategic information technology plan, including progress toward electronic access to public information and enabling citizens to have two-way access to public records, information, and services;

(c) An analysis of the success or failure, feasibility, progress, costs, and timeliness of implementation of major information technology projects under RCW 43.105.190;

(d) Identification of benefits, cost avoidance, and cost savings generated by major information technology projects developed under RCW 43.105.190; and

(e) An inventory of state information services, equipment, and proprietary software.

Copies of the report shall be distributed biennially to the governor and the chairs and ranking minority members of the appropriations committees of the senate and the house of representatives.

Sec. 10. RCW 43.105.170 and 1992 c 20 s 2 are each amended to read as follows:

(1) Each agency shall develop an agency strategic information technology plan which establishes agency goals and objectives regarding the development and use of information technology. Plans shall include, but not be limited to, the following:

(a) A statement of the agency's mission, goals, and objectives for information technology, including goals and objectives for achieving electronic access to agency records, information, and services;

(b) An explanation of how the agency's mission, goals, and objectives for information technology support and conform to the state strategic information technology plan developed under RCW 43.105.160;

(c) An implementation strategy to provide electronic access to public records and information. This implementation strategy must be assembled to include:

(i) Compliance with Title 40 RCW;

(ii) Adequate public notice and opportunity for comment;

(iii) Consideration of a variety of electronic technologies, including those that help transcend geographic locations, standard business hours, economic conditions of users, and disabilities;

(iv) Methods to educate both state employees and the public in the effective use of access technologies;

(d) Projects and resources required to meet the objectives of the plan; and

~~((d))~~ (e) Where feasible, estimated schedules and funding required to implement identified projects.

(2) Plans developed under subsection (1) of this section shall be submitted to the department for review and forwarded along with the department's recommendations to the board for review and approval. The board may reject, require modification to, or approve plans as deemed appropriate by the board. Plans submitted under this subsection shall be updated and submitted for review and approval as necessary.

(3) Each agency shall prepare and submit to the department a biennial performance report. The report shall include:

(a) An evaluation of the agency's performance relating to information technology;

(b) An assessment of progress made toward implementing the agency strategic information technology plan; ~~((and))~~

(c) Progress toward electronic access to public information and enabling citizens to have two-way interaction for obtaining information and services from agencies; and

(d) An inventory of agency information services, equipment, and proprietary software.

(4) The department, with the approval of the board, shall establish standards, elements, form, and format for plans and reports developed under this section.

(5) Agency activities to increase electronic access to public records and information, as required by this section, must be implemented within available resources and existing agency planning processes.

(6) The board may exempt any agency from any or all of the requirements of this section.

Sec. 11. RCW 43.105.180 and 1992 c 20 s 3 are each amended to read as follows:

Upon request of the office of financial management, the department shall evaluate agency budget requests for major information technology projects identified under RCW 43.105.190. The department shall submit recommendations for funding all or part of such requests to the office of financial management.

The department, with the advice and approval of the office of financial management, shall establish criteria for the evaluation of agency budget requests under this section. Criteria shall include, but not be limited to: Feasibility of the proposed projects, consistency with state and agency strategic information technology plans, consistency with agency goals and objectives, appropriate provision for public electronic access to information and services, costs, and benefits.

NEW SECTION. Sec. 12. COSTS AND FEES. Funding to meet the costs of providing access, including the building of the necessary information systems, the digitizing of information, developing the ability to mask nondisclosable information, and maintenance and upgrade of information access systems should come primarily from state and local appropriations, federal dollars, grants, private funds, cooperative ventures among governments, nonexclusive licensing, and public/private partnerships. Agencies should not offer customized electronic access services as the primary way of responding to requests or as a primary source of revenue. Fees for staff time to respond to requests, and other direct costs may be included in costs of providing customized access.

Agencies and local governments are encouraged to pool resources and to form cooperative ventures to provide electronic access to government records and information. State agencies are encouraged to seek federal and private grants for projects that provide increased efficiency and improve government delivery of information and services.

NEW SECTION. Sec. 13. GOVERNMENT INFORMATION LOCATOR SERVICE PILOT PROJECT. The state library, with the assistance of the department of information services and the state archives, shall establish a pilot project to design and test an electronic information locator system, allowing members of the public to locate and access electronic public records. In designing the system, the following factors shall be considered: (1) Ease of operation by citizens; (2) access through multiple technologies, such as direct dial and toll-free numbers, kiosks, and the Internet; (3) compatibility with private on-line services; and (4) capability of expanding the electronic public records included in the system. The pilot project may restrict the type and quality of electronic public records that are included in the system to test the feasibility of making electronic public records and information widely available to the public.

NEW SECTION. Sec. 14. EDUCATION IN THE USE OF TECHNOLOGY. State agencies and local governments are encouraged to provide education for their employees in the use and implementation of electronic technologies. State agencies are encouraged to make maximum use of the provisions of RCW 28B.15.558, and training offered by the state department of personnel, to maximize employee education in the creation, design, maintenance, and use of electronic information systems and improved customer service delivery.

NEW SECTION. Sec. 15. ACCURACY, INTEGRITY, AND PRIVACY OF RECORDS AND INFORMATION. State agencies and local governments

that collect and enter information concerning individuals into electronic records and information systems that will be widely accessible by the public under RCW 42.17.020 shall ensure the accuracy of this information to the extent possible. To the extent possible, information must be collected directly from, and with the consent of, the individual who is the subject of the data. Agencies shall establish procedures for correcting inaccurate information, including establishing mechanisms for individuals to review information about themselves and recommend changes in information they believe to be inaccurate. The inclusion of personal information in electronic public records that is widely available to the public should include information on the date when the data base was created or most recently updated. If personally identifiable information is included in electronic public records that are made widely available to the public, agencies must follow retention and archival schedules in accordance with chapter 40.14 RCW, retaining personally identifiable information only as long as needed to carry out the purpose for which it was collected.

NEW SECTION. Sec. 16. Section captions used in this act do not constitute any part of the law.

NEW SECTION. Sec. 17. If specific funding for the purposes of section 13 of this act is not provided by June 30, 1996, in the supplemental appropriations act, section 13 of this act is null and void.

NEW SECTION. Sec. 18. Sections 1, 2, 5, 12, and 13 of this act are added to chapter 43.105 RCW.

NEW SECTION. Sec. 19. 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, except for section 8 of this act, which takes effect June 30, 1997.

NEW SECTION. Sec. 20. Section 7 of this act expires June 30, 1997.

Passed the Senate March 2, 1996.

Passed the House February 29, 1996.

Approved by the Governor March 28, 1996.

Filed in Office of Secretary of State March 28, 1996.

CHAPTER 172

[Substitute Senate Bill 6636]

DEDICATION OF ROADSIDE REST AREAS

AN ACT Relating to dedication of roadside safety rest areas; and adding a new section to chapter 47.38 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 47.38 RCW to read as follows:

The transportation commission may designate interstate safety rest areas, as appropriate, as locations for memorial signs to prisoners of war and those missing in action. The commission shall adopt policies for the placement of memorial signs on interstate safety rest areas and may disapprove any memorial sign that it determines to be inappropriate or inconsistent with the policies. The policies shall include, but are not limited to, guidelines for the size and location of and inscriptions on memorial signs. The secretary shall adopt rules for administering this program. Nonprofit associations may have their name identified on a memorial sign if the association bears the cost of supplying and maintaining the memorial sign.

Passed the Senate March 4, 1996.

Passed the House February 27, 1996.

Approved by the Governor March 28, 1996.

Filed in Office of Secretary of State March 28, 1996.

CHAPTER 173

[Substitute Senate Bill 6656]

MANUFACTURING MACHINERY AND EQUIPMENT— SALES AND USE TAX EXEMPTIONS

AN ACT Relating to sales and use tax exemptions for manufacturing machinery and equipment; amending RCW 82.04.190 and 82.08.02565; 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 health, safety, and welfare of the people of the state of Washington are heavily dependent upon the continued encouragement, development, and expansion of opportunities for family wage employment in the state's manufacturing industries.

The legislature also finds that sales and use tax exemptions for manufacturing machinery and equipment enacted by the 1995 legislature have improved Washington's ability to compete with other states for manufacturing investment, but that additional incentives for manufacturers need to be adopted to solidify and enhance the state's competitive position.

The legislature intends to accomplish this by extending the current manufacturing machinery and equipment exemptions to allow a sales tax exemption for labor and service charges for repairing, cleaning, altering, or improving machinery and equipment, and a sales and use tax exemption for repair and replacement parts with a useful life of one year or more.

Sec. 2. RCW 82.04.190 and 1995 1st sp.s. c 3 s 4 are each amended to read as follows:

"Consumer" means the following:

(1) Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business and including, among others, without limiting the scope hereof, persons who install,

repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than for the purpose (a) of resale as tangible personal property in the regular course of business or (b) of incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers or (c) of consuming such property in producing for sale a new article of tangible personal property or a new substance, of which such property becomes an ingredient or component or as a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale or (d) purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon;

(2) Any person engaged in any business activity taxable under RCW 82.04.290 and any person who purchases, acquires, or uses any telephone service as defined in RCW 82.04.065, other than for resale in the regular course of business;

(3) Any person engaged in the business of contracting for the building, repairing or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state of Washington or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind as defined in RCW 82.04.280, in respect to tangible personal property when such person incorporates such property as an ingredient or component of such publicly owned street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right of way of such street, place, road, highway, easement, bridge, tunnel, or trestle or in or upon the site of such mass public transportation terminal or parking facility;

(4) Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business, excluding only (a) municipal corporations or political subdivisions of the state in respect to labor and services rendered to their real property which is used or held for public road purposes, and (b) the United States, instrumentalities thereof, and county and city housing authorities created pursuant to chapter 35.82 RCW in respect to labor and services rendered to their real property. Nothing contained in this or any other subsection of this definition shall be construed to modify any other definition of "consumer";

(5) Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

(6) Any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation; also, any person engaged in the business of clearing land and moving earth of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW. Any such person shall be a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person; and

(7) Any person who is a lessor of machinery and equipment, the rental of which is exempt from the tax imposed by RCW 82.08.020 under RCW 82.08.02565, with respect to the sale of or charge made for tangible personal property consumed (~~(and for labor and services rendered)~~) in respect to repairing the machinery and equipment, if the tangible personal property has a useful life of less than one year.

Nothing contained in this or any other subsection of this definition shall be construed to modify any other definition of "consumer."

Sec. 3. RCW 82.08.02565 and 1995 1st sp.s. c 3 s 2 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 shall not apply to sales to a manufacturer or processor for hire of machinery and equipment used directly in a manufacturing operation, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment, but only when the purchaser provides the seller with an exemption certificate in a form and manner prescribed by the department by rule, and the purchaser provides the department with a duplicate of the certificate or a summary of exempt sales as the department may require. The seller shall retain a copy of the certificate for the seller's files.

(2) For purposes of this section and RCW 82.12.02565:

(a) "Machinery and equipment" means industrial fixtures, devices, and support facilities, and tangible personal property that becomes an ingredient or component thereof, including repair parts and replacement parts. "Machinery and equipment" includes pollution control equipment installed and used in a manufacturing operation to prevent air pollution, water pollution, or contamination that might otherwise result from the manufacturing operation.

(b) "Machinery and equipment" does not include:

(i) Hand tools;

(ii) Property with a useful life of less than one year;

(iii) ~~((Repair parts required to restore machinery and equipment to normal working order;~~

~~—(iv) Replacement parts that do not increase productivity, improve efficiency, or extend the useful life of the machinery and equipment; or~~

~~—(v)) Buildings, other than machinery and equipment that is permanently affixed to or becomes a physical part of a building; and~~

(iv) Building fixtures that are not integral to the manufacturing operation that are permanently affixed to and become a physical part of a building, such as utility systems for heating, ventilation, air conditioning, communications, plumbing, or electrical.

(c) Machinery and equipment is "used directly" in a manufacturing operation if the machinery and equipment:

(i) Acts upon or interacts with an item of tangible personal property;

(ii) Conveys, transports, handles, or temporarily stores an item of tangible personal property at the manufacturing site;

(iii) Controls, guides, measures, verifies, aligns, regulates, or tests tangible personal property;

(iv) Provides physical support for or access to tangible personal property;

(v) Produces power for, or lubricates machinery and equipment;

(vi) Produces another item of tangible personal property for use in the manufacturing operation; or

(vii) Places tangible personal property in the container, package, or wrapping in which the tangible personal property is normally sold or transported.

(d) "Manufacturing operation" means the manufacturing of articles, substances, or commodities for sale as tangible personal property. The manufacturing operation begins at the point where the raw materials enter the manufacturing site and ends at the point where the finished product leaves the manufacturing site. The term also includes that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. The term does not include research and development, the production of electricity by a light and power business as defined in RCW 82.16.010, or the preparation of food products on the premises of a person selling food products at retail.

(e) "Cogeneration" means the simultaneous generation of electrical energy and low-grade heat from the same fuel.

***NEW SECTION. Sec. 4. This act shall take effect January 1, 1997.**

*Sec. 4 was vetoed. See message at end of chapter.

Passed the Senate March 7, 1996.

Passed the House March 7, 1996.

Approved by the Governor March 28, 1996, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 28, 1996.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 4, Substitute Senate Bill No. 6656 entitled:

"AN ACT Relating to sales and use tax exemptions for manufacturing machinery and equipment;"

Substitute Senate Bill No. 6656 provides an exemption from the sales and use taxes for repair and replacement parts with a useful life of one year or more, as well as a sales and use tax exemption for labor and service charges for repairing, cleaning, altering, or improving machinery and equipment.

I agree with the finding of the legislature that this measure would improve the ability of Washington State to compete with other states in our region for manufacturing investment. This type of legislation helps bring more family wage jobs to the state as well as enhance and solidify the state's competitive position. I further agree with the legislature's finding that the health, safety, and welfare of the people of the state of Washington are heavily dependent upon the continued development and expansion of the state's manufacturing industries. In that light, I am vetoing section 4 of Substitute Senate Bill No. 6656. This section establishes an effective date for the bill of January 1, 1997.

The necessity and importance of this type of legislation dictates that it be put into effect as soon as possible so that the economic benefits of increased employment and family wage jobs for the people of the state of Washington can begin immediately rather than next year. In addition, allowing the bill to become law within the usual 90 days after adjournment of the legislature will provide an additional \$11.2 million in sales and use tax relief to manufacturers in the state.

For this reason, I have vetoed section 4 of Substitute Senate Bill No. 6656.

With the exception of section 4, Substitute Senate Bill No. 6656 is approved."

CHAPTER 174

[House Bill 2250]

HIGHER EDUCATION COORDINATING BOARD—BUDGET REQUESTS

AN ACT Relating to duties of the higher education coordinating board; and amending RCW 28B.80.330.

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

Sec. 1. RCW 28B.80.330 and 1993 c 363 s 6 are each amended to read as follows:

The board shall perform the following planning duties in consultation with the four-year institutions, the community and technical college system, and when appropriate the work force training and education coordinating board, the superintendent of public instruction, and the independent higher educational institutions:

- (1) Develop and establish role and mission statements for each of the four-year institutions and for the community and technical college system;
- (2) Identify the state's higher education goals, objectives, and priorities;
- (3) Prepare a comprehensive master plan which includes but is not limited to:

(a) Assessments of the state's higher education needs. These assessments may include, but are not limited to: The basic and continuing needs of various age groups; business and industrial needs for a skilled work force; analyses of demographic, social, and economic trends; consideration of the changing ethnic

composition of the population and the special needs arising from such trends; college attendance, retention, and dropout rates, and the needs of recent high school graduates and placebound adults. The board should consider the needs of residents of all geographic regions, but its initial priorities should be applied to heavily populated areas underserved by public institutions;

(b) Recommendations on enrollment and other policies and actions to meet those needs;

(c) Guidelines for continuing education, adult education, public service, and other higher education programs.

The initial plan shall be submitted to the governor and the legislature by December 1, 1987. Comments on the plan from the board's advisory committees and the institutions shall be submitted with the plan.

The plan shall be updated every four years, and presented to the governor and the appropriate legislative policy committees. Following public hearings, the legislature shall, by concurrent resolution, approve or recommend changes to the initial plan, and the updates. The plan shall then become state higher education policy unless legislation is enacted to alter the policies set forth in the plan;

(4) Review, evaluate, and make recommendations on operating and capital budget requests from four-year institutions and the community and technical college system, based on the elements outlined in subsections (1), (2), and (3) of this section, and on guidelines which outline the board's fiscal priorities. These guidelines shall be distributed to the institutions and the community college board by December of each odd-numbered year. The institutions and the community college board shall submit an outline of their proposed budgets, identifying major components, to the board no later than August 1 of each even-numbered year. The board shall submit recommendations on the proposed budgets and on the board's budget priorities to the office of financial management before ~~((October 15))~~ November 1st of each even-numbered year, and to the legislature by January 1 of each odd-numbered year;

(5) Institutions and the state board for community and technical colleges shall submit any supplemental budget requests and revisions to the board at the same time they are submitted to the office of financial management. The board shall submit recommendations on the proposed supplemental budget requests to the office of financial management by November 1st and to the legislature by January 1st.

(6) Recommend legislation affecting higher education;

~~((6))~~ (7) Recommend tuition and fees policies and levels based on comparisons with peer institutions;

~~((7))~~ (8) Establish priorities and develop recommendations on financial aid based on comparisons with peer institutions;

~~((8))~~ (9) Prepare recommendations on merging or closing institutions; and

~~((9))~~ (10) Develop criteria for identifying the need for new baccalaureate institutions.

Passed the House February 5, 1996.
 Passed the Senate March 1, 1996.
 Approved by the Governor March 28, 1996.
 Filed in Office of Secretary of State March 28, 1996.

CHAPTER 175

[Second Substitute House Bill 1229]

PUBLIC EMPLOYMENT—RETIREMENT ALLOWANCES FOR SURVIVOR BENEFICIARIES

AN ACT Relating to public employment; amending RCW 2.10.146, 41.26.460, 41.32.530, 41.32.785, 41.40.188, and 41.40.660; and adding a new section to chapter 41.50 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 41.50 RCW to read as follows:

(1) The department shall designate an obligee as a survivor beneficiary of a member under RCW 2.10.146, 41.26.460, 41.32.530, 41.32.785, 41.40.188, or 41.40.660 if the department has been served by registered or certified mail with a dissolution order as defined in RCW 41.50.500 at least thirty days prior to the member's retirement. The department's duty to comply with the dissolution order arises only if the order contains a provision that states in substantially the following form:

When (the obligor) applies for retirement the department shall designate (the obligee) as survivor beneficiary with a survivor benefit.

The survivor benefit designated in the dissolution order must be consistent with the survivor benefit options authorized by statute or administrative rule.

(2) The obligee's entitlement to a survivor benefit pursuant to a dissolution order filed with the department in compliance with subsection (1) of this section shall cease upon the death of the obligee.

(3)(a) A subsequent dissolution order may order the department to divide a survivor benefit between a survivor beneficiary and an alternate payee. In order to divide a survivor benefit between more than one payee, the dissolution order must:

(i) Be ordered by a court of competent jurisdiction following notice to the survivor beneficiary;

(ii) Contain a provision that complies with subsection (1) of this section designating the survivor beneficiary;

(iii) Contain a provision clearly identifying the alternate payee or payees; and

(iv) Specify the proportional division of the benefit between the survivor beneficiary and the alternate payee or payees.

(b) The department will calculate actuarial adjustment for the court-ordered survivor benefit based upon the life of the survivor beneficiary.

(c) If the survivor beneficiary dies, the department shall terminate the benefit. If the alternate payee predeceases the survivor beneficiary, all entitlement of the alternate payee to a benefit ceases and the entire benefit will revert to the survivor beneficiary.

(d) For purposes of this section, "survivor beneficiary" means:

(i) The obligee designated in the provision of dissolution filed in compliance with subsection (1) of this section; or

(ii) In the event of more than one dissolution order, the obligee named in the first decree of dissolution received by the department.

(e) For purposes of this section, "alternate payee" means a person, other than the survivor beneficiary, who is granted a percentage of a survivor benefit pursuant to a dissolution order.

(4) The department shall under no circumstances be held liable for not designating an obligee as a survivor beneficiary under subsection (1) of this section if the dissolution order or amendment thereto is not served on the department by registered or certified mail at least thirty days prior to the member's retirement.

(5) If a dissolution order directing designation of a survivor beneficiary has been previously filed with the department in compliance with this section, no additional obligation shall arise on the part of the department upon filing of a subsequent dissolution order unless the subsequent dissolution order:

(a) Specifically amends or supersedes the dissolution order already on file with the department; and

(b) Is filed with the department by registered or certified mail at least thirty days prior to the member's retirement.

(6) The department shall designate a court-ordered survivor beneficiary pursuant to a dissolution order filed with the department before the effective date of this act only if the order:

(a) Specifically directs the member or department to make such selection;

(b) Specifies the survivor option to be selected; and

(c) The member retires after the effective date of this act.

Sec. 2. RCW 2.10.146 and 1995 c 144 s 21 are each amended to read as follows:

(1) Upon making application for a service retirement allowance under RCW 2.10.100 or a disability allowance under RCW 2.10.120, a judge who is eligible therefor shall make an election as to the manner in which such service retirement shall be paid from among the following designated options, calculated so as to be actuarially equivalent to each other:

(a) Standard allowance. A member selecting this option shall receive a retirement allowance, which shall be computed as provided in RCW 2.10.110. The retirement allowance shall be payable throughout the judge's life. However, if the judge dies before the total of the retirement allowance paid to the judge equals the amount of the judge's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person

or persons, trust, or organization as the judge has nominated by written designation duly executed and filed with the department of retirement systems or, if there is no such designated person or persons still living at the time of the judge's death, then to the surviving spouse or, if there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the judge's legal representative.

(b) The department shall adopt rules that allow a judge to select a retirement option that pays the judge a reduced retirement allowance and upon death, such portion of the judge's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a designated person. Such person shall be nominated by the judge by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A judge, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a judge is married and both the judge and the judge's spouse do not give written consent to an option under this section, the department will pay the judge a joint and fifty percent survivor benefit and record the judge's spouse as the beneficiary. Such benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under section 1 of this act has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

Sec. 3. RCW 41.26.460 and 1995 c 144 s 17 are each amended to read as follows:

(1) Upon retirement for service as prescribed in RCW 41.26.430 or disability retirement under RCW 41.26.470, a member shall elect to have the retirement allowance paid pursuant to the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons

still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option 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 and paid to a designated person. Such person shall be nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and member's spouse do not give written consent to an option under this section, the department will pay the member a joint and fifty percent survivor benefit and record the member's spouse as the beneficiary. Such benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under section 1 of this act has been filed with the department at least thirty days prior to a member's retirement;

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

Sec. 4. RCW 41.32.530 and 1995 c 144 s 12 are each amended to read as follows:

(1) Upon an application for retirement for service under RCW 41.32.480 or retirement for disability under RCW 41.32.550, approved by the department, every member shall receive the maximum retirement allowance available to him or her throughout life unless prior to the time the first installment thereof becomes due he or she has elected, by executing the proper application therefor, to receive the actuarial equivalent of his or her retirement allowance in reduced payments throughout his or her life with the following options:

(a) Standard allowance. If he or she dies before he or she has received the present value of his or her accumulated contributions at the time of his or her retirement in annuity payments, the unpaid balance shall be paid to his or her estate or to such person, trust, or organization as he or she shall have nominated by written designation executed and filed with the department.

(b) The department shall adopt rules that allow a member to select a retirement option 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 and paid

to a person who has an insurable interest in the member's life. Such person shall be nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(c) Such other benefits shall be paid to a member receiving a retirement allowance under RCW 41.32.497 as the member may designate for himself, herself, or others equal to the actuarial value of his or her retirement annuity at the time of his retirement: PROVIDED, That the board of trustees shall limit withdrawals of accumulated contributions to such sums as will not reduce the member's retirement allowance below one hundred and twenty dollars per month.

(d) A member whose retirement allowance is calculated under RCW 41.32.498 may also elect to receive a retirement allowance based on options available under this subsection that includes the benefit provided under RCW 41.32.770. This retirement allowance option shall also be calculated so as to be actuarially equivalent to the maximum retirement allowance and to the options available under this subsection.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department will pay the member a joint and fifty percent survivor benefit and record the member's spouse as the beneficiary. Such benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under section 1 of this act has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

Sec. 5. RCW 41.32.785 and 1995 c 144 s 14 are each amended to read as follows:

(1) Upon retirement for service as prescribed in RCW 41.32.765 or retirement for disability under RCW 41.32.790, a member shall elect to have the retirement allowance paid pursuant to the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written

designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option 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 and paid to a designated person. Such person shall be nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and member's spouse do not give written consent to an option under this section, the department will pay the member a joint and fifty percent survivor benefit and record the member's spouse as the beneficiary. Such benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under section I of this act has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

Sec. 6. RCW 41.40.188 and 1995 c 144 s 1 are each amended to read as follows:

(1) Upon retirement for service as prescribed in RCW 41.40.180 or retirement for disability under RCW 41.40.210 or 41.40.230, a member shall elect to have the retirement allowance paid pursuant to one of the following options calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons

still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option 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 and paid to a person nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(c) A member may elect to include the benefit provided under RCW 41.40.640 along with the retirement options available under this section. This retirement allowance option shall be calculated so as to be actuarially equivalent to the options offered under this subsection.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department shall pay a joint and fifty percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under section 1 of this act has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

Sec. 7. RCW 41.40.660 and 1995 c 144 s 6 are each amended to read as follows:

(1) Upon retirement for service as prescribed in RCW 41.40.630 or retirement for disability under RCW 41.40.670, a member shall elect to have the retirement allowance paid pursuant to one of the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons

still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option 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 and paid to a person nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department shall pay a joint and fifty percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under section I of this act has been filed with the department at least thirty days prior to a member's retirement;

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

Passed the House January 19, 1996.

Passed the Senate March 1, 1996.

Approved by the Governor March 28, 1996.

Filed in Office of Secretary of State March 28, 1996.

CHAPTER 176

[Third Substitute House Bill 1381]

SHARED LEAVE AND PERSONAL HOLIDAYS—TRANSFER

AN ACT Relating to shared leave; amending RCW 41.04.665 and 41.04.660; and creating a new section.

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

Sec. 1. RCW 41.04.665 and 1990 c 23 s 2 are each amended to read as follows:

(1) An agency head may permit an employee to receive leave under this section if:

(a) The employee suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature and which has caused, or is likely to cause, the employee to:

- (i) Go on leave without pay status; or
- (ii) Terminate state employment;
- (b) The employee's absence and the use of shared leave are justified;
- (c) The employee has depleted or will shortly deplete his or her annual leave and sick leave reserves;
- (d) The employee has abided by agency rules regarding sick leave use; and
- (e) The employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW.

(2) The agency head shall determine the amount of leave, if any, which an employee may receive under this section. However, an employee shall not receive a total of more than two hundred sixty-one days of leave.

(3) An employee may transfer annual leave, sick leave, and his or her personal holiday, as follows:

(a) An employee who has an accrued annual leave balance of more than ten days may request that the head of the agency for which the employee works transfer a specified amount of annual leave to another employee authorized to receive leave under subsection (1) of this section. In no event may the employee request a transfer of an amount of leave that would result in his or her annual leave account going below ten days. For purposes of this subsection (3)(a), annual leave does not accrue if the employee receives compensation in lieu of accumulating a balance of annual leave.

(b) An employee may transfer a specified amount of sick leave to an employee requesting shared leave only when the donating employee retains a minimum of four hundred eighty hours of sick leave after the transfer. In no event may such an employee request a transfer of more than six days of sick leave during any twelve-month period.

(c) An employee may transfer all or part of his or her personal holiday, as that term is defined under RCW 1.16.050, under the provisions of this section relating to the transfer of leave.

(4) An employee of ((a community college)) an institution of higher education under RCW 28B.10.016, school district, or educational service district who does not accrue annual leave but does accrue sick leave and who has an accrued sick leave balance of more than sixty days may request that the head of the agency for which the employee works transfer a specified amount of sick leave to another employee authorized to receive leave under subsection (1) of this section. In no event may such an employee request a transfer of more than six days of sick leave during any twelve month period, or request a transfer that would result in his or her sick leave account going below sixty days. Transfers of sick leave under this subsection are limited to transfers from employees who do not accrue annual leave. Under this subsection, "sick leave" also includes leave accrued pursuant to RCW 28A.400.300(2) or 28A.310.240(1) with compensation for illness, injury, and emergencies.

(5) Transfers of leave made by an agency head under subsections (3) and (4) of this section shall not exceed the requested amount.

(6) Leave transferred under this section may be transferred from employees of one agency to an employee of the same agency or, with the approval of the heads of both agencies, to an employee of another state agency. However, leave transferred to or from employees of school districts or educational service districts is limited to transfers to or from employees within the same employing district.

(7) While an employee is on leave transferred under this section, he or she shall continue to be classified as a state employee and shall receive the same treatment in respect to salary, wages, and employee benefits as the employee would normally receive if using accrued annual leave or sick leave.

(a) All salary and wage payments made to employees while on leave transferred under this section shall be made by the agency employing the person receiving the leave. The value of leave transferred shall be based upon the ((annual)) leave value of the person receiving the leave.

(b) In the case of leave transferred by an employee of one agency to an employee of another agency, the agencies involved shall arrange for the transfer of funds and credit for the appropriate value of leave.

(i) Pursuant to rules adopted by the office of financial management, funds shall not be transferred under this section if the transfer would violate any constitutional or statutory restrictions on the funds being transferred.

(ii) The office of financial management may adjust the appropriation authority of an agency receiving funds under this section only if and to the extent that the agency's existing appropriation authority would prevent it from expending the funds received.

(iii) Where any questions arise in the transfer of funds or the adjustment of appropriation authority, the director of financial management shall determine the appropriate transfer or adjustment.

(8) Leave transferred under this section shall not be used in any calculation to determine an agency's allocation of full time equivalent staff positions.

(9) The value of any leave transferred under this section which remains unused shall be returned at its original value to the employee or employees who transferred the leave when the agency head finds that the leave is no longer needed or will not be needed at a future time in connection with the illness or injury for which the leave was transferred. To the extent administratively feasible, the value of unused leave which was transferred by more than one employee shall be returned on a pro rata basis.

(10) An employee who uses leave that is transferred to him or her under this section may not be required to repay the value of the leave that he or she used.

Sec. 2. RCW 41.04.660 and 1990 c 23 s 1 are each amended to read as follows:

The Washington state leave sharing program is hereby created. The purpose of the program is to permit state employees, at no significantly increased cost to the state of providing annual ((~~or~~)) leave, sick leave, or personal holidays, to come to the aid of a fellow state employee who is suffering from or has a

relative or household member suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition which has caused or is likely to cause the employee to take leave without pay or terminate his or her employment.

NEW SECTION. Sec. 3. The legislative budget committee shall prepare a study of leave transfer and submit the report to the legislature on or before December 1, 1997.

Passed the House February 13, 1996.

Passed the Senate February 29, 1996.

Approved by the Governor March 28, 1996.

Filed in Office of Secretary of State March 28, 1996.

CHAPTER 177

[Engrossed Substitute House Bill 1556]

CHILD VISITATION—REVISIONS

AN ACT Relating to visitation; and amending RCW 26.09.240.

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

Sec. 1. RCW 26.09.240 and 1989 c 375 s 13 are each amended to read as follows:

~~((The court may order visitation rights for a person other than a parent when visitation may serve the best interest of the child whether or not there has been any change of circumstances.~~

~~— A person other than a parent may petition the court for visitation rights at any time.~~

~~— The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child,))~~ (1) A person other than a parent may petition the court for visitation with a child at any time or may intervene in a pending dissolution, legal separation, or modification of parenting plan proceeding. A person other than a parent may not petition for visitation under this section unless the child's parent or parents have commenced an action under this chapter.

(2) A petition for visitation with a child by a person other than a parent must be filed in the county in which the child resides.

(3) A petition for visitation or a motion to intervene pursuant to this section shall be dismissed unless the petitioner or intervenor can demonstrate by clear and convincing evidence that a significant relationship exists with the child with whom visitation is sought. If the petition or motion is dismissed for failure to establish the existence of a significant relationship, the petitioner or intervenor shall be ordered to pay reasonable attorney's fees and costs to the parent, parents, other custodian, or representative of the child who responds to this petition or motion.

(4) The court may order visitation between the petitioner or intervenor and the child between whom a significant relationship exists upon a finding supported by the evidence that the visitation is in the child's best interests.

(5)(a) Visitation with a grandparent shall be presumed to be in the child's best interests when a significant relationship has been shown to exist. This presumption may be rebutted by a preponderance of evidence showing that visitation would endanger the child's physical, mental, or emotional health.

(b) If the court finds that reasonable visitation by a grandparent would be in the child's best interest except for hostilities that exist between the grandparent and one or both of the parents or person with whom the child lives, the court may set the matter for mediation under RCW 26.09.015.

(6) The court may consider the following factors when making a determination of the child's best interests:

(a) The strength of the relationship between the child and the petitioner;

(b) The relationship between each of the child's parents or the person with whom the child is residing and the petitioner;

(c) The nature and reason for either parent's objection to granting the petitioner visitation;

(d) The effect that granting visitation will have on the relationship between the child and the child's parents or the person with whom the child is residing;

(e) The residential time sharing arrangements between the parents;

(f) The good faith of the petitioner;

(g) Any criminal history or history of physical, emotional, or sexual abuse or neglect by the petitioner; and

(h) Any other factor relevant to the child's best interest.

(7) The restrictions of RCW 26.09.191 that apply to parents shall be applied to a petitioner or intervenor who is not a parent. The nature and extent of visitation, subject to these restrictions, is in the discretion of the court.

(8) The court may order an investigation and report concerning the proposed visitation or may appoint a guardian ad litem as provided in RCW 26.09.220.

(9) Visitation granted pursuant to this section shall be incorporated into the parenting plan for the child.

(10) The court may modify or terminate visitation rights granted pursuant to this section in any subsequent modification action upon a showing that the visitation is no longer in the best interest of the child.

Passed the House January 10, 1996.

Passed the Senate March 5, 1996.

Approved by the Governor March 28, 1996.

Filed in Office of Secretary of State March 28, 1996.

CHAPTER 178

[House Bill 1627]

**OSTEOPATHIC PHYSICIANS AND SURGEONS—CORRECTION
OF OBSOLETE TERMINOLOGY**

AN ACT Relating to correcting obsolete terminology for the designation of osteopathic physician and surgeon; amending RCW 18.35.110, 18.57.001, 18.57.140, 18.71.030, 18.71.055, 18.71.205, 18.76.020, 18.76.060, 43.43.830, 48.46.170, 49.78.020, 68.50.530, 69.41.010, 69.41.030, 69.50.101, 70.05.050, 70.08.030, 70.28.031, 70.38.115, 70.96A.020, and 70.124.020; reenacting and amending RCW 18.120.020, 26.44.020, and 41.26.030; and providing an effective date.

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

Sec. 1. RCW 18.35.110 and 1993 c 313 s 4 are each amended to read as follows:

In addition to causes specified under RCW 18.130.170 and 18.130.180, any person licensed under this chapter may be subject to disciplinary action by the board for any of the following causes:

(1) For unethical conduct in dealing in hearing aids. Unethical conduct shall include, but not be limited to:

(a) Using or causing or promoting the use of, in any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is false, misleading or deceptive;

(b) Failing or refusing to honor or to perform as represented any representation, promise, agreement, or warranty in connection with the promotion, sale, dispensing, or fitting of the hearing aid;

(c) Advertising a particular model, type, or kind of hearing aid for sale which purchasers or prospective purchasers responding to the advertisement cannot purchase or are dissuaded from purchasing and where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model, type, or kind than that advertised;

(d) Falsifying hearing test or evaluation results;

(e)(i) Whenever any of the following conditions are found or should have been found to exist either from observations by the licensee or on the basis of information furnished by the prospective hearing aid user prior to fitting and dispensing a hearing aid to any such prospective hearing aid user, failing to advise that prospective hearing aid user in writing that the user should first consult a licensed physician specializing in diseases of the ear or if no such licensed physician is available in the community then to any duly licensed physician:

(A) Visible congenital or traumatic deformity of the ear, including perforation of the eardrum;

(B) History of, or active drainage from the ear within the previous ninety days;

(C) History of sudden or rapidly progressive hearing loss within the previous ninety days;

(D) Acute or chronic dizziness;

(E) Any unilateral hearing loss;

(F) Significant air-bone gap when generally acceptable standards have been established as defined by the food and drug administration;

(G) Visible evidence of significant cerumen accumulation or a foreign body in the ear canal;

(H) Pain or discomfort in the ear; or

(I) Any other conditions that the board may by rule establish. It is a violation of this subsection for any licensee or that licensee's employees and putative agents upon making such required referral for medical opinion to in any manner whatsoever disparage or discourage a prospective hearing aid user from seeking such medical opinion prior to the fitting and dispensing of a hearing aid. No such referral for medical opinion need be made by any licensee in the instance of replacement only of a hearing aid which has been lost or damaged beyond repair within six months of the date of purchase. The licensee or the licensee's employees or putative agents shall obtain a signed statement from the hearing aid user documenting the waiver of medical clearance and the waiver shall inform the prospective user that signing the waiver is not in the user's best health interest: PROVIDED, That the licensee shall maintain a copy of either the physician's statement showing that the prospective hearing aid user has had a medical evaluation or the statement waiving medical evaluation, for a period of three years after the purchaser's receipt of a hearing aid. Nothing in this section required to be performed by a licensee shall mean that the licensee is engaged in the diagnosis of illness or the practice of medicine or any other activity prohibited under the laws of this state;

(ii) Fitting and dispensing a hearing aid to any person under eighteen years of age who has not been examined and cleared for hearing aid use within the previous six months by a physician specializing in otolaryngology except in the case of replacement instruments or except in the case of the parents or guardian of such person refusing, for good cause, to seek medical opinion: PROVIDED, That should the parents or guardian of such person refuse, for good cause, to seek medical opinion, the licensee shall obtain from such parents or guardian a certificate to that effect in a form as prescribed by the department;

(iii) Fitting and dispensing a hearing aid to any person under eighteen years of age who has not been examined by an audiologist who holds at least a master's degree in audiology for recommendations during the previous six months, without first advising such person or his or her parents or guardian in writing that he or she should first consult an audiologist who holds at least a master's degree in audiology, except in cases of hearing aids replaced within six months of their purchase;

(f) Representing that the services or advice of a person licensed to practice medicine and surgery under chapter 18.71 RCW or (~~osteopathy~~) osteopathic

medicine and surgery under chapter 18.57 RCW or of a clinical audiologist will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true, or using the word "doctor," "clinic," or other like words, abbreviations, or symbols which tend to connote a medical or osteopathic medicine and surgery profession when such use is not accurate;

(g) Permitting another to use his or her license;

(h) Stating or implying that the use of any hearing aid will restore normal hearing, preserve hearing, prevent or retard progression of a hearing impairment, or any other false, misleading, or medically or audiologicaly unsupportable claim regarding the efficiency of a hearing aid;

(i) Representing or implying that a hearing aid is or will be "custom-made," "made to order," "prescription made," or in any other sense specially fabricated for an individual when that is not the case; or

(j) Directly or indirectly offering, giving, permitting, or causing to be given, money or anything of value to any person who advised another in a professional capacity as an inducement to influence that person, or to have that person influence others to purchase or contract to purchase any product sold or offered for sale by the licensee, or to influence any person to refrain from dealing in the products of competitors.

(2) Engaging in any unfair or deceptive practice or unfair method of competition in trade within the meaning of RCW 19.86.020.

(3) Aiding or abetting any violation of the rebating laws as stated in chapter 19.68 RCW.

Sec. 2. RCW 18.57.001 and 1991 c 160 s 1 are each amended to read as follows:

As used in this chapter:

(1) "Board" means the Washington state board of osteopathic medicine and surgery;

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

(3) "Secretary" means the secretary of health; and

(4) "Osteopathic medicine and surgery" means the use of any and all methods in the treatment of disease, injuries, deformities, and all other physical and mental conditions in and of human beings, including the use of osteopathic manipulative therapy. ~~((The term means the same as "osteopathy and surgery".))~~

Sec. 3. RCW 18.57.140 and 1919 c 4 s 20 are each amended to read as follows:

On all cards, signs, letterheads, envelopes and billheads used by those licensed by this chapter to practice ~~((osteopathy or osteopathy))~~ osteopathic medicine and surgery the word "osteopathic" shall always immediately precede the word "physician" and if the word "surgeon" is used in connection with said name, the word "osteopathic" shall also immediately precede said word "surgeon."

Sec. 4. RCW 18.71.030 and 1995 c 65 s 1 are each amended to read as follows:

Nothing in this chapter shall be construed to apply to or interfere in any way with the practice of religion or any kind of treatment by prayer; nor shall anything in this chapter be construed to prohibit:

(1) The furnishing of medical assistance in cases of emergency requiring immediate attention;

(2) The domestic administration of family remedies;

(3) The administration of oral medication of any nature to students by public school district employees or private elementary or secondary school employees as provided for in chapter 28A.210 RCW;

(4) The practice of dentistry, (~~osteopathy, osteopathy~~) osteopathic medicine and surgery, nursing, chiropractic, podiatric medicine and surgery, optometry, naturopathy, or any other healing art licensed under the methods or means permitted by such license;

(5) The practice of medicine in this state by any commissioned medical officer serving in the armed forces of the United States or public health service or any medical officer on duty with the United States veterans administration while such medical officer is engaged in the performance of the duties prescribed for him or her by the laws and regulations of the United States;

(6) The practice of medicine by any practitioner licensed by another state or territory in which he or she resides, provided that such practitioner shall not open an office or appoint a place of meeting patients or receiving calls within this state;

(7) The practice of medicine by a person who is a regular student in a school of medicine approved and accredited by the commission, however, the performance of such services be only pursuant to a regular course of instruction or assignments from his or her instructor, or that such services are performed only under the supervision and control of a person licensed pursuant to this chapter;

(8) The practice of medicine by a person serving a period of postgraduate medical training in a program of clinical medical training sponsored by a college or university in this state or by a hospital accredited in this state, however, the performance of such services shall be only pursuant to his or her duties as a trainee;

(9) The practice of medicine by a person who is regularly enrolled in a physician assistant program approved by the commission, however, the performance of such services shall be only pursuant to a regular course of instruction in said program and such services are performed only under the supervision and control of a person licensed pursuant to this chapter;

(10) The practice of medicine by a licensed physician assistant which practice is performed under the supervision and control of a physician licensed pursuant to this chapter;

(11) The practice of medicine, in any part of this state which shares a common border with Canada and which is surrounded on three sides by water, by a physician licensed to practice medicine and surgery in Canada or any province or territory thereof;

(12) The administration of nondental anesthesia by a dentist who has completed a residency in anesthesiology at a school of medicine approved by the commission, however, a dentist allowed to administer nondental anesthesia shall do so only under authorization of the patient's attending surgeon, obstetrician, or psychiatrist, and the commission has jurisdiction to discipline a dentist practicing under this exemption and enjoin or suspend such dentist from the practice of nondental anesthesia according to this chapter and chapter 18.130 RCW;

(13) Emergency lifesaving service rendered by a physician's trained emergency medical service intermediate life support technician and paramedic, as defined in RCW 18.71.200, if the emergency lifesaving service is rendered under the responsible supervision and control of a licensed physician;

(14) The provision of clean, intermittent bladder catheterization for students by public school district employees or private school employees as provided for in RCW 18.79.290 and 28A.210.280.

Sec. 5. RCW 18.71.055 and 1994 sp.s. c 9 s 309 are each amended to read as follows:

The commission may approve any school of medicine which is located in any state, territory, or possession of the United States, the District of Columbia, or in the Dominion of Canada, provided that it:

(1) Requires collegiate instruction which includes courses deemed by the commission to be prerequisites to medical education;

(2) Provides adequate instruction in the following subjects: Anatomy, biochemistry, microbiology and immunology, pathology, pharmacology, physiology, anaesthesiology, dermatology, gynecology, internal medicine, neurology, obstetrics, ophthalmology, orthopedic surgery, otolaryngology, pediatrics, physical medicine and rehabilitation, preventive medicine and public health, psychiatry, radiology, surgery, and urology, and such other subjects determined by the commission;

(3) Provides clinical instruction in hospital wards and out-patient clinics under guidance.

Approval may be withdrawn by the commission at any time a medical school ceases to comply with one or more of the requirements of this section.

(4) Nothing in this section shall be construed to authorize the commission to approve a school of (~~osteopathy, osteopathy~~) osteopathic medicine and surgery, or osteopathic medicine, for purposes of qualifying an applicant to be licensed under this chapter by direct licensure, reciprocity, or otherwise.

Sec. 6. RCW 18.71.205 and 1995 c 65 s 3 are each amended to read as follows:

(1) The secretary of the department of health, in conjunction with the advice and assistance of the emergency medical services licensing and certification advisory committee as prescribed in RCW 18.73.050, and the commission, shall prescribe:

(a) Practice parameters, training standards for, and levels of, physician trained emergency medical service intermediate life support technicians and paramedics;

(b) Minimum standards and performance requirements for the certification and recertification of physician's trained emergency medical service intermediate life support technicians and paramedics; and

(c) Procedures for certification, recertification, and decertification of physician's trained emergency medical service intermediate life support technicians and paramedics.

(2) Initial certification shall be for a period of three years.

(3) Recertification shall be granted upon proof of continuing satisfactory performance and education, and shall be for a period of three years.

(4) As used in chapters 18.71 and 18.73 RCW, "approved medical program director" means a person who:

(a) Is licensed to practice medicine and surgery pursuant to chapter 18.71 RCW or ((osteopathy)) osteopathic medicine and surgery pursuant to chapter 18.57 RCW; and

(b) Is qualified and knowledgeable in the administration and management of emergency care and services; and

(c) Is so certified by the department of health for a county, group of counties, or cities with populations over four hundred thousand in coordination with the recommendations of the local medical community and local emergency medical services and trauma care council.

(5) The Uniform Disciplinary Act, chapter 18.130 RCW, governs uncertified practice, the issuance and denial of certificates, and the disciplining of certificate holders under this section. The secretary shall be the disciplining authority under this section. Disciplinary action shall be initiated against a person credentialed under this chapter in a manner consistent with the responsibilities and duties of the medical program director under whom such person is responsible.

(6) Such activities of ((physician[s])) physician's trained emergency medical service intermediate life support technicians and paramedics shall be limited to actions taken under the express written or oral order of medical program directors and shall not be construed at any time to include free standing or nondirected actions, for actions not presenting an emergency or life-threatening condition.

Sec. 7. RCW 18.76.020 and 1991 c 3 s 184 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) "Poison information center medical director" means a person who: (a) Is licensed to practice medicine and surgery under chapter 18.71 RCW or ~~((osteopathy))~~ osteopathic medicine and surgery under chapter 18.57 RCW; (b) is certified by the secretary under standards adopted under RCW 18.76.050; and (c) provides services enumerated under RCW 18.76.030 ~~((and 18.76.040))~~, and is responsible for supervision of poison information specialists.

(3) "Poison information specialist" means a person who provides services enumerated under RCW 18.76.030 ~~((and 18.76.040))~~ under the supervision of a poison information center medical director and is certified by the secretary under standards adopted under RCW 18.76.050.

(4) "Secretary" means the secretary of health.

Sec. 8. RCW 18.76.060 and 1993 c 343 s 4 are each amended to read as follows:

(1) A person may not act as a poison center medical director or perform the duties of poison information specialists of a poison information center without being certified by the secretary under this chapter.

(2) Notwithstanding subsection (1) of this section, if a poison center medical director terminates certification or is decertified, that poison center medical director's authority may be delegated by the department to any other person licensed to practice medicine and surgery under chapter 18.71 RCW or ~~((osteopathy))~~ osteopathic medicine and surgery under chapter 18.57 RCW for a period of thirty days, or until a new poison center medical director is certified, whichever comes first.

Sec. 9. RCW 18.120.020 and 1995 c 323 s 15 and 1995 c 1 s 18 (Initiative Measure No. 607) are each reenacted and umended to read as follows:

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

(1) "Applicant group" includes any health professional group or organization, any individual, or any other interested party which proposes that any health professional group not presently regulated be regulated or which proposes to substantially increase the scope of practice of the profession.

(2) "Certificate" and "certification" mean a voluntary process by which a statutory regulatory entity grants recognition to an individual who (a) has met certain prerequisite qualifications specified by that regulatory entity, and (b) may assume or use "certified" in the title or designation to perform prescribed health professional tasks.

(3) "Grandfather clause" means a provision in a regulatory statute applicable to practitioners actively engaged in the regulated health profession prior to the effective date of the regulatory statute which exempts the practitioners from meeting the prerequisite qualifications set forth in the regulatory statute to perform prescribed occupational tasks.

(4) "Health professions" means and includes the following health and health-related licensed or regulated professions and occupations: Podiatric medicine and

surgery under chapter 18.22 RCW; chiropractic under chapter 18.25 RCW; dental hygiene under chapter 18.29 RCW; dentistry under chapter 18.32 RCW; denturism under chapter 18.30 RCW; dispensing opticians under chapter 18.34 RCW; hearing aids under chapter 18.35 RCW; naturopaths under chapter 18.36A RCW; embalming and funeral directing under chapter 18.39 RCW; midwifery under chapter 18.50 RCW; nursing home administration under chapter 18.52 RCW; optometry under chapters 18.53 and 18.54 RCW; ocularists under chapter 18.55 RCW; (~~osteopathy and~~) osteopathic medicine and surgery under chapters 18.57 and 18.57A RCW; pharmacy under chapters 18.64 and 18.64A RCW; medicine under chapters 18.71 and 18.71A RCW; emergency medicine under chapter 18.73 RCW; physical therapy under chapter 18.74 RCW; practical nurses under chapter 18.79 RCW; psychologists under chapter 18.83 RCW; registered nurses under chapter 18.79 RCW; occupational therapists licensed under chapter 18.59 RCW; respiratory care practitioners certified under chapter 18.89 RCW; veterinarians and animal technicians under chapter 18.92 RCW; health care assistants under chapter 18.135 RCW; massage practitioners under chapter 18.108 RCW; acupuncturists licensed under chapter 18.06 RCW; persons registered or certified under chapter 18.19 RCW; dietitians and nutritionists certified by chapter 18.138 RCW; radiologic technicians under chapter 18.84 RCW; and nursing assistants registered or certified under chapter 18.88A RCW.

(5) "Inspection" means the periodic examination of practitioners by a state agency in order to ascertain whether the practitioners' occupation is being carried out in a fashion consistent with the public health, safety, and welfare.

(6) "Legislative committees of reference" means the standing legislative committees designated by the respective rules committees of the senate and house of representatives to consider proposed legislation to regulate health professions not previously regulated.

(7) "License," "licensing," and "licensure" mean permission to engage in a health profession which would otherwise be unlawful in the state in the absence of the permission. A license is granted to those individuals who meet prerequisite qualifications to perform prescribed health professional tasks and for the use of a particular title.

(8) "Professional license" means an individual, nontransferable authorization to carry on a health activity based on qualifications which include: (a) Graduation from an accredited or approved program, and (b) acceptable performance on a qualifying examination or series of examinations.

(9) "Practitioner" means an individual who (a) has achieved knowledge and skill by practice, and (b) is actively engaged in a specified health profession.

(10) "Public member" means an individual who is not, and never was, a member of the health profession being regulated or the spouse of a member, or an individual who does not have and never has had a material financial interest in either the rendering of the health professional service being regulated or an activity directly related to the profession being regulated.

(11) "Registration" means the formal notification which, prior to rendering services, a practitioner shall submit to a state agency setting forth the name and address of the practitioner; the location, nature and operation of the health activity to be practiced; and, if required by the regulatory entity, a description of the service to be provided.

(12) "Regulatory entity" means any board, commission, agency, division, or other unit or subunit of state government which regulates one or more professions, occupations, industries, businesses, or other endeavors in this state.

(13) "State agency" includes every state office, department, board, commission, regulatory entity, and agency of the state, and, where provided by law, programs and activities involving less than the full responsibility of a state agency.

Sec. 10. RCW 26.44.020 and 1993 c 412 s 12 and 1993 c 402 s 1 are each reenacted and amended to read as follows:

For the purpose of and as used in this chapter:

(1) "Court" means the superior court of the state of Washington, juvenile department.

(2) "Law enforcement agency" means the police department, the prosecuting attorney, the state patrol, the director of public safety, or the office of the sheriff.

(3) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice podiatric medicine and surgery, optometry, chiropractic, nursing, dentistry, (~~osteopathy~~) osteopathic medicine and surgery, or medicine and surgery or to provide other health services. The term "practitioner" shall include a duly accredited Christian Science practitioner: PROVIDED, HOWEVER, That a person who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner shall not be considered, for that reason alone, a neglected person for the purposes of this chapter.

(4) "Institution" means a private or public hospital or any other facility providing medical diagnosis, treatment or care.

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

(6) "Child" or "children" means any person under the age of eighteen years of age.

(7) "Professional school personnel" shall include, but not be limited to, teachers, counselors, administrators, child care facility personnel, and school nurses.

(8) "Social service counselor" shall mean anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support or education of children, or providing social services to adults or families, including mental health, drug and alcohol treatment, and domestic violence programs, whether in an individual capacity, or as an employee or agent of any public or private organization or institution.

(9) "Psychologist" shall mean any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(10) "Pharmacist" shall mean any registered pharmacist under the provisions of chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(11) "Clergy" shall mean any regularly licensed or ordained minister, priest or rabbi of any church or religious denomination, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(12) "Abuse or neglect" shall mean the injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child, adult dependent, or developmentally disabled person by any person under circumstances which indicate that the child's or adult's health, welfare, and safety is harmed. An abused child is a child who has been subjected to child abuse or neglect as defined herein.

(13) "Child protective services section" shall mean the child protective services section of the department.

(14) "Adult dependent persons" shall be defined as those persons over the age of eighteen years who have been found to be legally incompetent or disabled pursuant to chapter 11.88 RCW.

(15) "Sexual exploitation" includes: (a) Allowing, permitting, or encouraging a child to engage in prostitution by any person; or (b) allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child by any person.

(16) "Negligent treatment or maltreatment" means an act or omission which evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the child's health, welfare, and safety.

(17) "Developmentally disabled person" means a person who has a disability defined in RCW 71A.10.020.

(18) "Child protective services" means those services provided by the department designed to protect children from child abuse and neglect and safeguard the general welfare of such children and shall include investigations of child abuse and neglect reports, including reports regarding child care centers and family child care homes, and the development, management, and provision of or referral to services to ameliorate conditions which endanger the welfare of children, the coordination of necessary programs and services relevant to the prevention, intervention, and treatment of child abuse and neglect, and services to children to ensure that each child has a permanent home. In determining whether protective services should be provided, the department shall not decline to provide such services solely because of the child's unwillingness or developmental inability to describe the nature and severity of the abuse or neglect.

(19) "Malice" or "maliciously" means an evil intent, wish, or design to vex, annoy, or injure another person. Such malice may be inferred from an act done in wilful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a wilful disregard of social duty.

(20) "Sexually aggressive youth" means a child who is defined in RCW 74.13.075(1)(b) as being a "sexually aggressive youth."

Sec. 11. RCW 41.26.030 and 1994 c 264 s 14 and 1994 c 197 s 5 are each reenacted and amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Retirement system" means the "Washington law enforcement officers' and fire fighters' retirement system" provided herein.

(2)(a) "Employer" for plan I members, means the legislative authority of any city, town, county, or district or the elected officials of any municipal corporation that employs any law enforcement officer and/or fire fighter, any authorized association of such municipalities, and, except for the purposes of RCW 41.26.150, any labor guild, association, or organization, which represents the fire fighters or law enforcement officers of at least seven cities of over 20,000 population and the membership of each local lodge or division of which is composed of at least sixty percent law enforcement officers or fire fighters as defined in this chapter.

(b) "Employer" for plan II members, means the following entities to the extent that the entity employs any law enforcement officer and/or fire fighter:

- (i) The legislative authority of any city, town, county, or district;
- (ii) The elected officials of any municipal corporation; or
- (iii) The governing body of any other general authority law enforcement agency.

(3) "Law enforcement officer" beginning January 1, 1994, means any person who is commissioned and employed by an employer on a full time, fully compensated basis to enforce the criminal laws of the state of Washington generally, with the following qualifications:

(a) No person who is serving in a position that is basically clerical or secretarial in nature, and who is not commissioned shall be considered a law enforcement officer;

(b) Only those deputy sheriffs, including those serving under a different title pursuant to county charter, who have successfully completed a civil service examination for deputy sheriff or the equivalent position, where a different title is used, and those persons serving in unclassified positions authorized by RCW 41.14.070 except a private secretary will be considered law enforcement officers;

(c) Only such full time commissioned law enforcement personnel as have been appointed to offices, positions, or ranks in the police department which have been specifically created or otherwise expressly provided for and designated

by city charter provision or by ordinance enacted by the legislative body of the city shall be considered city police officers;

(d) The term "law enforcement officer" also includes the executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26.030(2) ~~((as now or hereafter amended))~~) if that individual has five years previous membership in the retirement system established in chapter 41.20 RCW. The provisions of this subsection (3)(d) shall not apply to plan II members; and

(e) The term "law enforcement officer" also includes a person employed on or after January 1, 1993, as a public safety officer or director of public safety, so long as the job duties substantially involve only either police or fire duties, or both, and no other duties in a city or town with a population of less than ten thousand. The provisions of this subsection (3)(c) shall not apply to any public safety officer or director of public safety who is receiving a retirement allowance under this chapter as of May 12, 1993.

(4) "Fire fighter" means:

(a) Any person who is serving on a full time, fully compensated basis as a member of a fire department of an employer and who is serving in a position which requires passing a civil service examination for fire fighter, and who is actively employed as such;

(b) Anyone who is actively employed as a full time fire fighter where the fire department does not have a civil service examination;

(c) Supervisory fire fighter personnel;

(d) Any full time executive secretary of an association of fire protection districts authorized under RCW 52.12.031. The provisions of this subsection (4)(d) shall not apply to plan II members;

(e) The executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26.030(2) as now or hereafter amended), if such individual has five years previous membership in a retirement system established in chapter 41.16 or 41.18 RCW. The provisions of this subsection (4)(e) shall not apply to plan II members;

(f) Any person who is serving on a full time, fully compensated basis for an employer, as a fire dispatcher, in a department in which, on March 1, 1970, a dispatcher was required to have passed a civil service examination for fire fighter; and

(g) Any person who on March 1, 1970, was employed on a full time, fully compensated basis by an employer, and who on May 21, 1971, was making retirement contributions under the provisions of chapter 41.16 or 41.18 RCW.

(5) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(6) "Surviving spouse" means the surviving widow or widower of a member. "Surviving spouse" shall not include the divorced spouse of a member except as provided in RCW 41.26.162.

(7)(a) "Child" or "children" means an unmarried person who is under the age of eighteen or mentally or physically handicapped as determined by the

department, except a handicapped person in the full time care of a state institution, who is:

- (i) A natural born child;
- (ii) A stepchild where that relationship was in existence prior to the date benefits are payable under this chapter;
- (iii) A posthumous child;
- (iv) A child legally adopted or made a legal ward of a member prior to the date benefits are payable under this chapter; or
- (v) An illegitimate child legitimized prior to the date any benefits are payable under this chapter.

(b) A person shall also be deemed to be a child up to and including the age of twenty years and eleven months while attending any high school, college, or vocational or other educational institution accredited, licensed, or approved by the state, in which it is located, including the summer vacation months and all other normal and regular vacation periods at the particular educational institution after which the child returns to school.

(8) "Member" means any fire fighter, law enforcement officer, or other person as would apply under subsections (3) or (4) of this section whose membership is transferred to the Washington law enforcement officers' and fire fighters' retirement system on or after March 1, 1970, and every law enforcement officer and fire fighter who is employed in that capacity on or after such date.

(9) "Retirement fund" means the "Washington law enforcement officers' and fire fighters' retirement system fund" as provided for herein.

(10) "Employee" means any law enforcement officer or fire fighter as defined in subsections (3) and (4) of this section.

(11)(a) "Beneficiary" for plan I members, means any person in receipt of a retirement allowance, disability allowance, death benefit, or any other benefit described herein.

(b) "Beneficiary" for plan II 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.

(12)(a) "Final average salary" for plan I members, means (i) for a member holding the same position or rank for a minimum of twelve months preceding the date of retirement, the basic salary attached to such same position or rank at time of retirement; (ii) for any other member, including a civil service member who has not served a minimum of twelve months in the same position or rank preceding the date of retirement, the average of the greatest basic salaries payable to such member during any consecutive twenty-four month period within such member's last ten years of service for which service credit is allowed, computed by dividing the total basic salaries payable to such member during the selected twenty-four month period by twenty-four; (iii) in the case of disability of any member, the basic salary payable to such member at the time of disability

retirement; (iv) in the case of a member who hereafter vests pursuant to RCW 41.26.090, the basic salary payable to such member at the time of vesting.

(b) "Final average salary" for plan II members, means the monthly average of the member's basic salary for the highest consecutive sixty service credit months of service prior to such member's retirement, termination, or death. Periods constituting authorized unpaid leaves of absence may not be used in the calculation of final average salary.

(13)(a) "Basic salary" for plan I members, means the basic monthly rate of salary or wages, including longevity pay but not including overtime earnings or special salary or wages, upon which pension or retirement benefits will be computed and upon which employer contributions and salary deductions will be based.

(b) "Basic salary" for plan II 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. In any year in which a member serves in the legislature the member shall have the option of having such member's basic salary be the greater of:

(i) The basic salary the member would have received had such member not served in the legislature; or

(ii) Such member's actual basic salary received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because basic salary under (b)(i) of this subsection is greater than basic salary under (b)(ii) of this subsection shall be paid by the member for both member and employer contributions.

(14)(a) "Service" for plan I members, means all periods of employment for an employer as a fire fighter or law enforcement officer, for which compensation is paid, together with periods of suspension not exceeding thirty days in duration. For the purposes of this chapter service shall also include service in the armed forces of the United States as provided in RCW 41.26.190. Credit shall be allowed for all service credit months of service rendered by a member from and after the member's initial commencement of employment as a fire fighter or law enforcement officer, during which the member worked for seventy or more hours, or was on disability leave or disability retirement. Only service credit months of service shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter.

(i) For members retiring after May 21, 1971 who were employed under the coverage of a prior pension act before March 1, 1970, "service" shall also include (A) such military service not exceeding five years as was creditable to the member as of March 1, 1970, under the member's particular prior pension act, and (B) such other periods of service as were then creditable to a particular

member under the provisions of RCW 41.18.165, 41.20.160 or 41.20.170. However, in no event shall credit be allowed for any service rendered prior to March 1, 1970, where the member at the time of rendition of such service was employed in a position covered by a prior pension act, unless such service, at the time credit is claimed therefor, is also creditable under the provisions of such prior act.

(ii) A member who is employed by two employers at the same time shall only be credited with service to one such employer for any month during which the member rendered such dual service.

(b) "Service" for plan II members, means periods of employment by a member for one or more employers for which basic salary is earned for ninety or more hours per calendar month which shall constitute a service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for at least seventy hours but less than ninety hours per calendar month shall constitute one-half service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for less than seventy hours shall constitute a one-quarter service credit month.

Members of the retirement system who are elected or appointed to a state elective position may elect to continue to be members of this retirement system.

Service credit years of service shall be determined by dividing the total number of service credit months of service by twelve. Any fraction of a service credit year of service as so determined shall be taken into account in the computation of such retirement allowance or benefits.

If a member receives basic salary from two or more employers during any calendar month, the individual shall receive one service credit month's service credit during any calendar month in which multiple service for ninety or more hours is rendered; or one-half service credit month's service credit during any calendar month in which multiple service for at least seventy hours but less than ninety hours is rendered; or one-quarter service credit month during any calendar month in which multiple service for less than seventy hours is rendered.

(15) "Accumulated contributions" means the employee's contributions made by a member, including any amount paid under RCW 41.50.165(2), plus accrued interest credited thereon.

(16) "Actuarial reserve" means a method of financing a pension or retirement plan wherein reserves are accumulated as the liabilities for benefit payments are incurred in order that sufficient funds will be available on the date of retirement of each member to pay the member's future benefits during the period of retirement.

(17) "Actuarial valuation" means a mathematical determination of the financial condition of a retirement plan. It includes the computation of the present monetary value of benefits payable to present members, and the present monetary value of future employer and employee contributions, giving effect to mortality among active and retired members and also to the rates of disability, retirement, withdrawal from service, salary and interest earned on investments.

(18) "Disability board" for plan I members means either the county disability board or the city disability board established in RCW 41.26.110.

(19) "Disability leave" means the period of six months or any portion thereof during which a member is on leave at an allowance equal to the member's full salary prior to the commencement of disability retirement. The definition contained in this subsection shall apply only to plan I members.

(20) "Disability retirement" for plan I members, means the period following termination of a member's disability leave, during which the member is in receipt of a disability retirement allowance.

(21) "Position" means the employment held at any particular time, which may or may not be the same as civil service rank.

(22) "Medical services" for plan I members, shall include the following as minimum services to be provided. Reasonable charges for these services shall be paid in accordance with RCW 41.26.150.

(a) Hospital expenses: These are the charges made by a hospital, in its own behalf, for

(i) Board and room not to exceed semiprivate room rate unless private room is required by the attending physician due to the condition of the patient.

(ii) Necessary hospital services, other than board and room, furnished by the hospital.

(b) Other medical expenses: The following charges are considered "other medical expenses", provided that they have not been considered as "hospital expenses".

(i) The fees of the following:

(A) A physician or surgeon licensed under the provisions of chapter 18.71 RCW;

(B) An ~~((osteopath))~~ osteopathic physician and surgeon licensed under the provisions of chapter 18.57 RCW;

(C) A chiropractor licensed under the provisions of chapter 18.25 RCW.

(ii) The charges of a registered graduate nurse other than a nurse who ordinarily resides in the member's home, or is a member of the family of either the member or the member's spouse.

(iii) The charges for the following medical services and supplies:

(A) Drugs and medicines upon a physician's prescription;

(B) Diagnostic x-ray and laboratory examinations;

(C) X-ray, radium, and radioactive isotopes therapy;

(D) Anesthesia and oxygen;

(E) Rental of iron lung and other durable medical and surgical equipment;

(F) Artificial limbs and eyes, and casts, splints, and trusses;

(G) Professional ambulance service when used to transport the member to or from a hospital when injured by an accident or stricken by a disease;

(H) Dental charges incurred by a member who sustains an accidental injury to his or her teeth and who commences treatment by a legally licensed dentist within ninety days after the accident;

- (I) Nursing home confinement or hospital extended care facility;
- (J) Physical therapy by a registered physical therapist;
- (K) Blood transfusions, including the cost of blood and blood plasma not replaced by voluntary donors;
- (L) An optometrist licensed under the provisions of chapter 18.53 RCW.
- (23) "Regular interest" means such rate as the director may determine.
- (24) "Retiree" for persons who establish membership in the retirement system on or after October 1, 1977, means any member in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.
- (25) "Director" means the director of the department.
- (26) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).
- (27) "State elective position" means any position held by any person elected or appointed to state-wide office or elected or appointed as a member of the legislature.
- (28) "Plan I" means the law enforcement officers' and fire fighters' retirement system, plan I providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.
- (29) "Plan II" means the law enforcement officers' and fire fighters' retirement system, plan II providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.
- (30) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.
- (31) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.
- (32) "General authority law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, but not including the Washington state patrol. Such an agency, department, or division is distinguished from a limited authority law enforcement agency having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas, including but not limited to, the state departments of natural resources, fish and wildlife, and social and health services, the state gambling commission, the state lottery commission, the state parks and recreation commission, the state utilities and transportation commission, the state liquor control board, and the state department of corrections.

Sec. 12. RCW 43.43.830 and 1995 c 250 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.43.830 through 43.43.840.

(1) "Applicant" means:

(a) Any prospective employee who will or may have unsupervised access to children under sixteen years of age or developmentally disabled persons or vulnerable adults during the course of his or her employment or involvement with the business or organization;

(b) Any prospective volunteer who will have regularly scheduled unsupervised access to children under sixteen years of age, developmentally disabled persons, or vulnerable adults during the course of his or her employment or involvement with the business or organization under circumstances where such access will or may involve groups of (i) five or fewer children under twelve years of age, (ii) three or fewer children between twelve and sixteen years of age, (iii) developmentally disabled persons, or (iv) vulnerable adults; or

(c) Any prospective adoptive parent, as defined in RCW 26.33.020.

(2) "Business or organization" means a business or organization licensed in this state, any agency of the state, or other governmental entity, that educates, trains, treats, supervises, houses, or provides recreation to developmentally disabled persons, vulnerable adults, or children under sixteen years of age, including but not limited to public housing authorities, school districts, and educational service districts.

(3) "Civil adjudication" means a specific court finding of sexual abuse or exploitation or physical abuse in a dependency action under RCW 13.34.040 or in a domestic relations action under Title 26 RCW. In the case of vulnerable adults, civil adjudication means a specific court finding of abuse or financial exploitation in a protection proceeding under chapter 74.34 RCW. It does not include administrative proceedings. The term "civil adjudication" is further limited to court findings that identify as the perpetrator of the abuse a named individual, over the age of eighteen years, who was a party to the dependency or dissolution proceeding or was a respondent in a protection proceeding in which the finding was made and who contested the allegation of abuse or exploitation.

(4) "Conviction record" means "conviction record" information as defined in RCW 10.97.030(3) relating to a crime against children or other persons committed by either an adult or a juvenile. It does not include a conviction for an offense that has been the subject of an expungement, pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or a conviction that has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. It does include convictions for offenses for which the defendant received a deferred or suspended sentence, unless the record has been expunged according to law.

(5) "Crime against children or other persons" means a conviction of any of the following offenses: Aggravated murder; first or second degree murder; first or second degree kidnaping; first, second, or third degree assault; first, second, or third degree assault of a child; first, second, or third degree rape; first, second,

or third degree rape of a child; first or second degree robbery; first degree arson; first degree burglary; first or second degree manslaughter; first or second degree extortion; indecent liberties; incest; vehicular homicide; first degree promoting prostitution; communication with a minor; unlawful imprisonment; simple assault; sexual exploitation of minors; first or second degree criminal mistreatment; child abuse or neglect as defined in RCW 26.44.020; first or second degree custodial interference; malicious harassment; first, second, or third degree child molestation; first or second degree sexual misconduct with a minor; first or second degree rape of a child; patronizing a juvenile prostitute; child abandonment; promoting pornography; selling or distributing erotic material to a minor; custodial assault; violation of child abuse restraining order; child buying or selling; prostitution; felony indecent exposure; criminal abandonment; or any of these crimes as they may be renamed in the future.

(6) "Crimes relating to financial exploitation" means a conviction for first, second, or third degree extortion; first, second, or third degree theft; first or second degree robbery; forgery; or any of these crimes as they may be renamed in the future.

(7) "Disciplinary board final decision" means any final decision issued by a disciplining authority under chapter 18.130 RCW or the secretary of the department of health for the following businesses or professions:

- (a) Chiropractic;
- (b) Dentistry;
- (c) Dental hygiene;
- (d) Massage;
- (e) Midwifery;
- (f) Naturopathy;
- (g) ~~((Osteopathy))~~ Osteopathic medicine and surgery;
- (h) Physical therapy;
- (i) Physicians;
- (j) Practical nursing;
- (k) Registered nursing; and
- (l) Psychology.

"Disciplinary board final decision," for real estate brokers and salespersons, means any final decision issued by the director of the department of licensing for real estate brokers and salespersons.

(8) "Unsupervised" means not in the presence of:

(a) Another employee or volunteer from the same business or organization as the applicant; or

(b) Any relative or guardian of any of the children or developmentally disabled persons or vulnerable adults to which the applicant has access during the course of his or her employment or involvement with the business or organization.

(9) "Vulnerable adult" means "vulnerable adult" as defined in chapter 74.34 RCW, except that for the purposes of requesting and receiving background

checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

(10) "Financial exploitation" means the illegal or improper use of a vulnerable adult or that adult's resources for another person's profit or advantage.

(11) "Agency" means any person, firm, partnership, association, corporation, or facility which receives, provides services to, houses or otherwise cares for vulnerable adults.

Sec. 13. RCW 48.46.170 and 1983 c 106 s 7 are each amended to read as follows:

(1) Solicitation of enrolled participants by a health maintenance organization granted a certificate of registration, or its agents or representatives, shall not be construed to violate any provision of law relating to solicitation or advertising by health professionals.

(2) Any health maintenance organization authorized under this chapter shall not be deemed to be violating any law prohibiting the practice by unlicensed persons of (~~podiatry~~) podiatric medicine and surgery, chiropractic, dental hygiene, opticianary, dentistry, optometry, (~~osteopathy~~) osteopathic medicine and surgery, pharmacy, medicine and surgery, physical therapy, nursing, or psychology: PROVIDED, That this subsection shall not be construed to expand a health professional's scope of practice or to allow employees of a health maintenance organization to practice as a health professional unless licensed.

(3) Nothing contained in this chapter shall alter any statutory obligation, or rule (~~or regulation promulgated~~) adopted thereunder, in chapter 70.38 or 70.39 RCW.

(4) Any health maintenance organization receiving a certificate of registration pursuant to this chapter shall be exempt from the provisions of chapter 48.05 RCW, but shall be subject to chapter 70.39 RCW.

Sec. 14. RCW 49.78.020 and 1989 1st ex.s. c 11 s 2 are each amended to read as follows:

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

(1) "Child" means a biological or adopted child, or a stepchild, living with the employee.

(2) "Department" means the department of labor and industries.

(3) "Employee" means a person other than an independent contractor employed by an employer on a continuous basis for the previous fifty-two weeks for at least thirty-five hours per week.

(4) "Employer" means: (a) Any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and includes any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision, which (i) employed a daily average of one hundred or more employees during the last

calendar quarter at the place where the employee requesting leave reports for work, or (ii) employed a daily average of one hundred or more employees during the last calendar quarter within a twenty mile radius of the place where the employee requesting leave reports for work, where the employer maintains a central hiring location and customarily transfers employees among workplaces; and (b) the state, state institutions, and state agencies.

(5) "Family leave" means leave from employment to care for a newborn or newly adopted child under the age of six or a child under eighteen years old with a terminal health condition, as provided in RCW 49.78.030.

(6) "Health care provider" means a person licensed as a physician under chapter 18.71 RCW or an (~~osteopath~~) osteopathic physician and surgeon under chapter 18.57 RCW.

(7) "Parent" means a biological or adoptive parent, or a stepparent.

(8) "Reduced leave schedule" means leave scheduled for fewer than an employee's usual number of hours or days per workweek.

(9) "Terminal health condition" means a condition caused by injury, disease, or illness, that, within reasonable medical judgment, is incurable and will produce death within the period of leave to which the employee is entitled.

Sec. 15. RCW 68.50.530 and 1993 c 228 s 2 are each amended to read as follows:

Unless the context requires otherwise, the definitions in this section apply throughout RCW 68.50.520 through 68.50.630 and 68.50.901 through 68.50.904.

(1) "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death.

(2) "Decedent" means a deceased individual.

(3) "Document of gift" means a card, a statement attached to or imprinted on a motor vehicle operator's license, a will, or other writing used to make an anatomical gift.

(4) "Donor" means an individual who makes an anatomical gift of all or part of the individual's body.

(5) "Enucleator" means an individual who is qualified to remove or process eyes or parts of eyes.

(6) "Hospital" means a facility licensed under chapter 70.41 RCW, or as a hospital under the law of any state or a facility operated as a hospital by the United States government, a state, or a subdivision of a state.

(7) "Part" means an organ, tissue, eye, bone, artery, blood, fluid, or other portion of a human body.

(8) "Person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, government, governmental subdivision or agency, or any other legal or commercial entity.

(9) "Physician" or "surgeon" means an individual licensed or otherwise authorized to practice medicine and surgery or (~~osteopathy~~) osteopathic medicine and surgery under chapters 18.71 and 18.57 RCW.

(10) "Procurement organization" means a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts.

(11) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(12) "Technician" means an individual who is qualified to remove or process a part.

Sec. 16. RCW 69.41.010 and 1994 sp.s. c 9 s 736 are each amended to read as follows:

As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "Administer" means the direct application of a legend drug whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) A practitioner; or

(b) The patient or research subject at the direction of the practitioner.

(2) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a legend drug, whether or not there is an agency relationship.

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

(4) "Dispense" means the interpretation of a prescription or order for a legend drug and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(5) "Dispenser" means a practitioner who dispenses.

(6) "Distribute" means to deliver other than by administering or dispensing a legend drug.

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

(8) "Drug" means:

(a) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(c) Substances (other than food, minerals or vitamins) intended to affect the structure or any function of the body of man or animals; and

(d) Substances intended for use as a component of any article specified in clause (a), (b), or (c) of this subsection. It does not include devices or their components, parts, or accessories.

(9) "Legend drugs" means any drugs which are required by state law or regulation of the state board of pharmacy to be dispensed on prescription only or are restricted to use by practitioners only.

(10) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(11) "Practitioner" means:

(a) A physician under chapter 18.71 RCW, an osteopathic physician or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW, an optometrist under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010, an osteopathic physician assistant under chapter 18.57A RCW, a physician assistant under chapter 18.71A RCW, or a pharmacist under chapter 18.64 RCW;

(b) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a legend drug in the course of professional practice or research in this state; and

(c) A physician licensed to practice medicine and surgery or a physician licensed to practice (~~(osteopathy)~~) osteopathic medicine and surgery in any state, or province of Canada, which shares a common border with the state of Washington.

(12) "Secretary" means the secretary of health or the secretary's designee.

Sec. 17. RCW 69.41.030 and 1994 sp.s. c 9 s 737 are each amended to read as follows:

It shall be unlawful for any person to sell, deliver, or possess any legend drug except upon the order or prescription of a physician under chapter 18.71 RCW, ~~((an osteopathic physician or))~~ an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a commissioned medical or dental officer in the United States armed forces or public health service in the discharge of his or her official duties, a duly licensed physician or dentist employed by the veterans administration in the discharge of his or her official duties, a registered nurse or advanced registered nurse practitioner under chapter 18.79 RCW when authorized by the nursing care quality assurance commission, an osteopathic physician assistant under chapter 18.57A RCW when authorized by the board of osteopathic ~~((examiners))~~ medicine and surgery, a physician assistant under chapter 18.71A RCW when authorized by the medical quality assurance commission, a physician licensed to practice medicine and surgery or a physician licensed to practice ~~((osteopathy))~~ osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, or a veterinarian licensed to practice veterinary medicine, in any province of Canada which shares a common border with the state of Washington or in any state of the United States: PROVIDED, HOWEVER, That the above

provisions shall not apply to sale, delivery, or possession by drug wholesalers or drug manufacturers, or their agents or employees, or to any practitioner acting within the scope of his or her license, or to a common or contract carrier or warehouseman, or any employee thereof, whose possession of any legend drug is in the usual course of business or employment: PROVIDED FURTHER, That nothing in this chapter or chapter 18.64 RCW shall prevent a family planning clinic that is under contract with the department of social and health services from selling, delivering, possessing, and dispensing commercially prepackaged oral contraceptives prescribed by authorized, licensed health care practitioners.

Sec. 18. RCW 69.50.10I and 1994 sp.s. c 9 s 739 are each amended to read as follows:

Unless the context clearly requires otherwise, definitions of terms shall be as indicated where used in this chapter:

(a) "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

(1) a practitioner authorized to prescribe (or, by the practitioner's authorized agent); or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseperson, or employee of the carrier or warehouseperson.

(c) "Board" means the state board of pharmacy.

(d) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or board rules.

(e)(1) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and:

(i) that has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; or

(ii) with respect to a particular individual, that the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II.

(2) The term does not include:

(i) a controlled substance;

(ii) a substance for which there is an approved new drug application;

(iii) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. Sec. 355, to the extent conduct with respect to the substance is pursuant to the exemption; or

(iv) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(f) "Deliver" or "delivery," means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

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

(h) "Dispense" means the interpretation of a prescription or order for a controlled substance and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(i) "Dispenser" means a practitioner who dispenses.

(j) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

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

(l) "Drug" means (1) a controlled substance recognized as a drug in the official United States pharmacopoeia/national formulary or the official homeopathic pharmacopoeia of the United States, or any supplement to them; (2) controlled substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals; (3) controlled substances (other than food) intended to affect the structure or any function of the body of individuals or animals; and (4) controlled substances intended for use as a component of any article specified in (1), (2), or (3) of this subsection. The term does not include devices or their components, parts, or accessories.

(m) "Drug enforcement administration" means the drug enforcement administration in the United States Department of Justice, or its successor agency.

(n) "Immediate precursor" means a substance:

(1) that the state board of pharmacy has found to be and by rule designates as being the principal compound commonly used, or produced primarily for use, in the manufacture of a controlled substance;

(2) that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and

(3) the control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

(o) "Isomer" means an optical isomer, but in RCW 69.50.101(r)(5), 69.50.204(a) (12) and (34), and 69.50.206(a)(4), the term includes any geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c) the term includes any positional isomer; and in RCW 69.50.204(a)(35), 69.50.204(c), and 69.50.208(a) the term includes any positional or geometric isomer.

(p) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance:

(1) by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(q) "Marijuana" or "marihuana" means all parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(r) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium, opium derivative, and any derivative of opium or opium derivative, including their salts, isomers, and salts of isomers, whenever the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium.

(2) Synthetic opiate and any derivative of synthetic opiate, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation.

(3) Poppy straw and concentrate of poppy straw.

(4) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives or ecgonine or their salts have been removed.

(5) Cocaine, or any salt, isomer, or salt of isomer thereof.

(6) Cocaine base.

(7) Ecgonine, or any derivative, salt, isomer, or salt of isomer thereof.

(8) Any compound, mixture, or preparation containing any quantity of any substance referred to in subparagraphs (1) through (7).

(s) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term includes opium, substances derived from opium (opium derivatives), and synthetic opiates. The term does not include, unless specifically designated as controlled under RCW 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes the racemic and levorotatory forms of dextromethorphan.

(t) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

(u) "Person" means individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(v) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(w) "Practitioner" means:

(1) A physician under chapter 18.71 RCW, a physician assistant under chapter 18.71A RCW, an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW, a pharmacist under chapter 18.64 RCW or a scientific investigator under this chapter, licensed, registered or otherwise permitted insofar as is consistent with those licensing laws to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of their professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(3) A physician licensed to practice medicine and surgery, a physician licensed to practice ((osteopathy)) osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, or a veterinarian licensed to practice veterinary medicine in any state of the United States.

(x) "Prescription" means an order for controlled substances issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe controlled substances within the scope of his or her professional practice for a legitimate medical purpose.

(y) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(z) "Secretary" means the secretary of health or the secretary's designee.

(aa) "State," unless the context otherwise requires, means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(bb) "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

Sec. 19. RCW 70.05.050 and 1995 c 43 s 8 are each amended to read as follows:

The local health officer shall be an experienced physician licensed to practice medicine and surgery or ((osteopathy)) osteopathic medicine and surgery in this state and who is qualified or provisionally qualified in accordance with the standards prescribed in RCW 70.05.051 through 70.05.055 to hold the office of local health officer. No term of office shall be established for the local health officer but the local health officer shall not be removed until after notice is given, and an opportunity for a hearing before the board or official responsible for his or her appointment under this section as to the reason for his or her removal. The local health officer shall act as executive secretary to, and administrative officer for the local board of health and shall also be empowered to employ such technical and other personnel as approved by the local board of health except where the local board of health has appointed an administrative officer under RCW 70.05.040. The local health officer shall be paid such salary and allowed such expenses as shall be determined by the local board of health. In home rule counties that are part of a health district under this chapter and chapter 70.46 RCW the local health officer and administrative officer shall be appointed by the local board of health.

Sec. 20. RCW 70.08.030 and 1985 c 124 s 3 are each amended to read as follows:

Notwithstanding any provisions to the contrary contained in any city or county charter, the director of public health, under this chapter shall meet as a minimum one of the following standards of educational achievement and vocational experience to be qualified for appointment to the office:

(1) Bachelor's degree in business administration, public administration, hospital administration, management, nursing, environmental health, epidemiology, public health, or its equivalent and five years of experience in administration in a community-related field; or

(2) A graduate degree in any of the fields listed in subsection (1) of this section, or in medicine or ((osteopathy)) osteopathic medicine and surgery, plus three years of administrative experience in a community-related field.

The director shall not engage in the private practice of the director's profession during such tenure of office and shall not be included in the classified civil service of the said city or the said county.

If the director of public health does not meet the qualifications of a health officer or a physician under RCW 70.05.050, the director shall employ a person so qualified to advise the director on medical or public health matters.

Sec. 21. RCW 70.28.031 and 1967 c 54 s 4 are each amended to read as follows:

Each health officer is hereby directed to use every available means to ascertain the existence of, and immediately to investigate, all reported or suspected cases of tuberculosis in the infectious stages within his or her jurisdiction and to ascertain the sources of such infections. In carrying out such investigations, each health officer is hereby invested with full powers of inspection, examination and quarantine or isolation of all persons known to be infected with tuberculosis in an infectious stage or persons who have been previously diagnosed as having tuberculosis and who are under medical orders for periodic follow-up examinations and is hereby directed:

(a) To make such examinations as are deemed necessary of persons reasonably suspected of having tuberculosis in an infectious stage and to isolate or isolate and quarantine such persons, whenever deemed necessary for the protection of the public health.

(b) To make such examinations as deemed necessary of persons who have been previously diagnosed as having tuberculosis and who are under medical orders for periodic follow-up examinations.

(c) Follow local rules and regulations regarding examinations, quarantine, or isolation, and all rules, regulations, and orders of the state board and of the department in carrying out such examination, quarantine or isolation.

(d) Whenever the health officer shall determine on reasonable grounds that an examination of any person is necessary for the preservation and protection of the public health, he or she shall make an examination order in writing, setting forth the name of the person to be examined, the time and place of the examination, and such other terms and conditions as may be necessary to protect the public health. Nothing contained in this subdivision shall be construed to prevent any person whom the health officer determines should have an examination for infectious tuberculosis from having such an examination made by a physician of his or her own choice who is licensed to practice (~~osteopathy~~) osteopathic medicine and surgery under chapter 18.57 RCW or medicine and surgery under chapter 18.71 RCW under such terms and conditions as the health officer shall determine on reasonable grounds to be necessary to protect the public health.

(e) Whenever the health officer shall determine that quarantine or isolation in a particular case is necessary for the preservation and protection of the public health, he or she shall make an isolation or quarantine order in writing, setting forth the name of the person to be isolated, the period of time during which the order shall remain effective, the place of isolation or quarantine, and such other terms and conditions as may be necessary to protect the public health.

(f) Upon the making of an examination, isolation, or quarantine order as provided in this section, a copy of such order shall be served upon the person named in such order.

(g) Upon the receipt of information that any examination, quarantine, or isolation order, made and served as herein provided, has been violated, the health officer shall advise the prosecuting attorney of the county in which such violation has occurred, in writing, and shall submit to such prosecuting attorney the information in his or her possession relating to the subject matter of such examination, isolation, or quarantine order, and of such violation or violations thereof.

(h) Any and all orders authorized under this section shall be made by the health officer or his or her tuberculosis control officer.

Sec. 22. RCW 70.38.115 and 1995 1st sp.s. c 18 s 72 are each amended to read as follows:

(1) Certificates of need shall be issued, denied, suspended, or revoked by the designee of the secretary in accord with the provisions of this chapter and rules of the department which establish review procedures and criteria for the certificate of need program.

(2) Criteria for the review of certificate of need applications, except as provided in subsection (3) of this section for health maintenance organizations, shall include but not be limited to consideration of the following:

(a) The need that the population served or to be served by such services has for such services;

(b) The availability of less costly or more effective alternative methods of providing such services;

(c) The financial feasibility and the probable impact of the proposal on the cost of and charges for providing health services in the community to be served;

(d) In the case of health services to be provided, (i) the availability of alternative uses of project resources for the provision of other health services, (ii) the extent to which such proposed services will be accessible to all residents of the area to be served, and (iii) the need for and the availability in the community of services and facilities for osteopathic physicians and surgeons and allopathic physicians and their patients. The department shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of (~~osteopathy~~) osteopathic medicine and surgery and medicine at the student, internship, and residency training levels;

(e) In the case of a construction project, the costs and methods of the proposed construction, including the cost and methods of energy provision, and the probable impact of the construction project reviewed (i) on the cost of providing health services by the person proposing such construction project and (ii) on the cost and charges to the public of providing health services by other persons;

(f) The special needs and circumstances of osteopathic hospitals, nonallopathic services and children's hospitals;

(g) Improvements or innovations in the financing and delivery of health services which foster cost containment and serve to promote quality assurance and cost-effectiveness;

(h) In the case of health services proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed;

(i) In the case of existing services or facilities, the quality of care provided by such services or facilities in the past;

(j) In the case of hospital certificate of need applications, whether the hospital meets or exceeds the regional average level of charity care, as determined by the secretary; and

(k) In the case of nursing home applications:

(i) The availability of other nursing home beds in the planning area to be served; and

(ii) The availability of other services in the community to be served. Data used to determine the availability of other services will include but not be limited to data provided by the department of social and health services.

(3) A certificate of need application of a health maintenance organization or a health care facility which is controlled, directly or indirectly, by a health maintenance organization, shall be approved by the department if the department finds:

(a) Approval of such application is required to meet the needs of the members of the health maintenance organization and of the new members which such organization can reasonably be expected to enroll; and

(b) The health maintenance organization is unable to provide, through services or facilities which can reasonably be expected to be available to the organization, its health services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the organization and which makes such services available on a long-term basis through physicians and other health professionals associated with it.

A health care facility, or any part thereof, with respect to which a certificate of need was issued under this subsection may not be sold or leased and a controlling interest in such facility or in a lease of such facility may not be acquired unless the department issues a certificate of need approving the sale, acquisition, or lease.

(4) Until the final expiration of the state health plan as provided under RCW 70.38.919, the decision of the department on a certificate of need application shall be consistent with the state health plan in effect, except in emergency circumstances which pose a threat to the public health. The department in making its final decision may issue a conditional certificate of need if it finds that the project is justified only under specific circumstances. The conditions shall directly relate to the project being reviewed. The conditions may be released if it can be substantiated that the conditions are no longer valid and the release of such conditions would be consistent with the purposes of this chapter.

(5) Criteria adopted for review in accordance with subsection (2) of this section may vary according to the purpose for which the particular review is being conducted or the type of health service reviewed.

(6) The department shall specify information to be required for certificate of need applications. Within fifteen days of receipt of the application, the department shall request additional information considered necessary to the application or start the review process. Applicants may decline to submit requested information through written notice to the department, in which case review starts on the date of receipt of the notice. Applications may be denied or limited because of failure to submit required and necessary information.

(7) Concurrent review is for the purpose of comparative analysis and evaluation of competing or similar projects in order to determine which of the projects may best meet identified needs. Categories of projects subject to concurrent review include at least new health care facilities, new services, and expansion of existing health care facilities. The department shall specify time periods for the submission of applications for certificates of need subject to concurrent review, which shall not exceed ninety days. Review of concurrent applications shall start fifteen days after the conclusion of the time period for submission of applications subject to concurrent review. Concurrent review periods shall be limited to one hundred fifty days, except as provided for in rules adopted by the department authorizing and limiting amendment during the course of the review, or for an unresolved pivotal issue declared by the department.

(8) Review periods for certificate of need applications other than those subject to concurrent review shall be limited to ninety days. Review periods may be extended up to thirty days if needed by a review agency, and for unresolved pivotal issues the department may extend up to an additional thirty days. A review may be extended in any case if the applicant agrees to the extension.

(9) The department or its designee, shall conduct a public hearing on a certificate of need application if requested unless the review is expedited or subject to emergency review. The department by rule shall specify the period of time within which a public hearing must be requested and requirements related to public notice of the hearing, procedures, recordkeeping and related matters.

(10)(a) Any applicant denied a certificate of need or whose certificate of need has been suspended or revoked has the right to an adjudicative proceeding. The proceeding is governed by chapter 34.05 RCW, the Administrative Procedure Act.

(b) Any health care facility or health maintenance organization that: (i) Provides services similar to the services provided by the applicant and under review pursuant to this subsection; (ii) is located within the applicant's health service area; and (iii) testified or submitted evidence at a public hearing held pursuant to subsection (9) of this section, shall be provided an opportunity to present oral or written testimony and argument in a proceeding under this subsection: PROVIDED, That the health care facility or health maintenance

organization had, in writing, requested to be informed of the department's decisions.

(c) If the department desires to settle with the applicant prior to the conclusion of the adjudicative proceeding, the department shall so inform the health care facility or health maintenance organization and afford them an opportunity to comment, in advance, on the proposed settlement.

(11) An amended certificate of need shall be required for the following modifications of an approved project:

(a) A new service requiring review under this chapter;

(b) An expansion of a service subject to review beyond that originally approved;

(c) An increase in bed capacity;

(d) A significant reduction in the scope of a nursing home project without a commensurate reduction in the cost of the nursing home project, or a cost increase (as represented in bids on a nursing home construction project or final cost estimates acceptable to the person to whom the certificate of need was issued) if the total of such increases exceeds twelve percent or fifty thousand dollars, whichever is greater, over the maximum capital expenditure approved. The review of reductions or cost increases shall be restricted to the continued conformance of the nursing home project with the review criteria pertaining to financial feasibility and cost containment.

(12) An application for a certificate of need for a nursing home capital expenditure which is determined by the department to be required to eliminate or prevent imminent safety hazards or correct violations of applicable licensure and accreditation standards shall be approved.

(13)(a) Replacement of existing nursing home beds in the same planning area by an existing licensee who has operated the beds for at least one year shall not require a certificate of need under this chapter. The licensee shall give written notice of its intent to replace the existing nursing home beds to the department and shall provide the department with information as may be required pursuant to rule. Replacement of the beds by a party other than the licensee is subject to certificate of need review under this chapter, except as otherwise permitted by subsection (14) of this section.

(b) When an entire nursing home ceases operation, the licensee or any other party who has secured an interest in the beds may reserve his or her interest in the beds for eight years or until a certificate of need to replace them is issued, whichever occurs first. However, the nursing home, licensee, or any other party who has secured an interest in the beds must give notice of its intent to retain the beds to the department of health no later than thirty days after the effective date of the facility's closure. Certificate of need review shall be required for any party who has reserved the nursing home beds except that the need criteria shall be deemed met when the applicant is the licensee who had operated the beds for at least one year, who has operated the beds for at least one year immediately

preceding the reservation of the beds, and who is replacing the beds in the same planning area.

(14) In the event that a licensee, who has provided the department with notice of his or her intent to replace nursing home beds under subsection (13)(a) of this section, engages in unprofessional conduct or becomes unable to practice with reasonable skill and safety by reason of mental or physical condition, pursuant to chapter 18.130 RCW, or dies, the building owner shall be permitted to complete the nursing home bed replacement project, provided the building owner has secured an interest in the beds.

Sec. 23. RCW 70.96A.020 and 1994 c 231 s 1 are each amended to read as follows:

For the purposes of this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

- (1) "Alcoholic" means a person who suffers from the disease of alcoholism.
- (2) "Alcoholism" means a disease, characterized by a dependency on alcoholic beverages, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.
- (3) "Approved treatment program" means a discrete program of chemical dependency treatment provided by a treatment program certified by the department of social and health services as meeting standards adopted under this chapter.
- (4) "Chemical dependency" means alcoholism or drug addiction, or dependence on alcohol and one or more other psychoactive chemicals, as the context requires.
- (5) "Chemical dependency program" means expenditures and activities of the department designed and conducted to prevent or treat alcoholism and other drug addiction, including reasonable administration and overhead.
- (6) "Department" means the department of social and health services.
- (7) "Designated chemical dependency specialist" means a person designated by the county alcoholism and other drug addiction program coordinator designated under RCW 70.96A.310 to perform the commitment duties described in RCW 70.96A.140 and qualified to do so by meeting standards adopted by the department.
- (8) "Director" means the person administering the chemical dependency program within the department.
- (9) "Drug addict" means a person who suffers from the disease of drug addiction.
- (10) "Drug addiction" means a disease characterized by a dependency on psychoactive chemicals, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(11) "Emergency service patrol" means a patrol established under RCW 70.96A.170.

(12) "Gravely disabled by alcohol or other drugs" means that a person, as a result of the use of alcohol or other drugs: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by a repeated and escalating loss of cognition or volitional control over his or her actions and is not receiving care as essential for his or her health or safety.

(13) "Incapacitated by alcohol or other psychoactive chemicals" means that a person, as a result of the use of alcohol or other psychoactive chemicals, has his or her judgment so impaired that he or she is incapable of realizing and making a rational decision with respect to his or her need for treatment and presents a likelihood of serious harm to himself or herself, to any other person, or to property.

(14) "Incompetent person" means a person who has been adjudged incompetent by the superior court.

(15) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or other psychoactive chemicals.

(16) "Licensed physician" means a person licensed to practice medicine or ((osteopathy)) osteopathic medicine and surgery in the state of Washington.

(17) "Likelihood of serious harm" means either: (a) A substantial risk that physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's self; (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior that has caused the harm or that places another person or persons in reasonable fear of sustaining the harm; or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others.

(18) "Minor" means a person less than eighteen years of age.

(19) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment.

(20) "Person" means an individual, including a minor.

(21) "Secretary" means the secretary of the department of social and health services.

(22) "Treatment" means the broad range of emergency, detoxification, residential, and outpatient services and care, including diagnostic evaluation, chemical dependency education and counseling, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics and other drug addicts and their families, persons

incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons.

(23) "Treatment program" means an organization, institution, or corporation, public or private, engaged in the care, treatment, or rehabilitation of alcoholics or other drug addicts.

Sec. 24. RCW 70.124.020 and 1981 c 174 s 2 are each amended to read as follows:

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

(1) "Court" means the superior court of the state of Washington.

(2) "Law enforcement agency" means the police department, the director of public safety, or the office of the sheriff.

(3) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice (~~(podiatry)~~) podiatric medicine and surgery, optometry, pharmacy, physical therapy, chiropractic, nursing, dentistry, (~~(osteopathy)~~) osteopathic medicine and surgery, or medicine and surgery. The term "practitioner" shall include a nurses aide, a nursing home administrator licensed under chapter 18.52 RCW, and a duly accredited Christian Science practitioner: PROVIDED, HOWEVER, That a nursing home patient who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner shall not be considered, for that reason alone, a neglected patient for the purposes of this chapter.

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

(5) "Nursing home" has the meaning prescribed by RCW 18.51.010.

(6) "Social worker" means anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support, or education of nursing home patients, or providing social services to nursing home patients, whether in an individual capacity or as an employee or agent of any public or private organization or institution.

(7) "Psychologist" means any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(8) "Pharmacist" means any registered pharmacist under chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(9) "Abuse or neglect" or "patient abuse or neglect" means the nonaccidental physical injury or condition, sexual abuse, or negligent treatment of a nursing home or state hospital patient under circumstances which indicate that the patient's health, welfare, and safety is harmed thereby.

(10) "Negligent treatment" means an act or omission which evinces a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the patient's health, welfare, and safety.

(11) "State hospital" means any hospital operated and maintained by the state for the care of the mentally ill under chapter 72.23 RCW.

NEW SECTION. Sec. 25. This act shall take effect July 1, 1996.

Passed the House March 2, 1996.

Passed the Senate February 29, 1996.

Approved by the Governor March 28, 1996.

Filed in Office of Secretary of State March 28, 1996.

CHAPTER 179

[Second Engrossed House Bill 1659]

REAL ESTATE BROKERAGE RELATIONSHIPS

AN ACT Relating to real estate brokerage relationships; amending RCW 18.85.230; adding a new chapter to Title 18 RCW; creating a new section; and providing an effective date.

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

NEW SECTION. Sec. 1. DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency relationship" means the agency relationship created under this chapter or by written agreement between a licensee and a buyer and/or seller relating to the performance of real estate brokerage services by the licensee.

(2) "Agent" means a licensee who has entered into an agency relationship with a buyer or seller.

(3) "Business opportunity" means and includes a business, business opportunity, and goodwill of an existing business, or any one or combination thereof.

(4) "Buyer" means an actual or prospective purchaser in a real estate transaction, or an actual or prospective tenant in a real estate rental or lease transaction, as applicable.

(5) "Buyer's agent" means a licensee who has entered into an agency relationship with only the buyer in a real estate transaction, and includes subagents engaged by a buyer's agent.

(6) "Confidential information" means information from or concerning a principal of a licensee that:

(a) Was acquired by the licensee during the course of an agency relationship with the principal;

(b) The principal reasonably expects to be kept confidential;

(c) The principal has not disclosed or authorized to be disclosed to third parties;

(d) Would, if disclosed, operate to the detriment of the principal; and

(e) The principal personally would not be obligated to disclose to the other party.

(7) "Dual agent" means a licensee who has entered into an agency relationship with both the buyer and seller in the same transaction.

(8) "Licensee" means a real estate broker, associate real estate broker, or real estate salesperson, as those terms are defined in chapter 18.85 RCW.

(9) "Material fact" means information that substantially adversely affects the value of the property or a party's ability to perform its obligations in a real estate transaction, or operates to materially impair or defeat the purpose of the transaction. The fact or suspicion that the property, or any neighboring property, is or was the site of a murder, suicide or other death, rape or other sex crime, assault or other violent crime, robbery or burglary, illegal drug activity, gang-related activity, political or religious activity, or other act, occurrence, or use not adversely affecting the physical condition of or title to the property is not a material fact.

(10) "Principal" means a buyer or a seller who has entered into an agency relationship with a licensee.

(11) "Real estate brokerage services" means the rendering of services for which a real estate license is required under chapter 18.85 RCW.

(12) "Real estate transaction" or "transaction" means an actual or prospective transaction involving a purchase, sale, option, or exchange of any interest in real property or a business opportunity, or a lease or rental of real property. For purposes of this chapter, a prospective transaction does not exist until a written offer has been signed by at least one of the parties.

(13) "Seller" means an actual or prospective seller in a real estate transaction, or an actual or prospective landlord in a real estate rental or lease transaction, as applicable.

(14) "Seller's agent" means a licensee who has entered into an agency relationship with only the seller in a real estate transaction, and includes subagents engaged by a seller's agent.

(15) "Subagent" means a licensee who is engaged to act on behalf of a principal by the principal's agent where the principal has authorized the agent in writing to appoint subagents.

NEW SECTION. Sec. 2. RELATIONSHIPS BETWEEN LICENSEES AND THE PUBLIC. (1) A licensee who performs real estate brokerage services for a buyer is a buyer's agent unless the:

- (a) Licensee has entered into a written agency agreement with the seller;
- (b) Licensee has entered into a subagency agreement with the seller's agent;
- (c) Licensee has entered into a written agency agreement with both parties;
- (d) Licensee is the seller or one of the sellers; or
- (e) Parties agree otherwise in writing after the licensee has complied with section 3(1)(f) of this act.

(2) In a transaction in which different licensees affiliated with the same broker represent different parties, the broker is a dual agent, and must obtain the written consent of both parties as required under section 6 of this act. In such a case, each licensee shall solely represent the party with whom the licensee has an agency relationship, unless all parties agree in writing that both licensees are dual agents.

(3) A licensee may work with a party in separate transactions pursuant to different relationships, including, but not limited to, representing a party in one

transaction and at the same time not representing that party in a different transaction involving that party, if the licensee complies with this chapter in establishing the relationships for each transaction.

NEW SECTION. Sec. 3. DUTIES OF A LICENSEE GENERALLY. (1) Regardless of whether the licensee is an agent, a licensee owes to all parties to whom the licensee renders real estate brokerage services the following duties, which may not be waived:

(a) To exercise reasonable skill and care;

(b) To deal honestly and in good faith;

(c) To present all written offers, written notices and other written communications to and from either party in a timely manner, regardless of whether the property is subject to an existing contract for sale or the buyer is already a party to an existing contract to purchase;

(d) To disclose all existing material facts known by the licensee and not apparent or readily ascertainable to a party; provided that this subsection shall not be construed to imply any duty to investigate matters that the licensee has not agreed to investigate;

(e) To account in a timely manner for all money and property received from or on behalf of either party;

(f) To provide a pamphlet on the law of real estate agency in the form prescribed in section 13 of this act to all parties to whom the licensee renders real estate brokerage services, before the party signs an agency agreement with the licensee, signs an offer in a real estate transaction handled by the licensee, consents to dual agency, or waives any rights, under section 2(1)(e), 4(1)(e), 5(1)(e), or 6(2)(e) or (f) of this act, whichever occurs earliest; and

(g) To disclose in writing to all parties to whom the licensee renders real estate brokerage services, before the party signs an offer in a real estate transaction handled by the licensee, whether the licensee represents the buyer, the seller, both parties, or neither party. The disclosure shall be set forth in a separate paragraph entitled "Agency Disclosure" in the agreement between the buyer and seller or in a separate writing entitled "Agency Disclosure."

(2) Unless otherwise agreed, a licensee owes no duty to conduct an independent inspection of the property or to conduct an independent investigation of either party's financial condition, and owes no duty to independently verify the accuracy or completeness of any statement made by either party or by any source reasonably believed by the licensee to be reliable.

NEW SECTION. Sec. 4. DUTIES OF A SELLER'S AGENT. (1) Unless additional duties are agreed to in writing signed by a seller's agent, the duties of a seller's agent are limited to those set forth in section 3 of this act and the following, which may not be waived except as expressly set forth in (e) of this subsection:

(a) To be loyal to the seller by taking no action that is adverse or detrimental to the seller's interest in a transaction;

(b) To timely disclose to the seller any conflicts of interest;

(c) To advise the seller to seek expert advice on matters relating to the transaction that are beyond the agent's expertise;

(d) Not to disclose any confidential information from or about the seller, except under subpoena or court order, even after termination of the agency relationship; and

(e) Unless otherwise agreed to in writing after the seller's agent has complied with section 3(1)(f) of this act, to make a good faith and continuous effort to find a buyer for the property; except that a seller's agent is not obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale.

(2) A seller's agent may show alternative properties not owned by the seller to prospective buyers and may list competing properties for sale without breaching any duty to the seller.

NEW SECTION. Sec. 5. DUTIES OF A BUYER'S AGENT. (1) Unless additional duties are agreed to in writing signed by a buyer's agent, the duties of a buyer's agent are limited to those set forth in section 3 of this act and the following, which may not be waived except as expressly set forth in (e) of this subsection:

(a) To be loyal to the buyer by taking no action that is adverse or detrimental to the buyer's interest in a transaction;

(b) To timely disclose to the buyer any conflicts of interest;

(c) To advise the buyer to seek expert advice on matters relating to the transaction that are beyond the agent's expertise;

(d) Not to disclose any confidential information from or about the buyer, except under subpoena or court order, even after termination of the agency relationship; and

(e) Unless otherwise agreed to in writing after the buyer's agent has complied with section 3(1)(f) of this act, to make a good faith and continuous effort to find a property for the buyer; except that a buyer's agent is not obligated to: (i) Seek additional properties to purchase while the buyer is a party to an existing contract to purchase; or (ii) show properties as to which there is no written agreement to pay compensation to the buyer's agent.

(2) A buyer's agent may show properties in which the buyer is interested to other prospective buyers without breaching any duty to the buyer.

NEW SECTION. Sec. 6. DUTIES OF A DUAL AGENT. (1) A licensee may act as a dual agent only with the written consent of both parties to the transaction after the dual agent has complied with section 3(1)(f) of this act, which consent must include a statement of the terms of compensation.

(2) Unless additional duties are agreed to in writing signed by a dual agent, the duties of a dual agent are limited to those set forth in section 3 of this act and the following, which may not be waived except as expressly set forth in (e) and (f) of this subsection:

(a) To take no action that is adverse or detrimental to either party's interest in a transaction;

(b) To timely disclose to both parties any conflicts of interest;

(c) To advise both parties to seek expert advice on matters relating to the transaction that are beyond the dual agent's expertise;

(d) Not to disclose any confidential information from or about either party, except under subpoena or court order, even after termination of the agency relationship;

(e) Unless otherwise agreed to in writing after the dual agent has complied with section 3(1)(f) of this act, to make a good faith and continuous effort to find a buyer for the property; except that a dual agent is not obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale; and

(f) Unless otherwise agreed to in writing after the dual agent has complied with section 3(1)(f) of this act, to make a good faith and continuous effort to find a property for the buyer; except that a dual agent is not obligated to: (i) Seek additional properties to purchase while the buyer is a party to an existing contract to purchase; or (ii) show properties as to which there is no written agreement to pay compensation to the dual agent.

(3) A dual agent may show alternative properties not owned by the seller to prospective buyers and may list competing properties for sale without breaching any duty to the seller.

(4) A dual agent may show properties in which the buyer is interested to other prospective buyers without breaching any duty to the buyer.

NEW SECTION. Sec. 7. DURATION OF AGENCY RELATIONSHIP.

(1) The agency relationships set forth in this chapter commence at the time that the licensee undertakes to provide real estate brokerage services to a principal and continue until the earliest of the following:

(a) Completion of performance by the licensee;

(b) Expiration of the term agreed upon by the parties; or

(c) Termination of the relationship by mutual agreement of the parties.

(2) Except as otherwise agreed to in writing, a licensee owes no further duty after termination of the agency relationship, other than the duties of:

(a) Accounting for all moneys and property received during the relationship; and

(b) Not disclosing confidential information.

NEW SECTION. Sec. 8. COMPENSATION. (1) In any real estate transaction, the broker's compensation may be paid by the seller, the buyer, a third party, or by sharing the compensation between brokers.

(2) An agreement to pay or payment of compensation does not establish an agency relationship between the party who paid the compensation and the licensee.

(3) A seller may agree that a seller's agent may share with another broker the compensation paid by the seller.

(4) A buyer may agree that a buyer's agent may share with another broker the compensation paid by the buyer.

(5) A broker may be compensated by more than one party for real estate brokerage services in a real estate transaction, if those parties consent in writing at or before the time of signing an offer in the transaction.

(6) A buyer's agent or dual agent may receive compensation based on the purchase price without breaching any duty to the buyer.

(7) Nothing contained in this chapter obligates a buyer or seller to pay compensation to a licensee, unless the buyer or seller has entered into a written agreement with the licensee specifying the terms of such compensation.

NEW SECTION. Sec. 9. VICARIOUS LIABILITY. (1) A principal is not liable for an act, error, or omission by an agent or subagent of the principal arising out of an agency relationship:

(a) Unless the principal participated in or authorized the act, error, or omission; or

(b) Except to the extent that: (i) The principal benefited from the act, error, or omission; and (ii) the court determines that it is highly probable that the claimant would be unable to enforce a judgment against the agent or subagent.

(2) A licensee is not liable for an act, error, or omission of a subagent under this chapter, unless the licensee participated in or authorized the act, error or omission. This subsection does not limit the liability of a real estate broker for an act, error, or omission by an associate real estate broker or real estate salesperson licensed to that broker.

NEW SECTION. Sec. 10. IMPUTED KNOWLEDGE AND NOTICE. (1) Unless otherwise agreed to in writing, a principal does not have knowledge or notice of any facts known by an agent or subagent of the principal that are not actually known by the principal.

(2) Unless otherwise agreed to in writing, a licensee does not have knowledge or notice of any facts known by a subagent that are not actually known by the licensee. This subsection does not limit the knowledge imputed to a real estate broker of any facts known by an associate real estate broker or real estate salesperson licensed to such broker.

NEW SECTION. Sec. 11. INTERPRETATION. This chapter supersedes only the duties of the parties under the common law, including fiduciary duties of an agent to a principal, to the extent inconsistent with this chapter. The common law continues to apply to the parties in all other respects. This chapter does not affect the duties of a licensee while engaging in the authorized or unauthorized practice of law as determined by the courts of this state. This chapter shall be construed broadly.

NEW SECTION. Sec. 12. EFFECTIVE DATE. This chapter shall take effect on January 1, 1997. This chapter does not apply to an agency relationship

entered into before January 1, 1997, unless the principal and agent agree in writing that this chapter will, as of January 1, 1997, apply to such agency relationship.

NEW SECTION. Sec. 13. PAMPHLET ON THE LAW OF REAL ESTATE AGENCY. The pamphlet required under section 3(1)(f) of this act shall consist of the entire text of sections 1 through 12 of this act with a separate cover page. The pamphlet shall be 8 1/2 by 11 inches in size, the text shall be in print no smaller than 10-point type, the cover page shall be in print no smaller than 12-point type, and the title of the cover page "The Law of Real Estate Agency" shall be in print no smaller than 18-point type. The cover page shall be in the following form:

The Law of Real Estate Agency

This pamphlet describes your legal rights in dealing with a real estate broker or salesperson. Please read it carefully before signing any documents.

The following is only a brief summary of the attached law:

Sec. 1. Definitions. Defines the specific terms used in the law.

Sec. 2. Relationships between Licensees and the Public. States that a licensee who works with a buyer or tenant represents that buyer or tenant — unless the licensee is the listing agent, a seller's subagent, a dual agent, the seller personally or the parties agree otherwise. Also states that in a transaction involving two different licensees affiliated with the same broker, the broker is a dual agent and each licensee solely represents his or her client — unless the parties agree in writing that both licensees are dual agents.

Sec. 3. Duties of a Licensee Generally. Prescribes the duties that are owed by all licensees, regardless of who the licensee represents. Requires disclosure of the licensee's agency relationship in a specific transaction.

Sec. 4. Duties of a Seller's Agent. Prescribes the additional duties of a licensee representing the seller or landlord only.

Sec. 5. Duties of a Buyer's Agent. Prescribes the additional duties of a licensee representing the buyer or tenant only.

Sec. 6. Duties of a Dual Agent. Prescribes the additional duties of a licensee representing both parties in the same transaction, and requires the written consent of both parties to the licensee acting as a dual agent.

Sec. 7. Duration of Agency Relationship. Describes when an agency relationship begins and ends. Provides that the duties of accounting and confidentiality continue after the termination of an agency relationship.

Sec. 8. Compensation. Allows brokers to share compensation with cooperating brokers. States that payment of compensation does not necessarily establish an agency relationship. Allows brokers to receive

compensation from more than one party in a transaction with the parties' consent.

Sec. 9. Vicarious Liability. Eliminates the common law liability of a party for the conduct of the party's agent or subagent, unless the agent or subagent is insolvent. Also limits the liability of a broker for the conduct of a subagent associated with a different broker.

Sec. 10. Imputed Knowledge and Notice. Eliminates the common law rule that notice to or knowledge of an agent constitutes notice to or knowledge of the principal.

Sec. 11. Interpretation. This law replaces the fiduciary duties owed by an agent to a principal under the common law, to the extent that it conflicts with the common law.

Sec. 12. Effective Date. This law generally takes effect on January 1, 1997.

NEW SECTION. Sec. 14. VIOLATION OF LICENSING LAW. A violation of section 3 of this act is a violation of RCW 18.85.230.

NEW SECTION. Sec. 15. CAPTIONS NOT PART OF LAW. Captions used in this chapter do not constitute any part of the law.

NEW SECTION. Sec. 16. Sections 1 through 15 of this act shall constitute a new chapter in Title 18 RCW.

NEW SECTION. Sec. 17. Chapter 18.— RCW (sections 1 through 15 of this act) is intended to supersede WAC 308-124D-040.

Sec. 18. RCW 18.85.230 and 1990 c 85 s 1 are each amended to read as follows:

The director may, upon his or her own motion, and shall upon verified complaint in writing by any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate broker, associate real estate broker, or real estate salesperson, regardless of whether the transaction was for his or her own account or in his or her capacity as broker, associate real estate broker, or real estate salesperson, and may impose any one or more of the following sanctions: Suspend or revoke, levy a fine not to exceed one thousand dollars for each offense, require the completion of a course in a selected area of real estate practice relevant to the section of this chapter or rule violated, or deny the license of any holder or applicant who is guilty of:

(1) Obtaining a license by means of fraud, misrepresentation, concealment, or through the mistake or inadvertence of the director;

(2) Violating any of the provisions of this chapter or any lawful rules or regulations made by the director pursuant thereto or violating a provision of chapter 64.36, 19.105, or 58.19 RCW or section 3 of this act or the rules adopted under those chapters or section;

(3) Being convicted in a court of competent jurisdiction of this or any other state, or federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or any similar

offense or offenses: PROVIDED, That for the purposes of this section being convicted shall include all instances in which a plea of guilty or nolo contendere is the basis for the conviction, and all proceedings in which the sentence has been deferred or suspended;

(4) Making, printing, publishing, distributing, or causing, authorizing, or knowingly permitting the making, printing, publication or distribution of false statements, descriptions or promises of such character as to reasonably induce any person to act thereon, if the statements, descriptions or promises purport to be made or to be performed by either the licensee or his or her principal and the licensee then knew or, by the exercise of reasonable care and inquiry, could have known, of the falsity of the statements, descriptions or promises;

(5) Knowingly committing, or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme or device whereby any other person lawfully relies upon the word, representation or conduct of the licensee;

(6) Accepting the services of, or continuing in a representative capacity, any associate broker or salesperson who has not been granted a license, or after his or her license has been revoked or during a suspension thereof;

(7) Conversion of any money, contract, deed, note, mortgage, or abstract or other evidence of title, to his or her own use or to the use of his or her principal or of any other person, when delivered to him or her in trust or on condition, in violation of the trust or before the happening of the condition; and failure to return any money or contract, deed, note, mortgage, abstract or other evidence of title within thirty days after the owner thereof is entitled thereto, and makes demand therefor, shall be prima facie evidence of such conversion;

(8) Failing, upon demand, to disclose any information within his or her knowledge to, or to produce any document, book or record in his or her possession for inspection of the director or his or her authorized representatives acting by authority of law;

(9) Continuing to sell any real estate, or operating according to a plan of selling, whereby the interests of the public are endangered, after the director has, by order in writing, stated objections thereto;

(10) Committing any act of fraudulent or dishonest dealing or a crime involving moral turpitude, and a certified copy of the final holding of any court of competent jurisdiction in such matter shall be conclusive evidence in any hearing under this chapter;

(11) Advertising in any manner without affixing the broker's name as licensed, and in the case of a salesperson or associate broker, without affixing the name of the broker as licensed for whom or under whom the salesperson or associate broker operates, to the advertisement; except, that a real estate broker, associate real estate broker, or real estate salesperson advertising their personally owned real property must only disclose that they hold a real estate license;

(12) Accepting other than cash or its equivalent as earnest money unless that fact is communicated to the owner prior to his or her acceptance of the offer to purchase, and such fact is shown in the earnest money receipt;

(13) Charging or accepting compensation from more than one party in any one transaction without first making full disclosure in writing of all the facts to all the parties interested in the transaction;

(14) Accepting, taking or charging any undisclosed commission, rebate or direct profit on expenditures made for the principal;

(15) Accepting employment or compensation for appraisal of real property contingent upon reporting a predetermined value;

(16) Issuing an appraisal report on any real property in which the broker, associate broker, or salesperson has an interest unless his or her interest is clearly stated in the appraisal report;

(17) Misrepresentation of his or her membership in any state or national real estate association;

(18) Discrimination against any person in hiring or in sales activity, on the basis of race, color, creed or national origin, or violating any of the provisions of any state or federal antidiscrimination law;

(19) Failing to keep an escrow or trustee account of funds deposited with him or her relating to a real estate transaction, for a period of three years, showing to whom paid, and such other pertinent information as the director may require, such records to be available to the director, or his or her representatives, on demand, or upon written notice given to the bank;

(20) Failing to preserve for three years following its consummation records relating to any real estate transaction;

(21) Failing to furnish a copy of any listing, sale, lease or other contract relevant to a real estate transaction to all signatories thereof at the time of execution;

(22) Acceptance by a branch manager, associate broker, or salesperson of a commission or any valuable consideration for the performance of any acts specified in this chapter, from any person, except the licensed real estate broker with whom he or she is licensed;

(23) To direct any transaction involving his or her principal, to any lending institution for financing or to any escrow company, in expectation of receiving a kickback or rebate therefrom, without first disclosing such expectation to his or her principal;

(24) Buying, selling, or leasing directly, or through a third party, any interest in real property without disclosing in writing that he or she holds a real estate license;

(25) In the case of a broker licensee, failing to exercise adequate supervision over the activities of his or her licensed associate brokers and salespersons within the scope of this chapter;

(26) Any conduct in a real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness or incompetency;

(27) Acting as a mobile home and travel trailer dealer or salesperson, as defined in RCW 46.70.011 as now or hereafter amended, without having a license to do so;

(28) Failing to assure that the title is transferred under chapter 46.12 RCW when engaging in a transaction involving a mobile home as a broker, associate broker, or salesperson; or

(29) Violation of an order to cease and desist which is issued by the director under this chapter.

NEW SECTION. **Sec. 19.** This act shall take effect January 1, 1997.

Passed the House February 8, 1996.

Passed the Senate February 27, 1996.

Approved by the Governor March 28, 1996.

Filed in Office of Secretary of State March 28, 1996.

CHAPTER 180

[Engrossed Substitute House Bill 1704]

SELLERS OF TRAVEL—REGISTRATION REQUIREMENTS ELIMINATED

AN ACT Relating to sellers of travel; amending RCW 19.138.021, 19.138.030, 19.138.040, 19.138.100, 19.138.110, 19.138.130, and 19.138.140; creating a new section; repealing RCW 19.138.055; and declaring an emergency.

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

Sec. 1. RCW 19.138.021 and 1994 c 237 s 2 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 licensing.

(2) "Director" means the director of licensing or the director's designee.

(3) "Seller of travel" means a person, firm, or corporation both inside and outside the state of Washington, who transacts business with Washington consumers ~~((, including, but not limited to, travel agencies, who sell, provide, furnish contracts for, arrange, or advertise, either directly or indirectly, by any means or method, to arrange or book any travel services including travel reservations or accommodations, tickets for domestic or foreign travel by air, rail, ship, bus, or other medium of transportation or hotel or other lodging accommodation and vouchers or coupons to be redeemed for future travel or accommodations for a fee, commission, or other valuable consideration))~~ for travel services.

(a) "Seller of travel" includes a travel agent and any person who is an independent contractor or outside agent for a travel agency or other seller of travel whose principal duties include consulting with and advising persons concerning travel arrangements or accommodations in the conduct or administration of its business. If a seller of travel is employed by a seller of travel who is registered under this chapter, the employee need not also be registered.

(b) "Seller of travel" does not include:

(i) An air carrier;

(ii) An owner or operator of a vessel, including an ocean common carrier as defined in 46 U.S.C. App. 1702(18), an owner or charterer of a vessel that is required to establish its financial responsibility in accordance with the requirements of the federal maritime commission, 46 U.S.C. App. 817 (e), and a steamboat company as defined in RCW 84.12.200 whether or not operating over and upon the waters of this state;

(iii) A motor carrier;

(iv) A rail carrier;

(v) A charter party carrier of passengers as defined in RCW 81.70.020;

(vi) An auto transportation company as defined in RCW 81.68.010;

(vii) A hotel or other lodging accommodation;

(viii) An affiliate of any person or entity described in (i) through (vii) of this subsection (3)(b) that is primarily engaged in the sale of travel services provided by the person or entity. For purposes of this subsection (3)(b)(viii), an "affiliate" means a person or entity owning, owned by, or under common ownership, with "owning," "owned," and "ownership" referring to equity holdings of at least eighty percent;

(ix) Direct providers of transportation by air, sea, or ground, or hotel or other lodging accommodations who do not book or arrange any other travel services.

(4) "Travel services" includes transportation by air, sea, or ~~((rail))~~ ground ~~((transportation))~~, hotel or any lodging accommodations, ~~((or))~~ package tours, ~~((whether offered or sold on a wholesale or retail basis))~~ or vouchers or coupons to be redeemed for future travel or accommodations for a fee, commission, or other valuable consideration.

(5) "Advertisement" includes, but is not limited to, a written or graphic representation in a card, brochure, newspaper, magazine, directory listing, or display, and oral, written, or graphic representations made by radio, television, or cable transmission that relates to travel services.

(6) "Transacts business with Washington consumers" means to directly offer or sell travel services to Washington consumers, including the placement of advertising in media based in the state of Washington or that is primarily directed to Washington residents. Advertising placed in national print or electronic media alone does not constitute "transacting business with Washington consumers." Those entities who only wholesale travel services are not "transacting business with Washington consumers" for the purposes of this chapter.

Sec. 2. RCW 19.138.030 and 1994 c 237 s 10 are each amended to read as follows:

A seller of travel shall not advertise that ~~((air, sea, or land transportation either separately or in conjunction with other))~~ any travel services ~~((is))~~ are or may be available unless he or she has, prior to the advertisement, determined that

the product advertised was available at the time the advertising was placed. This determination can be made by the seller of travel either by use of an airline computer reservation system, or by written confirmation from the vendor whose program is being advertised.

It is the responsibility of the seller of travel to keep written or printed documentation of the steps taken to verify that the advertised offer was available at the time the advertising was placed. These records are to be maintained for at least two years after the placement of the advertisement.

Sec. 3. RCW 19.138.040 and 1994 c 237 s 11 are each amended to read as follows:

At or prior to the time of full or partial payment for ~~((air, sea, or land transportation or))~~ any ~~((other))~~ travel services ~~((offered by the seller of travel in conjunction with the transportation))~~, the seller of travel shall furnish to the person making the payment a written statement conspicuously setting forth the ~~((following))~~ information contained in subsections (1) through (6) of this section. If the sale of travel services is made over the telephone or by other electronic media and payment is made by credit or debit card, the seller of travel shall transmit to the person making the payment the written statement required by this section within three business days of the consumer's credit or debit card authorization. The written statement shall contain the following information:

(1) The name and business address and telephone number of the seller of travel.

(2) The amount paid, the date of such payment, the purpose of the payment made, and an itemized statement of the balance due, if any.

(3) The registration number of the seller of travel required by this chapter.

(4) The name of the vendor with whom the seller of travel has contracted to provide travel arrangements for a consumer and all pertinent information relating to the travel as known by the seller of travel at the time of booking. The seller of travel will make known further details as soon as received from the vendor. All information will be provided with final documentation.

(5) The conditions, if any, upon which the contract between the seller of travel and the passenger may be canceled, and the rights and obligations of all parties in the event of cancellation.

(6) A statement in eight-point boldface type in substantially the following form:

"If transportation or other services are canceled by the seller of travel, all sums paid to the seller of travel for services not performed in accordance with the contract between the seller of travel and the purchaser will be refunded within thirty days of receiving the funds from the vendor with whom the services were arranged, or if the funds were not sent to the vendor, the funds shall be returned within fourteen days after cancellation by the seller of travel to the purchaser unless the purchaser requests the seller of travel to apply the money to another travel product and/or date."

Sec. 4. RCW 19.138.100 and 1994 c 237 s 3 are each amended to read as follows:

No person, firm, or corporation may act or hold itself out as a seller of travel unless, prior to engaging in the business of selling or advertising to sell travel services, the person, firm, or corporation registers with the director under this chapter and rules adopted under this chapter.

(1) The registration number must be conspicuously posted in the place of business and must be included in all advertisements. Any corporation which issues a class of equity securities registered under section 12 of the securities exchange act of 1934, and any subsidiary, the majority of voting stock of which is owned by such corporation including any wholly owned subsidiary of such corporation are not required to include company registration numbers in advertisements.

(2) The director shall issue duplicate registrations upon payment of a nominal duplicate registration fee to valid registration holders operating more than one office.

(3) No registration is assignable or transferable.

(4) If a registered seller of travel sells his or her business, when the new owner becomes responsible for the business, the new owner must comply with all provisions of this chapter, including registration.

(5) If a seller of travel is employed by or under contract as an independent contractor or an outside agent of a seller of travel who is registered under this chapter, the employee, independent contractor, or outside agent need not also be registered if:

(a) The employee, independent contractor, or outside agent is conducting business as a seller of travel in the name of and under the registration of the registered seller of travel; and

(b) All money received for travel services by the employee, independent contractor, or outside agent is collected in the name of the registered seller of travel and deposited directly into the registered seller of travel's trust account as required under this chapter.

Sec. 5. RCW 19.138.110 and 1994 c 237 s 4 are each amended to read as follows:

An application for registration as a seller of travel shall be submitted in the form prescribed by rule by the director, and shall contain but not be limited to the following:

(1) The name, address, and telephone number of the seller of travel;

(2) Proof that the seller of travel holds a valid business license in the state of its principal state of business;

(3) A registration fee in an amount determined under RCW 43.24.086;

(4) The names, ((address)) business addresses, and ((social security)) business phone numbers of all employees, independent contractors, or outside agents who sell travel and are covered by the seller of travel's registration. This subsection shall not apply to the out-of-state employees of a corporation that

issues a class of equity securities registered under section 12 of the securities exchange act of 1934, and any subsidiary, the majority of voting stock of which is owned by the corporation;

(5) A report prepared and signed by a bank officer, licensed public accountant, or certified public accountant or other report, approved by the director, that verifies that the seller of travel maintains a trust account at a federally insured financial institution located in Washington state, or other approved account (~~(at a federally insured institution located in the state of Washington)~~), the location and number of that trust account or other approved account, and verifying that the account (~~(is maintained and used)~~) exists as required by RCW 19.138.140. The director, by rule, may permit alternatives to the report that provides for at least the same level of verification.

Sec. 6. RCW 19.138.130 and 1994 c 237 s 6 are each amended to read as follows:

(1) The director may deny, suspend, or revoke the registration of a seller of travel if the director finds that the applicant:

(a) Was previously the holder of a registration issued under this chapter, and the registration was revoked for cause and never reissued by the director, or the registration was suspended for cause and the terms of the suspension have not been fulfilled;

(b) Has been found guilty of a felony within the past five years involving moral turpitude, or of a misdemeanor concerning fraud or conversion, or suffers a judgment in a civil action involving willful fraud, misrepresentation, or conversion;

(c) Has made a false statement of a material fact in an application under this chapter or in data attached to it;

(d) Has violated this chapter or failed to comply with a rule adopted by the director under this chapter;

(e) Has failed to display the registration as provided in this chapter;

(f) Has published or circulated a statement with the intent to deceive, misrepresent, or mislead the public; or

(g) Has committed a fraud or fraudulent practice in the operation and conduct of a travel agency business, including, but not limited to, intentionally misleading advertising(~~(; or~~

~~(h) Has aided or abetted a person, firm, or corporation that they know has not registered in this state in the business of conducting a travel agency or other sale of travel)).~~

(2) If the seller of travel is found in violation of this chapter or in violation of the consumer protection act, chapter 19.86 RCW, by the entry of a judgment or by settlement of a claim, the director may revoke the registration of the seller of travel, and the director may reinstate the registration at the director's discretion.

Sec. 7. RCW 19.138.140 and 1994 c 237 s 8 are each amended to read as follows:

(1) ~~((Within five business days of receipt,))~~ A seller of travel shall deposit in a trust account maintained in a federally insured financial institution located in Washington state, or other account approved by the director, all sums held for more than five business days that are received from a person or entity, for retail travel services offered by the seller of travel ~~((, in a trust account or other approved account maintained in a federally insured financial institution located in Washington state. Exempted are airline sales made)).~~ This subsection does not apply to travel services sold by a seller of travel, when payments for the ~~((airline tickets))~~ travel services are made through the airline reporting corporation either by cash or credit or debit card sale.

(2) The trust account or other approved account required by this section shall be established and maintained for the benefit of any person or entity paying money to the seller of travel. The seller of travel shall not in any manner encumber the amounts in trust and shall not withdraw money from the account except the following amounts may be withdrawn at any time:

(a) Partial or full payment for travel services to the entity directly providing the travel service;

(b) Refunds as required by this chapter;

(c) The amount of the sales commission;

(d) Interest earned and credited to the trust account or other approved account; ~~((or))~~

(e) Remaining funds of a purchaser once all travel services have been provided or once tickets or other similar documentation binding upon the ultimate provider of the travel services have been provided; or

(f) Reimbursement to the seller of travel for agency operating funds that are advanced for a customer's travel services.

(3) At the time of registration, the seller of travel shall file with the department the account number and the name of the financial institution at which the trust account or other approved account is held as set forth in RCW 19.138.110. The seller of travel shall notify the department of any change in the account number or location within one business day of the change.

(4) The director, by rule, may allow for the use of other types of funds or accounts only if the protection for consumers is no less than that provided by this section.

(5) The seller of travel need not comply with the requirements of this section if all of the following apply, except as exempted in subsection (1) of this section:

(a) The payment is made by credit card;

(b) The seller of travel does not deposit, negotiate, or factor the credit card charge or otherwise seek to obtain payment of the credit card charge to any account over which the seller of travel has any control; and

(c) If the charge includes transportation, the carrier that is to provide the transportation processes the credit card charge, or if the charge is only for services, the provider of services processes the credit card charges.

(6) If the seller of travel maintains its principal place of business in another state and maintains a trust account or other approved account in that state consistent with the requirement of this section, and if that seller of travel has transacted business within the state of Washington in an amount exceeding five million dollars for the preceding year, the out-of-state trust account or other approved account may be substituted for the in-state account required under this section.

NEW SECTION. Sec. 8. (1) There is created the joint legislative task force on the sale of travel services. The task force shall consider: Options for improving the implementation of chapter 19.138 RCW; methods of providing reduction in unnecessary regulatory burdens; methods of improving protections for purchasers of travel services; and review of rule making under the directions provided in the statutes relating to sellers of travel services.

(2) The task force shall consist of the following members: Two members of the senate, appointed by the president of the senate, one from the majority and one from the minority caucus; two members of the house of representatives, appointed by the speaker of the house of representatives, one from the majority and one from the minority caucus; a representative from the office of the attorney general; a representative from the department of licensing; and four members of the travel industry. The four members of the travel industry shall be jointly appointed by the president of the senate and the speaker of the house of representatives and shall include: A representative of wholesalers of travel services; a representative of a membership organization that sells travel services; and two retailers of travel services. The retailers of travel services shall represent an economic cross section of the retailers of travel services. Recommendations for appointment of the travel industry representatives may be made by industry representatives.

(3) The task force shall meet not more than three times, as a whole. The task force shall submit any recommendations it makes to the legislature by December 1, 1996. The task force may make recommendations for statutory or administrative changes.

(4) The legislative members shall be reimbursed for travel and expenses under RCW 43.03.050 and 43.03.060.

(5) The task force shall cease to exist on January 1, 1997.

NEW SECTION. Sec. 9. RCW 19.138.055 and 1994 c 237 s 31 are each repealed.

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 shall take effect immediately.

Passed the House March 2, 1996.
 Passed the Senate February 28, 1996.
 Approved by the Governor March 28, 1996.
 Filed in Office of Secretary of State March 28, 1996.

CHAPTER 181

[House Bill 1712]

PRETRIAL RELEASE—PROCEDURES

AN ACT Relating to pretrial release; and adding a new section to chapter 10.19 RCW.
 Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 10.19 RCW to read as follows:

Notwithstanding CrR 3.2, a court who releases a defendant arrested or charged with a violent offense as defined in RCW 9.94A.030 on the offender's personal recognizance or personal recognizance with conditions must state on the record the reasons why the court did not require the defendant to post bail.

Passed the House March 4, 1996.
 Passed the Senate February 27, 1996.
 Approved by the Governor March 28, 1996.
 Filed in Office of Secretary of State March 28, 1996.

CHAPTER 182

[Second Substitute House Bill 1860]

REAL ESTATE APPRAISERS

AN ACT Relating to real estate appraisers; amending RCW 18.140.005, 18.140.010, 18.140.020, 18.140.030, 18.140.090, 18.140.130, 18.140.140, 18.140.150, 18.140.160, and 18.140.170; adding new sections to chapter 18.140 RCW; adding a new section to chapter 50.04 RCW; repealing RCW 18.140.085; prescribing penalties; and providing effective dates.

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

Sec. 1. RCW 18.140.005 and 1993 c 30 s 1 are each amended to read as follows:

It is the intent of the legislature that only individuals who meet and maintain minimum standards of competence and conduct (~~((may provide))~~) established under this chapter for certified or licensed real estate appraisers may provide real estate appraisal services to the public.

Sec. 2. RCW 18.140.010 and 1993 c 30 s 2 are each amended to read as follows:

As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Appraisal" (~~((or "real estate appraisal"))~~) means (~~((an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate, for or in expectation of compensation. An~~

~~appraisal may be classified by subject matter into either a valuation or an analysis. A "valuation" is an estimate of the value of real estate or real property. An "analysis" is a study of real estate or real property other than estimating value))~~ the act or process of estimating value; an estimate of value; or of or pertaining to appraising and related functions.

(2) "Appraisal report" means any communication, written or oral, of an appraisal, ~~((except that all appraisal reports in federally related transactions are required to be written reports))~~ review, or consulting service in accordance with the standards of professional conduct or practice, adopted by the director, that is transmitted to the client upon completion of an assignment.

(3) "Appraisal assignment" means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion relating to the ~~((nature, quality,))~~ value~~((or utility))~~ of specified interests in, or aspects of, identified real estate. The term "appraisal assignment" may apply to valuation work and analysis work.

(4) "Brokers price opinion" means an oral or written report of property value that is prepared by a real estate broker or salesperson licensed under chapter 18.85 RCW for listing, sale, purchase, or rental purposes.

(5) "Certified appraisal" means an appraisal prepared or signed by a state-certified real estate appraiser. A certified appraisal represents to the public that it meets the appraisal standards defined in this chapter.

~~((5))~~ (6) "Client" means any party for whom an appraiser performs a service.

(7) "Committee" means the real estate appraiser advisory committee of the state of Washington.

~~((6))~~ (8) "Comparative market analysis" means a brokers price opinion.

(9) "Department" means the department of licensing.

~~((7))~~ (10) "Director" means the director of the department of licensing.

~~((8))~~ (11) "Expert review appraiser" means a state-certified or state-licensed real estate appraiser chosen by the director for the purpose of providing appraisal review assistance to the director.

(12) "Federal department" means an executive department of the United States of America specifically concerned with housing finance issues, such as the department of housing and urban development, the department of veterans affairs, or their legal federal successors.

(13) "Federal financial institutions regulatory agency" means the board of governors of the federal reserve system, the federal deposit insurance corporation, the office of the comptroller of the currency, the office of thrift supervision, the national credit union administration, their successors and/or such other agencies as may be named in future amendments to 12 U.S.C. Sec. 3350(6).

(14) "Federal secondary mortgage marketing agency" means the federal national mortgage association, the government national mortgage association, the federal home loan mortgage corporation, their successors and/or such other

similarly functioning housing finance agencies as may be federally chartered in the future.

(15) "Financial institution" means any person doing business under the laws of this state or the United States relating to banks, bank holding companies, savings banks, trust companies, savings and loan associations, credit unions, consumer loan companies, and the affiliates, subsidiaries, and service corporations thereof.

(16) "Licensed appraisal" means an appraisal prepared or signed by a state-licensed real estate appraiser. A licensed appraisal represents to the public that it meets the appraisal standards defined in this chapter.

~~((9))~~ (17) "Mortgage broker" for the purpose of this chapter means a mortgage broker licensed under chapter 19.146 RCW, any mortgage broker approved and subject to audit by the federal national mortgage association, the government national mortgage association, or the federal home loan mortgage corporation as provided in RCW 19.146.020, any mortgage broker approved by the United States secretary of housing and urban development for participation in any mortgage insurance under the national housing act, 12 U.S.C. Sec. 1201, and the affiliates, subsidiaries, and service corporations thereof.

(18) "Real estate" means an identified parcel or tract of land, including improvements, if any.

~~((10))~~ (19) "Real property" means one or more defined interests, benefits, or rights inherent in the ownership of real estate.

~~((11))~~ (20) "Review" means the act or process of critically studying an appraisal report prepared by another.

(21) "Specialized appraisal services" means all appraisal services which do not fall within the definition of appraisal assignment. The term "specialized appraisal service" may apply to valuation work and to analysis work. Regardless of the intention of the client or employer, if the appraiser would be perceived by third parties or the public as acting as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion, the work is classified as an appraisal assignment and not a specialized appraisal service.

~~((12))~~ (22) "State-certified general real estate appraiser" means a person certified by the director to develop and communicate real estate appraisals of all types of property. A state-certified general real estate appraiser may designate or identify an appraisal rendered by him or her as a "certified appraisal."

~~((13))~~ (23) "State-certified residential real estate appraiser" means a person certified by the director to develop and communicate real estate appraisals of all types of residential property of one to four units without regard to transaction value or complexity and nonresidential property having a transaction value as specified in rules adopted by the director. A state certified residential real estate appraiser may designate or identify an appraisal rendered by him or her as a "certified appraisal."

~~((14))~~ (24) "State-licensed real estate appraiser" means a person licensed by the director to develop and communicate real estate appraisals of noncomplex

one to four residential units and complex one to four residential units and nonresidential property having transaction values as specified in rules adopted by the director.

Sec. 3. RCW 18.140.020 and 1993 c 30 s 3 are each amended to read as follows:

(1) No person other than a state-certified or state-licensed real estate appraiser may receive compensation of any form for a real estate appraisal or an appraisal review.

(2) No person, other than a state-certified or state-licensed real estate appraiser, may assume or use that title or any title, designation, or abbreviation likely to create the impression of certification or licensure as a real estate appraiser by this state.

(3) A person who is not certified or licensed under this chapter shall not ~~((describe or refer to))~~ prepare any appraisal of real estate located in this state ~~((by the term "certified" or "licensed."))~~

~~—(2) This section does not preclude a person who is not certified or licensed as a state-certified or state-licensed real estate appraiser from appraising real estate in this state for compensation, except in federally related transactions requiring licensure or certification to perform appraisal services), except as provided under subsection (1) of this section.~~

(4) This section does not preclude a staff employee of a governmental entity from performing an appraisal or an appraisal assignment within the scope of his or her employment insofar as the performance of official duties for the governmental entity are concerned. Such an activity for the benefit of the governmental entity is exempt from the requirements of this chapter.

(5) This section does not preclude an individual person licensed by the state of Washington as a real estate broker or as a real estate salesperson and who performs a brokers price opinion as a service to a prospective seller, buyer, lessor or lessee as the onl intended user and not for dissemination to a third party, within the scope of his or her employment or agency. Such an activity for the sole benefit of the prospective seller, buyer, lessor, or lessee is exempt from the requirements of this chapter.

(6) This section does not apply to an appraisal or an appraisal review performed for a financial institution or mortgage broker, whether conducted by an employee or third party, when such appraisal or appraisal review is not required to be performed by a state-certified or state-licensed real estate appraiser by the appropriate federal financial institutions regulatory agency.

(7) This section does not apply to an attorney licensed to practice law in this state or to a certified public accountant, as defined in RCW 18.04.025, who evaluates real property in the normal scope of his or her professional services.

Sec. 4. RCW 18.140.030 and 1993 c 30 s 4 are each amended to read as follows:

The director shall have the following powers and duties:

(1) To adopt rules in accordance with chapter 34.05 RCW necessary to implement this chapter;

(2) To receive and approve or deny applications for certification or licensure as a state-certified or state-licensed real estate appraiser under this chapter; to establish appropriate administrative procedures for the processing of such applications; to issue certificates or licenses to qualified applicants pursuant to the provisions of this chapter; and to maintain a register of the names and addresses of individuals who are currently certified or licensed under this chapter;

(3) To establish, provide administrative assistance, and appoint the members for the real estate appraiser advisory committee to enable the committee to act in an advisory capacity to the director;

(4) To solicit bids and enter into contracts with educational testing services or organizations for the preparation of questions and answers for certification or licensure examinations;

(5) To administer or contract for administration of certification or licensure examinations at locations and times as may be required to carry out the responsibilities under this chapter;

(6) To enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;

(7) To consider recommendations by the real estate appraiser advisory committee relating to the experience, education, and examination requirements for each classification of state-certified appraiser and for licensure;

(8) To impose continuing education requirements as a prerequisite to renewal of certification or licensure;

(9) To consider recommendations by the real estate appraiser advisory committee relating to standards of professional appraisal practice in the enforcement of this chapter;

(10) To investigate all complaints or reports of unprofessional conduct as defined in this chapter and to hold hearings as provided in this chapter;

(11) To establish appropriate administrative procedures for disciplinary proceedings conducted pursuant to the provisions of this chapter;

(12) To compel the attendance of witnesses and production of books, documents, records, and other papers; to administer oaths; and to take testimony and receive evidence concerning all matters within their jurisdiction. These powers may be exercised directly by the director or the director's authorized representatives acting by authority of law;

(13) To take emergency action ordering summary suspension of a license or certification pending proceedings by the director;

(14) To employ such professional, clerical, and technical assistance as may be necessary to properly administer the work of the director;

(15) To establish forms necessary to administer this chapter;

(16) To adopt standards of professional conduct or practice; ((and))

(17) To establish an expert review appraiser roster comprised of state-certified or licensed real estate appraisers whose purpose is to assist the director by applying their individual expertise by reviewing real estate appraisals for compliance with this chapter. Qualifications to act as an expert review appraiser shall be established by the director with the advice of the committee. An application to serve as an expert review appraiser shall be submitted to the real estate appraiser program, and the roster of accepted expert review appraisers shall be maintained by the department. An expert review appraiser may be added to or deleted from that roster by the director. The expert review appraiser shall be reimbursed for expenses in the same manner as the department reimburses the committee; and

(18) To do all other things necessary to carry out the provisions of this chapter and minimally meet the requirements of federal guidelines regarding state certification or licensure of appraisers that the director determines are appropriate for state-certified and state-licensed appraisers in this state.

Sec. 5. RCW 18.140.090 and 1993 c 30 s 9 are each amended to read as follows:

(1) As a prerequisite to taking an examination for certification or licensure, an applicant must meet the experience requirements adopted by the director.

(2) The preexamination experience claimed by an applicant, and accepted by the department for the purpose of taking the examination, shall remain subject to postlicensure auditing by the department.

Sec. 6. RCW 18.140.130 and 1993 c 30 s 13 are each amended to read as follows:

(1) Each original and renewal license or certificate issued under this chapter shall expire on the applicant's second birthday following issuance of the license or certificate.

(2) To be renewed as a state-licensed or state-certified real estate appraiser, the holder of a valid license or certificate shall apply and pay the prescribed fee to the director no earlier than one hundred twenty days prior to the expiration date of the license or certificate and shall demonstrate satisfaction of any continuing education requirements.

(3) If a person fails to renew a license or certificate prior to its expiration and no more than ~~((two years have))~~ one year has passed since the person last held a valid license or certificate, the person may obtain a renewal license or certificate by satisfying all of the requirements for renewal and paying late renewal fees.

The director shall cancel the license or certificate of any person whose renewal fee is not received within ~~((two years))~~ one year from the date of expiration. A person may obtain a new license or certificate by satisfying the procedures and qualifications for initial licensure or certification, including the successful completion of any applicable examinations.

Sec. 7. RCW 18.140.140 and 1993 c 30 s 14 are each amended to read as follows:

(1) A license or certificate issued under this chapter shall bear the signature or facsimile signature of the director and a license or certificate number assigned by the director.

(2) Each state-licensed or state-certified real estate appraiser shall place his or her license or certificate number adjacent to or immediately below the title "state-licensed real estate appraiser," "state-certified residential real estate appraiser," or "state-certified general real estate appraiser" when used in an appraisal report or in a contract or other instrument used by the licensee or certificate holder in conducting real property appraisal activities, except that the license or certificate number shall not be required to appear when the title is not accompanied by a signature as is typical on such promotional and stationery items as brochures, business cards, forms, or letterhead.

Sec. 8. RCW 18.140.150 and 1993 c 30 s 15 are each amended to read as follows:

(1) The term "state-licensed" or "state-certified real estate appraiser" may only be used to refer to individuals who hold the license or certificate and may not be used following or immediately in connection with the name or signature of a firm, partnership, corporation, ~~((or))~~ group, or limited liability company, or in such manner that it might be interpreted as referring to a firm, partnership, corporation, group, limited liability company, or anyone other than an individual holder of the license or certificate.

(2) No license or certificate may be issued under this chapter to a corporation, partnership, firm, limited liability company, or group. This shall not be construed to prevent a state-licensed or state-certified appraiser from signing an appraisal report on behalf of a corporation, partnership, firm, ~~((or))~~ group practice, or limited liability company.

Sec. 9. RCW 18.140.160 and 1993 c 30 s 17 are each amended to read as follows:

The director may deny an application for licensure or certification and may ~~((be denied. The director may))~~ impose any one or more of the following sanctions against a state-licensed or state-certified appraiser~~((s))~~: Suspend, revoke, or levy a fine not to exceed one thousand dollars for each offense and/or otherwise discipline in accordance with the provisions of this chapter, for any of the following acts or omissions:

(1) Failing to meet the minimum qualifications for state licensure or certification established by or pursuant to this chapter;

(2) Procuring or attempting to procure state licensure or certification under this chapter by knowingly making a false statement, knowingly submitting false information, or knowingly making a material misrepresentation on any application filed with the director;

(3) Paying money other than the fees provided for by this chapter to any employee of the director or the committee to procure state licensure or certification under this chapter;

(4) Obtaining a license or certification through the mistake or inadvertence of the director;

(5) Conviction of any gross misdemeanor or felony or the commission of any act involving moral turpitude, dishonesty, or corruption whether or not the act constitutes a crime. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license or certificate holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(6) Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

(7) Negligence or incompetence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

(8) Continuing to act as a state-licensed or state-certified real estate appraiser when his or her license or certificate is on an expired status;

(9) Failing, upon demand, to disclose any information within his or her knowledge to, or to produce any document, book, or record in his or her possession for inspection of the director or the director's authorized representatives acting by authority of law;

(10) Violating any provision of this chapter or any lawful rule or regulation made by the director pursuant thereto;

(11) Advertising in a false, fraudulent, or misleading manner;

(12) Suspension, revocation, or restriction of the individual's license or certification to practice the profession by competent authority in any state, federal, or foreign jurisdiction, with a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;

(13) Failing to comply with an order issued by the director;

(14) Committing any act of fraudulent or dishonest dealing or a crime involving moral turpitude, with a certified copy of the final holding of any court of competent jurisdiction in such matter being conclusive evidence in any hearing under this chapter; and

(15) Issuing an appraisal report on any real property in which the appraiser has an interest unless his or her interest is clearly stated in the appraisal report.

Sec. 10. RCW 18.140.170 and 1993 c 30 s 18 are each amended to read as follows:

The director may investigate the actions of a state-licensed or state-certified real estate appraiser or an applicant for licensure or certification or relicensure or recertification. Upon receipt of information indicating that a state-licensed or state-certified real estate appraiser under this chapter may have violated this chapter, the director shall cause one or more of the staff investigators to make an investigation of the facts to determine whether or not there is admissible evidence of any such violation. If technical assistance is required, a staff investigator may consult with one or more of the members of the committee.

In any investigation made by the director's investigative staff, the director shall have the power to compel the attendance of witnesses and the production of books, documents, records, and other papers, to administer oaths, and to take testimony and receive evidence concerning all matters within the director's jurisdiction.

If the director determines, upon investigation, that a state-licensed or state-certified real estate appraiser under this chapter has violated this chapter, a statement of charges shall be prepared and served upon the state-licensed or state-certified real estate appraiser. The statement of charges shall be served as follows: The statement of charges shall be sent by certified or registered mail, and if no receipt of service is received, two attempts to personally serve the statement of charges shall be made. This statement of charges shall require the accused party to file an answer to the statement of charges within twenty days of the date of service.

In responding to a statement of charges, the accused party may admit to the allegations, deny the allegations, or otherwise plead. Failure to make a timely response shall be deemed an admission of the allegations contained in the statement of charges and will result in a default whereupon the director may enter an order under RCW 34.05.440. If a hearing is requested, the time of the hearing shall be scheduled but the hearing shall not be held earlier than thirty days after service of the charges upon the accused. A notice of hearing shall be issued at least twenty days prior to the hearing, specifying the time, date, and place of hearing.

NEW SECTION. Sec. 11. The director may refer a complaint for violation of any section of this chapter before any court of competent jurisdiction.

Any violation of the provisions of this chapter shall be prosecuted by the prosecuting attorney of each county in which the violation occurs, and if the prosecuting attorney fails to act, the director may request the attorney general to take action in lieu of the prosecuting attorney.

Whenever evidence satisfactory to the director suggests that any person has violated any of the provisions of this chapter, or any part or provision thereof, the director may bring an action, in the superior court in the county where the person resides, against the person to enjoin any person from continuing a violation or engaging or doing any act or acts in furtherance thereof. In this action an order or judgment may be entered awarding a preliminary or final injunction as may be proper.

The director may petition the superior court in any county in this state for the appointment of a receiver to take over, operate, or close any real estate appraisal activity or practice in this state which is found upon inspection of its books and records to be operating in violation of the provisions of this chapter, pending a hearing.

NEW SECTION. Sec. 12. Any person acting as a state-certified or state-licensed real estate appraiser without a certificate or license that is currently valid is guilty of a misdemeanor.

NEW SECTION. Sec. 13. RCW 18.140.085 and 1993 c 30 s 23 are each repealed.

NEW SECTION. Sec. 14. A new section is added to chapter 50.04 RCW to read as follows:

The term "employment" does not include services performed by an appraisal practitioner certified or licensed under chapter 18.140 RCW in an appraisal business if the use of the business facilities is contingent upon compensation to the owner of the business facilities and the person receives no compensation from the owner for the services performed. This exemption does not include services performed by an appraisal practitioner certified or licensed under chapter 18.140 RCW for an employer under chapter 50.44 RCW.

NEW SECTION. Sec. 15. Sections 11 and 12 of this act are each added to chapter 18.140 RCW.

NEW SECTION. Sec. 16. This act shall take effect July 1, 1996, except section 3 of this act, which shall take effect July 1, 1997.

Passed the House March 2, 1996.

Passed the Senate February 27, 1996.

Approved by the Governor March 28, 1996.

Filed in Office of Secretary of State March 28, 1996.

CHAPTER 183

[Substitute House Bill 1964]

ACCIDENT REPORTS ACCESS—SIMPLIFICATION

AN ACT Relating to access to accident reports; amending RCW 46.52.030 and 46.52.130; prescribing penalties; and providing an effective date.

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

Sec. 1. RCW 46.52.030 and 1989 c 353 s 5 are each amended to read as follows:

(1) 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 twenty-four hours 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.

(2) The original of ~~((such))~~ the report shall be immediately forwarded by the authority receiving ~~((such))~~ the report to the chief of the Washington state patrol at Olympia, Washington ~~((, and the second copy of such report to be forwarded to))~~. The Washington state patrol shall give the department of licensing ((at Olympia, Washington)) full access to the report.

(3) Any law enforcement officer who investigates an accident for which a driver's 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 his 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 cause, 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. 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 46.52.130 and 1994 c 275 s 16 are each amended to read as follows:

A certified abstract of the driving record shall be furnished only to the individual named in the abstract, an employer or prospective employer or an agent acting on behalf of an employer or prospective employer, the insurance carrier that has insurance in effect covering the employer or a prospective employer, the insurance carrier that has insurance in effect covering the named individual, the insurance carrier to which the named individual has applied, an alcohol/drug assessment or treatment agency approved by the department of social and health services, to which the named individual has applied or been assigned for evaluation or treatment, or city and county prosecuting attorneys. City attorneys and county prosecuting attorneys may provide the driving record to alcohol/drug assessment or treatment agencies approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment. The director, upon proper request, shall furnish a certified abstract covering the period of not more than the last three years to insurance companies. Upon proper request, the director shall furnish a certified abstract covering a period of not more than the last five years to state approved alcohol/drug assessment or treatment agencies, except that the certified abstract shall also include records of alcohol-related offenses as defined in RCW 46.01.260(2) covering a period of not more than the last ten years. Upon proper request, a certified abstract of the full driving record maintained by the department shall be furnished to a city or county prosecuting attorney, to the individual named in the abstract or to an employer or prospective employer or an agent acting on behalf of an employer or prospective employer of the named individual. The abstract, whenever possible, shall include an enumeration of motor vehicle accidents in which the person was driving; the total number of vehicles involved; whether the vehicles were legally parked or moving; whether the vehicles were occupied at the time of the accident; any reported convictions, forfeitures of bail, or findings that an infraction was committed based upon a violation of any motor vehicle law; and the status of the person's driving privilege in this state. The enumeration shall include any reports of failure to appear in response to a traffic citation or failure to respond to a notice of infraction served upon the named individual by an arresting officer. Certified abstracts furnished to prosecutors and alcohol/drug assessment or treatment agencies shall also indicate whether a recorded violation is an alcohol-related offense as defined in RCW 46.01.260(2) that was originally charged as one of the alcohol-related offenses designated in RCW 46.01.260(2)(a)(i).

The abstract provided to the insurance company shall exclude any information, except that related to the commission of misdemeanors or felonies by the individual, pertaining to law enforcement officers or fire fighters as defined in RCW 41.26.030, or any officer of the Washington state patrol, while driving official vehicles in the performance of occupational duty. The abstract provided to the insurance company shall exclude any deferred prosecution under RCW 10.05.060, except that if a person is removed from a deferred prosecution

under RCW 10.05.090, the abstract shall show the deferred prosecution as well as the removal.

The director shall collect for each abstract the sum of four dollars and fifty cents which shall be deposited in the highway safety fund.

Any insurance company or its agent receiving the certified abstract shall use it exclusively for its own underwriting purposes and shall not divulge any of the information contained in it to a third party. No policy of insurance may be canceled, nonrenewed, denied, or have the rate increased on the basis of such information unless the policyholder was determined to be at fault. No insurance company or its agent for underwriting purposes relating to the operation of commercial motor vehicles may use any information contained in the abstract relative to any person's operation of motor vehicles while not engaged in such employment, nor may any insurance company or its agent for underwriting purposes relating to the operation of noncommercial motor vehicles use any information contained in the abstract relative to any person's operation of commercial motor vehicles.

Any employer or prospective employer or an agent acting on behalf of an employer or prospective employer receiving the certified abstract shall use it exclusively for his or her own purpose to determine whether the licensee should be permitted to operate a commercial vehicle or school bus upon the public highways of this state and shall not divulge any information contained in it to a third party.

Any alcohol/drug assessment or treatment agency approved by the department of social and health services receiving the certified abstract shall use it exclusively for the purpose of assisting its employees in making a determination as to what level of treatment, if any, is appropriate. The agency, or any of its employees, shall not divulge any information contained in the abstract to a third party.

Release of a certified abstract of the driving record of an employee or prospective employee requires a statement signed by: (1) The employee or prospective employee that authorizes the release of the record, and (2) the employer attesting that the information is necessary to determine whether the licensee should be employed to operate a commercial vehicle or school bus upon the public highways of this state. If the employer or prospective employer authorizes an agent to obtain this information on their behalf, this must be noted in the statement.

Any violation of this section is a gross misdemeanor.

NEW SECTION. Sec. 3. This act takes effect July 1, 1996.

Passed the House March 4, 1996.

Passed the Senate February 29, 1996.

Approved by the Governor March 28, 1996.

Filed in Office of Secretary of State March 28, 1996.

CHAPTER 184

[Second Engrossed Substitute House Bill 1967]

LICENSING AND REGISTRATION CRIMES

AN ACT Relating to licensing and registration crimes; amending RCW 46.16.010, 46.16.160, 47.68.255, 88.02.118, and 82.32.330; adding a new section to chapter 46.68 RCW; creating a new section; prescribing penalties; and providing an effective date.

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

Sec. 1. RCW 46.16.010 and 1993 c 238 s 1 are each 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. Failure to make initial registration before operation on the highways of this state is a misdemeanor, and any person convicted thereof shall be punished by a fine of no less than three hundred thirty dollars, no part of which may be suspended or deferred. Failure to renew an expired registration before operation on the highways of this state is a traffic infraction.

(2) 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 ~~((three))~~ 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 shall 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.

(3) These provisions shall not apply to farm ~~((vehicle[s]))~~ vehicles as defined in RCW 46.04.181 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: PROVIDED FURTHER, That these provisions shall not apply to 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: PROVIDED FURTHER, That these provisions shall not apply to 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 equipment defined as follows:

"Special highway construction equipment" is 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 (1) are in excess of the legal width or (2) 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 (3) 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.

(4) 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. 2. RCW 46.16.160 and 1993 c 102 s 2 are each amended to read as follows:

(1) The owner of a vehicle which under reciprocal relations with another jurisdiction would be required to obtain a license registration in this state or an unlicensed vehicle which would be required to obtain a license registration for operation on public highways of this state may, as an alternative to such license registration, secure and operate such vehicle under authority of a trip permit issued by this state in lieu of a Washington certificate of license registration, and licensed gross weight if applicable. The licensed gross weight may not exceed eighty thousand pounds for a combination of vehicles nor forty thousand pounds for a single unit vehicle with three or more axles. Trip permits may also be issued for movement of mobile homes pursuant to RCW 46.44.170. For the purpose of this section, a vehicle is considered unlicensed if the licensed gross weight currently in effect for the vehicle or combination of vehicles is not adequate for the load being carried. Vehicles registered under RCW 46.16.135 shall not be operated under authority of trip permits in lieu of further registration within the same registration year.

(2) Each trip permit shall authorize the operation of a single vehicle at the maximum legal weight limit for such vehicle for a period of three consecutive days commencing with the day of first use. No more than three such permits may be used for any one vehicle in any period of thirty consecutive days, except that in the case of a recreational vehicle as defined in RCW 43.22.335, no more than two trip permits may be used for any one vehicle in a one-year period. Every permit shall identify, as the department may require, the vehicle for which it is issued and shall be completed in its entirety and signed by the operator before operation of the vehicle on the public highways of this state. Correction of data on the permit such as dates, license number, or vehicle identification number invalidates the permit. The trip permit shall be displayed on the vehicle to which it is issued as prescribed by the department.

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

(4) Prorate operators operating commercial vehicles on trip permits in Washington shall retain the customer copy of such permit for four years.

(5) (~~Blank~~) Trip permits may be obtained from field offices of the department of transportation, Washington state patrol, department of licensing, or other agents appointed by the department. For each permit issued, there shall be collected a filing fee as provided by RCW 46.01.140, an administrative fee of eight dollars, and an excise tax of one dollar. If the filing fee amount of one dollar prescribed by RCW 46.01.140 is increased or decreased after January 1, 1981, the administrative fee shall be adjusted to compensate for such change to insure that the total amount collected for the filing fee, administrative fee, and

excise tax remain at ten dollars. These fees and taxes are in lieu of all other vehicle license fees and taxes. No exchange, credits, or refunds may be given for trip permits after they have been purchased.

(6) The department may appoint county auditors or businesses as agents for the purpose of selling trip permits to the public. County auditors or businesses so appointed may retain the filing fee collected for each trip permit to defray expenses incurred in handling and selling the permits.

(7) A violation of or a failure to comply with any provision of this section is a gross misdemeanor.

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

(9) All administrative fees and excise taxes collected under the provisions of this chapter shall be forwarded by the department with proper identifying detailed report to the state treasurer who shall deposit the administrative fees to the credit of the motor vehicle fund and the excise taxes to the credit of the general fund. Filing fees will be forwarded and reported to the state treasurer by the department as prescribed in RCW 46.01.140.

Sec. 3. RCW 47.68.255 and 1993 c 238 s 2 are each amended to read as follows:

A person who is required to register an aircraft under this chapter and who registers an aircraft in another state or foreign country evading the Washington aircraft excise tax is guilty of a gross misdemeanor. For a second or subsequent offense, the person convicted is also subject to a fine equal to four times the amount of avoided taxes and fees, no part of which may be suspended or deferred. Excise taxes owed and fines assessed shall be deposited in the manner provided under RCW 46.16.010(2).

Sec. 4. RCW 88.02.118 and 1993 c 238 s 4 are each amended to read as follows:

It is a gross misdemeanor punishable as provided under chapter 9A.20 RCW for any person owning a vessel subject to taxation under chapter 82.49 RCW to register a vessel in another state to avoid Washington state vessel excise tax required under chapter 82.49 RCW or to obtain a vessel dealer's registration for the purpose of evading excise tax on vessels under chapter 82.49 RCW. For a second or subsequent offense, the person convicted is also subject to a fine equal to four times the amount of avoided taxes and fees, no part of which may be suspended or deferred. Excise taxes owed and fines assessed shall be deposited in the manner provided under RCW 46.16.010(2).

Sec. 5. RCW 82.32.330 and 1995 c 197 s 1 are each 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))~~ (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;

~~((j))~~ (k) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

~~((k))~~ (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, 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; or

~~((l))~~ (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 or is a document maintained by a court of record not otherwise prohibited from disclosure.

(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), ~~((or))~~ (i), or (j) 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, ~~((shall upon conviction be punished by a fine not exceeding one thousand dollars and,))~~ 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.

NEW SECTION. Sec. 6. A new section is added to chapter 46.68 RCW to read as follows:

The vehicle licensing fraud account is created in the state treasury. From penalties and fines imposed under RCW 46.16.010, 47.68.255, and 88.02.118, an amount equal to the taxes and fees owed 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 vehicle license fraud enforcement and collections by the Washington state patrol and the department of revenue.

NEW SECTION. Sec. 7. The department of licensing shall develop a method of accepting applications and issuing trip permits by electronic means.

The department shall present a progress report to the legislative transportation committee by December 15, 1996.

NEW SECTION. Sec. 8. Sections 1 through 6 of this act take effect January 1, 1997.

Passed the House March 4, 1996.

Passed the Senate March 1, 1996.

Approved by the Governor March 28, 1996.

Filed in Office of Secretary of State March 28, 1996.

CHAPTER 185

[Substitute House Bill 1990]

WASHINGTON STATE PATROL MINIMUM RETIREMENT BENEFITS

AN ACT Relating to minimum retirement benefits; amending RCW 43.43.277; and creating a new section.

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

Sec. 1. RCW 43.43.277 and 1987 c 173 s 2 are each amended to read as follows:

(1) The benefits provided under subsection (2) of this section shall be available only to surviving spouses whose allowances commenced before January 1, 1970, and who are not receiving and are not eligible for federal old age, survivors, or disability benefits.

(2) Effective July 1, 1987, the minimum retirement benefit provided pursuant to RCW 43.43.275(1) to surviving spouses who meet the qualifications in subsection (1) of this section shall be twenty-three dollars per month per year of service. However, the minimum benefit for the surviving spouse of a member who died in service who meets the qualifications in subsection (1) of this section shall be calculated using twenty years of service or the member's actual years of service, whichever is greater.

(3) Effective July 1, 1996, the minimum benefit under RCW 43.43.260 and 43.43.270(1) for the member or RCW 43.43.275(1) for the surviving spouse shall not be less than five hundred dollars per month if the member has completed at least twenty-five years of service in this system.

NEW SECTION. Sec. 2. The joint committee on pension policy shall study the benefits provided to surviving spouses of retirees of the Washington state patrol retirement system and shall report to the fiscal committees of the legislature by January 1997.

Passed the House March 2, 1996.

Passed the Senate February 29, 1996.

Approved by the Governor March 28, 1996.

Filed in Office of Secretary of State March 28, 1996.

CHAPTER 186

[Fourth Substitute House Bill 2009]

STATE ENERGY OFFICE—ELIMINATION—FUNCTIONS TRANSFERRED

AN ACT Relating to the energy office; amending RCW 43.21F.025, 43.21F.045, 43.21F.055, 43.21F.060, 43.21F.090, 43.140.050, 41.06.070, 39.35.030, 39.35.050, 39.35.060, 39.35C.010, 39.35C.020, 39.35C.030, 39.35C.040, 39.35C.050, 39.35C.060, 39.35C.070, 39.35C.080, 39.35C.090, 39.35C.100, 39.35C.110, 39.35C.130, 19.27.190, 19.27A.020, 28A.515.320, 43.06.115, 43.19.680, 43.21G.010, 43.31.621, 43.88.195, 43.140.040, 43.140.050, 47.06.110, 70.94.527, 70.94.537, 70.94.541, 70.94.551, 70.94.960, 70.120.210, 70.120.220, 80.28.260, 82.35.020, 82.35.080, and 90.03.247; reenacting and amending RCW 80.50.030 and 42.17.2401; adding a new section to chapter 43.330 RCW; adding new sections to chapter 28B.30 RCW; adding a new section to chapter 47.01 RCW; adding a new section to chapter 43.19 RCW; creating new sections; repealing RCW 43.21F.035, 43.21F.065, 39.35C.120, 41.06.081, 43.41.175, and 19.27A.055; and providing an effective date.

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

NEW SECTION. Sec. 1. The legislature finds responsibilities of state government need to be limited to core services in support of public safety and welfare. Services provided by the Washington state energy office are primarily advisory and can be eliminated. The legislature further finds a need to redefine the state's role in energy-related regulatory functions. The state may be better served by allowing regulatory functions to be performed by other appropriate entities, simplifying state government while maintaining core services. Further, it is the intent of the legislature that the state continue to receive oil overcharge restitution funds for our citizens while every effort is being made to maximize federal funds available for energy conservation purposes.

PART 1

FUNCTIONS OF THE DEPARTMENT OF COMMUNITY, TRADE,
AND ECONOMIC DEVELOPMENT

NEW SECTION. Sec. 101. A new section is added to chapter 43.330 RCW to read as follows:

(1) All powers, duties, and functions of the state energy office relating to energy resource policy and planning and energy facility siting are transferred to the department of community, trade, and economic development. All references to the director or the state energy office in the Revised Code of Washington shall be construed to mean the director or the department of community, trade, and economic development when referring to the functions transferred in this section.

The director shall appoint an assistant director for energy policy, and energy policy staff shall have no additional responsibilities beyond activities concerning energy policy.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the state energy office pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the department of community, trade, and economic development. All cabinets, furniture, office equipment, software, data base, motor vehicles, and other tangible property employed by the state energy office in carrying out the powers,

functions, and duties transferred shall be made available to the department of community, trade, and economic development.

(b) Any appropriations made to the state energy office for carrying out the powers, functions, and duties transferred shall, on the effective date of this section, be transferred and credited to the department of community, trade, and economic development.

(c) Whenever any question arises as to the transfer of any funds, books, documents, records, papers, files, software, data base, 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 state energy office engaged in performing the powers, functions, and duties pertaining to the energy facility site evaluation council are transferred to the jurisdiction of the department of community, trade, and economic development. All employees engaged in energy facility site evaluation council duties classified under chapter 41.06 RCW, the state civil service law, are assigned to the department of community, trade, and economic development 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 state energy office pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the department of community, trade, and economic development. All existing contracts and obligations shall remain in full force and shall be performed by the department of community, trade, and economic development.

(5) The transfer of the powers, duties, and functions of the state energy office does not affect the validity of any act performed before the effective date of this section.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of the office 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.

(7) The department of community, trade, and economic development shall direct the closure of the financial records of the state energy office.

(8) Responsibility for implementing energy education, applied research, and technology transfer programs rests with Washington State University. The department of community, trade, and economic development shall provide Washington State University available existing and future oil overcharge restitution and federal energy block funding for a minimum period of five years to carry out energy programs under an interagency agreement with the department of community, trade, and economic development. The interagency agreement shall also outline the working relationship between the department of

community, trade, and economic development and Washington State University as it pertains to the relationship between energy policy development and public outreach. Nothing in chapter . . . , Laws of 1996 (this act) prohibits Washington State University from seeking grant, contract, or fee-for-service funding for energy or related programs directly from other entities.

Sec. 102. RCW 43.21F.025 and 1994 c 207 s 2 are each amended to read as follows:

(1) "Energy" means petroleum or other liquid fuels; natural or synthetic fuel gas; solid carbonaceous fuels; fissionable nuclear material; electricity; solar radiation; geothermal resources; hydropower; organic waste products; wind; tidal activity; any other substance or process used to produce heat, light, or motion; or the savings from nongeneration technologies, including conservation or improved efficiency in the usage of any of the sources described in this subsection;

(2) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, joint operating agency, or any other entity, public or private, however organized;

(3) "Director" means the director of the ~~((state energy office))~~ department of community, trade, and economic development;

(4) ~~((("Office" means the Washington state energy office))~~ "Assistant director" means the assistant director of the department of community, trade, and economic development responsible for energy policy activities;

(5) "Department" means the department of community, trade, and economic development;

~~((5))~~ (6) "Distributor" means any person, private corporation, partnership, individual proprietorship, utility, including investor-owned utilities, municipal utility, public utility district, joint operating agency, or cooperative, which engages in or is authorized to engage in the activity of generating, transmitting, or distributing energy in this state; and

~~((6))~~ (7) "State energy strategy" means the document (7) and energy policy direction developed under section 1, chapter 201, Laws of 1991 including any related appendices.

Sec. 103. RCW 43.21F.045 and 1994 c 207 s 4 are each amended to read as follows:

~~((The energy office shall have the following duties:~~

~~—(1) The office shall))~~ (1) The department shall supervise and administer energy-related activities as specified in section 101 of this act and shall advise the governor and the legislature with respect to energy matters affecting the state.

(2) In addition to other powers and duties granted to the department, the department shall have the following powers and duties:

(a) Prepare and update contingency plans for implementation in the event of energy shortages or emergencies. The plans shall conform to chapter 43.21G

RCW and shall include procedures for determining when these shortages or emergencies exist, the state officers and agencies to participate in the determination, and actions to be taken by various agencies and officers of state government in order to reduce hardship and maintain the general welfare during these emergencies. The ~~((office))~~ department shall coordinate the activities undertaken pursuant to this subsection with other persons. The components of plans that require legislation for their implementation shall be presented to the legislature in the form of proposed legislation at the earliest practicable date. The ~~((office))~~ department shall report to the governor and the legislature on probable, imminent, and existing energy shortages, and shall administer energy allocation and curtailment programs in accordance with chapter 43.21G RCW.

~~((2) The office shall))~~ (b) Establish and maintain a central repository in state government for collection of existing data on energy resources, including:

~~((a))~~ (i) Supply, demand, costs, utilization technology, projections, and forecasts;

~~((b))~~ (ii) Comparative costs of alternative energy sources, uses, and applications; and

~~((c))~~ (iii) Inventory data on energy research projects in the state conducted under public and/or private auspices, and the results thereof.

~~((3) The office shall))~~ (c) Coordinate federal energy programs appropriate for state-level implementation, carry out such energy programs as are assigned to it by the governor or the legislature, and monitor federally funded local energy programs as required by federal or state regulations.

~~((4) The office shall))~~ (d) Develop energy policy recommendations for consideration by the governor and the legislature.

~~((5) The office shall))~~ (e) Provide assistance, space, and other support as may be necessary for the activities of the state's two representatives to the Pacific northwest electric power and conservation planning council. To the extent consistent with federal law, the ~~((office))~~ director shall request that Washington's council members request the administrator of the Bonneville power administration to reimburse the state for the expenses associated with the support as provided in the Pacific Northwest Electric Power Planning and Conservation Act (P.L. 96-501).

~~((6) The office shall))~~ (f) Cooperate with state agencies, other governmental units, and private interests in the prioritization and implementation of the state energy strategy elements and on other energy matters.

~~((7) The office shall represent the interests of the state in the siting, construction, and operation of nuclear waste storage and disposal facilities.~~

~~((8) The office shall))~~ (g) Serve as the official state agency responsible for coordinating implementation of the state energy strategy.

~~((9))~~ (h) No later than December 1, 1982, and by December 1st of each even-numbered year thereafter, ~~((the office shall))~~ prepare and transmit to the governor and the appropriate committees of the legislature a report on the

implementation of the state energy strategy and other important energy issues, as appropriate.

~~((10) The office shall)~~ (i) Provide support for increasing cost-effective energy conservation, including assisting in the removal of impediments to timely implementation.

~~((11) The office shall)~~ (j) Provide support for the development of cost-effective energy resources including assisting in the removal of impediments to timely construction.

~~((12) The office shall)~~ (k) Adopt rules, under chapter 34.05 RCW, necessary to carry out the powers and duties enumerated in this chapter.

~~((13) The office shall)~~ (l) Provide administrative assistance, space, and other support as may be necessary for the activities of the energy facility site evaluation council, as provided for in RCW 80.50.030.

(m) Appoint staff as may be needed to administer energy policy functions and manage energy facility site evaluation council activities. These employees are exempt from the provisions of chapter 41.06 RCW.

(3) To the extent the powers and duties set out under this section relate to energy education, applied research, and technology transfer programs they are transferred to Washington State University.

(4) To the extent the powers and duties set out under this section relate to energy efficiency in public buildings they are transferred to the department of general administration.

Sec. 104. RCW 43.21F.055 and 1981 c 295 s 5 are each amended to read as follows:

The ~~((office))~~ department shall not intervene in any regulatory proceeding before the Washington utilities and transportation commission or proceedings of utilities not regulated by the commission. Nothing in this chapter abrogates or diminishes the functions, powers, or duties of the energy facility site evaluation council pursuant to chapter 80.50 RCW, the utilities and transportation commission pursuant to Title 80 RCW, or other state or local agencies established by law.

The ~~((office))~~ department shall avoid duplication of activity with other state agencies and officers and other persons.

Sec. 105. RCW 43.21F.060 and 1981 c 295 s 6 are each amended to read as follows:

In addition to the duties prescribed in RCW 43.21F.045, the ~~((energy office))~~ department shall have the authority to:

(1) Obtain all necessary and existing information from energy producers, suppliers, and consumers, doing business within the state of Washington, from political subdivisions in this state, or any person as may be necessary to carry out the provisions of ~~((this))~~ chapter 43.21G RCW: PROVIDED, That if the information is available in reports made to another state agency, the ~~((office))~~ department shall obtain it from that agency: PROVIDED FURTHER, That, to

the maximum extent practicable, informational requests to energy companies regulated by the utilities and transportation commission shall be channeled through the commission and shall be accepted in the format normally used by the companies. Such information may include but not be limited to:

- (a) Sales volume;
- (b) Forecasts of energy requirements; and
- (c) Energy costs.

Notwithstanding any other provision of law to the contrary, information furnished under this subsection shall be confidential and maintained as such, if so requested by the person providing the information, if the information is proprietary.

It shall be unlawful to disclose such information except as hereinafter provided. A violation shall be punishable, upon conviction, by a fine of not more than one thousand dollars for each offense. In addition, any person who wilfully or with criminal negligence, as defined in RCW 9A.08.010, discloses confidential information in violation of this subsection may be subject to removal from office or immediate dismissal from public employment notwithstanding any other provision of law to the contrary.

Nothing in this subsection prohibits the use of confidential information to prepare statistics or other general data for publication when it is so presented as to prevent identification of particular persons or sources of confidential information.

(2) Receive and expend funds obtained from the federal government or other sources by means of contracts, grants, awards, payments for services, and other devices in support of the duties enumerated in this chapter.

Sec. 106. RCW 43.21F.090 and 1994 c 207 s 5 are each amended to read as follows:

The ((office)) department shall review the state energy strategy as developed under section 1, chapter 201, Laws of 1991, periodically with the guidance of an advisory committee. For each review, an advisory committee shall be established with a membership resembling as closely as possible the original energy strategy advisory committee specified under section 1, chapter 201, Laws of 1991. Upon completion of a public hearing regarding the advisory committee's advice and recommendations for revisions to the energy strategy, a written report shall be conveyed by the ((office)) department to the governor and the appropriate legislative committees. Any advisory committee established under this section shall be dissolved within three months after their written report is conveyed.

Sec. 107. RCW 43.140.050 and 1981 c 158 s 5 are each amended to read as follows:

The state treasurer shall be responsible for distribution of funds to the county of origin. Each county's share of rentals and royalties from a lease including lands in more than one county shall be computed on the basis of the ratio that the acreage within each county has to the total acreage in the lease.

~~((The Washington state energy office or its statutory successor))~~ Washington State University shall obtain the necessary information to make the distribution of funds on such a basis.

Sec. 108. RCW 80.50.030 and 1994 c 264 s 75 and 1994 c 154 s 315 are each reenacted and amended to read as follows:

(1) There is created and established the energy facility site evaluation council.

(2)(a) The chairman of the council shall be appointed by the governor with the advice and consent of the senate, shall have a vote on matters before the council, shall serve for a term coextensive with the term of the governor, and is removable for cause. The chairman may designate a member of the council to serve as acting chairman in the event of the chairman's absence. The chairman is a "state employee" for the purposes of chapter 42.52 RCW. As applicable, when attending meetings of the council, members may receive reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060, and are eligible for compensation under RCW ~~((43.03.240))~~ 43.03.250.

(b) The chairman or a designee shall execute all official documents, contracts, and other materials on behalf of the council. The Washington state ~~((energy office))~~ department of community, trade, and economic development shall provide all administrative and staff support for the council. The director of the ~~((energy office))~~ department of community, trade, and economic development has supervisory authority over the staff of the council and shall employ such personnel as are necessary to implement this chapter. Not more than three such employees may be exempt from chapter 41.06 RCW.

(3) The council shall consist of the directors, administrators, or their designees, of the following departments, agencies, commissions, and committees or their statutory successors:

- (a) Department of ecology;
- (b) Department of fish and wildlife;
- (c) ~~((Parks and recreation commission;~~
- ~~—(d))~~ Department of health;
- ~~((e) State energy office;~~
- ~~—(f))~~ (d) Military department;
- (e) Department of community, trade, and economic development;
- ~~((g))~~ (f) Utilities and transportation commission;
- ~~((h) Office of financial management;~~
- ~~—(i))~~ (g) Department of natural resources;
- ~~((j))~~ (h) Department of agriculture;
- ~~((k))~~ (i) Department of transportation.

(4) The appropriate county legislative authority of every county wherein an application for a proposed site is filed shall appoint a member or designee as a voting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for

the county which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site;

(5) The city legislative authority of every city within whose corporate limits an energy plant is proposed to be located shall appoint a member or designee as a voting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the city which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site.

(6) For any port district wherein an application for a proposed port facility is filed subject to this chapter, the port district shall appoint a member or designee as a nonvoting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the port district which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site. The provisions of this subsection shall not apply if the port district is the applicant, either singly or in partnership or association with any other person.

Sec. 109. RCW 41.06.070 and 1995 c 163 s 1 are each amended to read as follows:

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

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

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

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

(d) The officers of the Washington state patrol;

(e) Elective officers of the state;

(f) The chief executive officer of each agency;

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

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

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

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

or committee; and the confidential secretary of the chief executive officer of the board, commission, or committee;

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

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

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

(j) Assistant attorneys general;

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

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

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

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

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

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

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

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

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

(t) Officers and employees of the state wheat commission formed under chapter 15.63 RCW;

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

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

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

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

(y) All employees of the marine employees' commission;

(z) Up to a total of five senior staff positions of the western library network under chapter 27.26 RCW responsible for formulating policy or for directing program management of a major administrative unit. This subsection (1)(z) shall expire on June 30, 1997;

(aa) Staff employed by the department of community, trade, and economic development to administer energy policy functions and manage energy site evaluation council activities under RCW 43.21F.045(2)(m);

(bb) Staff employed by Washington State University to administer energy education, applied research, and technology transfer programs under RCW 43.21F.045 as provided in section 201(5) of this act.

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

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

(b) Student, part-time, or temporary employees, and part-time professional consultants, as defined by the Washington personnel resources board, employed by institutions of higher education and related boards;

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

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

(3) In addition to the exemptions specifically provided by this chapter, the Washington personnel resources board may provide for further exemptions pursuant to the following procedures. The governor or other appropriate elected

official may submit requests for exemption to the Washington personnel resources board stating the reasons for requesting such exemptions. The Washington personnel resources board shall hold a public hearing, after proper notice, on requests submitted pursuant to this subsection. If the board determines that the position for which exemption is requested is one involving substantial responsibility for the formulation of basic agency or executive policy or one involving directing and controlling program operations of an agency or a major administrative division thereof, the Washington personnel resources board shall grant the request and such determination shall be final as to any decision made before July 1, 1993. The total number of additional exemptions permitted under this subsection shall not exceed one percent of the number of employees in the classified service not including employees of institutions of higher education and related boards for those agencies not directly under the authority of any elected public official other than the governor, and shall not exceed a total of twenty-five for all agencies under the authority of elected public officials other than the governor. The Washington personnel resources board shall report to each regular session of the legislature during an odd-numbered year all exemptions granted under subsections (1) (w) and (x) and (2) of this section, together with the reasons for such exemptions.

The salary and fringe benefits of all positions presently or hereafter exempted except for the chief executive officer of each agency, full-time members of boards and commissions, administrative assistants and confidential secretaries in the immediate office of an elected state official, and the personnel listed in subsections (1) (j) through (v) and (2) of this section, shall be determined by the Washington personnel resources board.

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

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

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

PART 11
FUNCTIONS OF WASHINGTON STATE UNIVERSITY

NEW SECTION. Sec. 201. A new section is added to chapter 28B.30 RCW to read as follows:

(1) All powers, duties, and functions of the state energy office under RCW 43.21F.045 relating to implementing energy education, applied research, and technology transfer programs shall be transferred to Washington State University.

(2) The specific programs transferred to Washington State University shall include but not be limited to the following: Renewable energy, energy software, industrial energy efficiency, education and information, energy ideas clearing-house, and telecommunications.

(3)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the state energy office pertaining to the powers, functions, and duties transferred shall be delivered to the custody of Washington State University. All cabinets, furniture, office equipment, software, data base, motor vehicles, and other tangible property employed by the state energy office in carrying out the powers, functions, and duties transferred shall be made available to Washington State University.

(b) Any appropriations made to, any other funds provided to, or any grants made to or contracts with the state energy office for carrying out the powers, functions, and duties transferred shall, on the effective date of this section, be transferred and credited to Washington State University.

(c) Whenever any question arises as to the transfer of any funds, books, documents, records, papers, files, software, data base, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, an arbitrator mutually agreed upon by the parties in dispute shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(d) All rules and all pending business before the state energy office pertaining to the powers, functions, and duties transferred shall be continued and acted upon by Washington State University. All existing contracts, grants, and obligations, excluding personnel contracts and obligations, shall remain in full force and shall be assigned to and performed by Washington State University.

(e) The transfer of the powers, duties, and functions of the state energy office does not affect the validity of any act performed before the effective date of this section.

(f) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of the office 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.

(4) Washington State University shall enter into an interagency agreement with the department of community, trade, and economic development regarding the relationship between policy development and public outreach. The

department of community, trade, and economic development shall provide Washington State University available existing and future oil overcharge restitution and federal energy block funding for a minimum period of five years to carry out energy programs. Nothing in chapter . . . , Laws of 1996 (this act) prohibits Washington State University from seeking grant funding for energy-related programs directly from other entities.

(5) Washington State University shall select and appoint existing state energy office employees to positions to perform the duties and functions transferred. Employees appointed by Washington State University are exempt from the provisions of chapter 41.06 RCW unless otherwise designated by the institution. Any future vacant or new positions will be filled using Washington State University's standard hiring procedures.

NEW SECTION. Sec. 202. A new section is added to chapter 28B.30 RCW to read as follows:

In addition to the powers and duties transferred, Washington State University shall have the authority to establish administrative units as may be necessary to coordinate either energy education or energy program delivery programs, or both, and to revise, restructure, redirect, or eliminate programs transferred to Washington State University based on available funding or to better serve the people and businesses of Washington state.

PART III

FUNCTIONS OF THE DEPARTMENT OF TRANSPORTATION

NEW SECTION. Sec. 301. A new section is added to chapter 47.01 RCW to read as follows:

(1) All powers, duties, and functions of the state energy office pertaining to the commute trip reduction program are transferred to the department of transportation. All references to the director or the state energy office in the Revised Code of Washington shall be construed to mean the secretary or the department of transportation when referring to the functions transferred in this section.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the state energy office pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the department of transportation. All cabinets, furniture, office equipment, software, data base, motor vehicles, and other tangible property employed by the state energy office in carrying out the powers, functions, and duties transferred shall be made available to the department of transportation. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the department of transportation.

(b) Any appropriations made to the state energy office for carrying out the powers, functions, and duties transferred shall, on the effective date of this section, be transferred and credited to the department of transportation.

(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 state energy office engaged in performing the powers, functions, and duties transferred are transferred to the jurisdiction of the department of transportation. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the department of transportation 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 state energy office pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the department of transportation. All existing contracts and obligations, excluding personnel contracts and obligations, shall remain in full force and shall be performed by the department of transportation.

(5) The transfer of the powers, duties, functions, and personnel of the state energy office shall not affect the validity of any act performed before the effective date of this section.

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

(7) The department of transportation shall report to the legislature by December 1, 1996, on the effects of this section.

PART IV FUNCTIONS OF THE DEPARTMENT OF GENERAL ADMINISTRATION

NEW SECTION. Sec. 401. A new section is added to chapter 43.19 RCW to read as follows:

(1) All powers, duties, and functions of the state energy office pertaining to energy efficiency in public buildings are transferred to the department of general administration. All references to the director or the state energy office in the Revised Code of Washington shall be construed to mean the director or the department of general administration when referring to the functions transferred in this section.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the state energy office pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the

department of general administration. All cabinets, furniture, office equipment, software, data base, motor vehicles, and other tangible property employed by the state energy office in carrying out the powers, functions, and duties transferred shall be made available to the department of general administration. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the department of general administration.

(b) Any appropriations made to the state energy office for carrying out the powers, functions, and duties transferred shall, on the effective date of this section, be transferred and credited to the department of general administration.

(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) Within funds available, employees of the state energy office whose primary responsibility is performing the powers, functions, and duties pertaining to energy efficiency in public buildings are transferred to the jurisdiction of the department of general administration. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the department of general administration 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 state energy office pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the department of general administration. All existing contracts and obligations, excluding personnel contracts and obligations, shall remain in full force and shall be performed by the department of general administration.

(5) The transfer of the powers, duties, functions, and personnel of the state energy office shall not affect the validity of any act performed before the effective date of this section.

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

Sec. 402. RCW 39.35.030 and 1994 c 242 s 1 are each amended to read as follows:

For the purposes of this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Public agency" means every state office, officer, board, commission, committee, bureau, department, and all political subdivisions of the state.

(2) (~~"Office" means the Washington state energy office.~~) "Department" means the state department of general administration.

(3) "Major facility" means any publicly owned or leased building having twenty-five thousand square feet or more of usable floor space.

(4) "Initial cost" means the moneys required for the capital construction or renovation of a major facility.

(5) "Renovation" means additions, alterations, or repairs within any twelve-month period which exceed fifty percent of the value of a major facility and which will affect any energy system.

(6) "Economic life" means the projected or anticipated useful life of a major facility as expressed by a term of years.

(7) "Life-cycle cost" means the initial cost and cost of operation of a major facility over its economic life. This shall be calculated as the initial cost plus the operation, maintenance, and energy costs over its economic life, reflecting anticipated increases in these costs discounted to present value at the current rate for borrowing public funds, as determined by the office of financial management. The energy cost projections used shall be those provided by the (~~state energy office~~) department. The (~~office~~) department shall update these projections at least every two years.

(8) "Life-cycle cost analysis" includes, but is not limited to, the following elements:

- (a) The coordination and positioning of a major facility on its physical site;
- (b) The amount and type of fenestration employed in a major facility;
- (c) The amount of insulation incorporated into the design of a major facility;
- (d) The variable occupancy and operating conditions of a major facility; and
- (e) An energy-consumption analysis of a major facility.

(9) "Energy systems" means all utilities, including, but not limited to, heating, air-conditioning, ventilating, lighting, and the supplying of domestic hot water.

(10) "Energy-consumption analysis" means the evaluation of all energy systems and components by demand and type of energy including the internal energy load imposed on a major facility by its occupants, equipment, and components, and the external energy load imposed on a major facility by the climatic conditions of its location. An energy-consumption analysis of the operation of energy systems of a major facility shall include, but not be limited to, the following elements:

(a) The comparison of three or more system alternatives, at least one of which shall include renewable energy systems;

(b) The simulation of each system over the entire range of operation of such facility for a year's operating period; and

(c) The evaluation of the energy consumption of component equipment in each system considering the operation of such components at other than full or rated outputs.

The energy-consumption analysis shall be prepared by a professional engineer or licensed architect who may use computers or such other methods as are capable of producing predictable results.

(11) "Renewable energy systems" means methods of facility design and construction and types of equipment for the utilization of renewable energy sources including, but not limited to, hydroelectric power, active or passive solar space heating or cooling, domestic solar water heating, windmills, waste heat, biomass and/or refuse-derived fuels, photovoltaic devices, and geothermal energy.

(12) "Cogeneration" means the sequential generation of two or more forms of energy from a common fuel or energy source. Where these forms are electricity and thermal energy, then the operating and efficiency standards established by 18 C.F.R. Sec. 292.205 and the definitions established by 18 C.F.R. 292.202 (c) through (m) as of July 28, 1991, shall apply.

(13) "Selected buildings" means educational, office, residential care, and correctional facilities that are designed to comply with the design standards analyzed and recommended by the ((office)) department.

(14) "Design standards" means the heating, air-conditioning, ventilating, and renewable resource systems identified, analyzed, and recommended by the ((office)) department as providing an efficient energy system or systems based on the economic life of the selected buildings.

Sec. 403. RCW 39.35.050 and 1994 c 242 s 3 are each amended to read as follows:

The ((office)) department, in consultation with affected public agencies, shall develop and issue guidelines for administering this chapter. The purpose of the guidelines is to define a procedure and method for performance of life-cycle cost analysis to promote the selection of low-life-cycle cost alternatives. At a minimum, the guidelines must contain provisions that:

(1) Address energy considerations during the planning phase of the project;
(2) Identify energy components and system alternatives including renewable energy systems and cogeneration applications prior to commencing the energy consumption analysis;

(3) Identify simplified methods to assure the lowest life-cycle cost alternatives for selected buildings with between twenty-five thousand and one hundred thousand square feet of usable floor area;

(4) Establish times during the design process for preparation, review, and approval or disapproval of the life-cycle cost analysis;

(5) Specify the assumptions to be used for escalation and inflation rates, equipment service lives, economic building lives, and maintenance costs;

(6) Determine life-cycle cost analysis format and submittal requirements to meet the provisions of chapter 201, Laws of 1991;

(7) Provide for review and approval of life-cycle cost analysis.

Sec. 404. RCW 39.35.060 and 1991 c 201 s 16 are each amended to read as follows:

The ~~((energy office))~~ department may impose fees upon affected public agencies for the review of life-cycle cost analyses. The fees shall be deposited in the energy efficiency services account established in RCW 39.35C.110. The purpose of the fees is to recover the costs by the ~~((office))~~ department for review of the analyses. The ~~((office))~~ department shall set fees at a level necessary to recover all of its costs related to increasing the energy efficiency of state-supported new construction. The fees shall not exceed one-tenth of one percent of the total cost of any project or exceed two thousand dollars for any project unless mutually agreed to. The ~~((office))~~ department shall provide detailed calculation ensuring that the energy savings resulting from its review of life-cycle cost analysis justify the costs of performing that review.

Sec. 405. RCW 39.35C.010 and 1991 c 201 s 2 are each amended to read as follows:

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

(1) "Cogeneration" means the sequential generation of two or more forms of energy from a common fuel or energy source. If these forms are electricity and thermal energy, then the operating and efficiency standards established by 18 C.F.R. Sec. 292.205 and the definitions established by 18 C.F.R. Sec. 292.202 (c) through (m) apply.

(2) "Conservation" means reduced energy consumption or energy cost, or increased efficiency in the use of energy, and activities, measures, or equipment designed to achieve such results, but does not include thermal or electric energy production from cogeneration.

(3) "Cost-effective" means that the present value to a state agency or school district of the energy reasonably expected to be saved or produced by a facility, activity, measure, or piece of equipment over its useful life, including any compensation received from a utility or the Bonneville power administration, is greater than the net present value of the costs of implementing, maintaining, and operating such facility, activity, measure, or piece of equipment over its useful life, when discounted at the cost of public borrowing.

(4) "Energy" means energy as defined in RCW 43.21F.025(1).

(5) "Energy efficiency project" means a conservation or cogeneration project.

(6) "Energy efficiency services" means assistance furnished by the ~~((energy office))~~ department to state agencies and school districts in identifying, evaluating, and implementing energy efficiency projects.

(7) ~~(("Energy office" means the Washington state energy office.))~~
"Department" means the state department of general administration.

(8) "Performance-based contracting" means contracts for which payment is conditional on achieving contractually specified energy savings.

(9) "Public agency" means every state office, officer, board, commission, committee, bureau, department, and all political subdivisions of the state.

(10) "Public facility" means a building or structure, or a group of buildings or structures at a single site, owned by a state agency or school district.

~~((10))~~ (11) "State agency" means every state office or department, whether elective or appointive, state institutions of higher education, and all boards, commissions, or divisions of state government, however designated.

~~((11))~~ (12) "State facility" means a building or structure, or a group of buildings or structures at a single site, owned by a state agency.

~~((12))~~ (13) "Utility" means privately or publicly owned electric and gas utilities, electric cooperatives and mutuals, whether located within or without Washington state.

~~((13))~~ (14) "Local utility" means the utility or utilities in whose service territory a public facility is located.

Sec. 406. RCW 39.35C.020 and 1991 c 201 s 3 are each amended to read as follows:

(1) Each state agency and school district shall implement cost-effective conservation improvements and maintain efficient operation of its facilities in order to minimize energy consumption and related environmental impacts and reduce operating costs.

(2) The ~~((energy-office))~~ department shall assist state agencies and school districts in identifying, evaluating, and implementing cost-effective conservation projects at their facilities. The assistance shall include the following:

(a) Notifying state agencies and school districts of their responsibilities under this chapter;

(b) Apprising state agencies and school districts of opportunities to develop and finance such projects;

(c) Providing technical and analytical support, including procurement of performance-based contracting services;

(d) Reviewing verification procedures for energy savings; and

(e) Assisting in the structuring and arranging of financing for cost-effective conservation projects.

(3) Conservation projects implemented under this chapter shall have appropriate levels of monitoring to verify the performance and measure the energy savings over the life of the project. The ~~((energy-office))~~ department shall solicit involvement in program planning and implementation from utilities and other energy conservation suppliers, especially those that have demonstrated experience in performance-based energy programs.

(4) The ~~((energy-office))~~ department shall comply with the requirements of chapter 39.80 RCW when contracting for architectural or engineering services.

(5) The ~~((energy-office))~~ department shall recover any costs and expenses it incurs in providing assistance pursuant to this section, including reimbursement from third parties participating in conservation projects. The ~~((energy-office))~~ department shall enter into a written agreement with the ~~((state-agency-or-school-district))~~ public agency for the recovery of costs.

Sec. 407. RCW 39.35C.030 and 1991 c 201 s 4 are each amended to read as follows:

(1) The ~~((energy office))~~ department shall consult with the local utilities to develop priorities for energy conservation projects pursuant to this chapter, cooperate where possible with existing utility programs, and consult with the local utilities prior to implementing projects in their service territory.

(2) A local utility shall be offered the initial opportunity to participate in the development of conservation projects in the following manner:

(a) Before initiating projects in a local utility service territory, the ~~((energy office))~~ department shall notify the local utility in writing, on an annual basis, of public facilities in the local utility's service territory at which the ~~((energy office))~~ department anticipates cost-effective conservation projects will be developed.

(b) Within sixty days of receipt of this notification, the local utility may express interest in these projects by submitting to the ~~((energy office))~~ department a written description of the role the local utility is willing to perform in developing and acquiring the conservation at these facilities. This role may include any local utility conservation programs which would be available to the public facility, any competitive bidding or solicitation process which the local utility will be undertaking in accordance with the rules of the utilities and transportation commission or the public utility district, municipal utility, cooperative, or mutual governing body for which the public facility would be eligible, or any other role the local utility may be willing to perform.

(c) Upon receipt of the written description from the local utility, the ~~((energy office))~~ department shall, through discussions with the local utility, and with involvement from state agencies and school districts responsible for the public facilities, develop a plan for coordinated delivery of conservation services and financing or make a determination of whether to participate in the local utility's competitive bidding or solicitation process. The plan shall identify the local utility in roles that the local utility is willing to perform and that are consistent with the provisions of RCW 39.35C.040(2) (d) and (e).

Sec. 408. RCW 39.35C.040 and 1991 c 201 s 5 are each amended to read as follows:

(1) It is the intent of this chapter that the state, state agencies, and school districts are compensated fairly for the energy savings provided to utilities and be allowed to participate on an equal basis in any utility conservation program, bidding, or solicitation process. State agencies and school districts shall not receive preferential treatment. For the purposes of this section, any type of compensation from a utility or the Bonneville power administration intended to achieve reductions or efficiencies in energy use which are cost-effective to the utility or the Bonneville power administration shall be regarded as a sale of energy savings. Such compensation may include credits to the energy bill, low or no interest loans, rebates, or payment per unit of energy saved. The ~~((energy office))~~ department shall, in coordination with utilities, the Bonneville power administration, state agencies, and school districts, facilitate the sale of energy savings at public facilities including participation in any competitive bidding or

solicitation which has been agreed to by the state agency or school district. Energy savings may only be sold to local utilities or, under conditions specified in this section, to the Bonneville power administration. The ~~((energy office))~~ department shall not attempt to sell energy savings occurring in one utility service territory to a different utility. Nothing in this chapter mandates that utilities purchase the energy savings.

(2) To ensure an equitable allocation of benefits to the state, state agencies, and school districts, the following conditions shall apply to transactions between utilities or the Bonneville power administration and state agencies or school districts for sales of energy savings:

(a) A transaction shall be approved by both ~~((the energy office and))~~ the state agency or school district and the department.

(b) The ~~((energy office and the))~~ state agency or school district and the department shall work together throughout the planning and negotiation process for such transactions unless the ~~((energy office))~~ department determines that its participation will not further the purposes of this section.

(c) Before making a decision under (d) of this subsection, the ~~((energy office))~~ department shall review the proposed transaction for its technical and economic feasibility, the adequacy and reasonableness of procedures proposed for verification of project or program performance, the degree of certainty of benefits to the state, state agency, or school district, the degree of risk assumed by the state or school district, the benefits offered to the state, state agency, or school district and such other factors as the ~~((energy office))~~ department determines to be prudent.

(d) The ~~((energy office))~~ department shall approve a transaction unless it finds, pursuant to the review in (c) of this subsection, that the transaction would not result in an equitable allocation of costs and benefits to the state, state agency, or school district, in which case the transaction shall be disapproved.

(e) In addition to the requirements of (c) and (d) of this subsection, in areas in which the Bonneville power administration has a program for the purchase of energy savings at public facilities, the ~~((energy office))~~ department shall approve the transaction unless the local utility cannot offer a benefit substantially equivalent to that offered by the Bonneville power administration, in which case the transaction shall be disapproved. In determining whether the local utility can offer a substantially equivalent benefit, the ~~((energy office))~~ department shall consider the net present value of the payment for energy savings; any goods, services, or financial assistance provided by the local utility; and any risks borne by the local utility. Any direct negative financial impact on a nongrowing, local utility shall be considered.

(3) Any party to a potential transaction may, within thirty days of any decision to disapprove a transaction made pursuant to subsection (2) (c), (d), or (e) of this section, request an independent reviewer who is mutually agreeable to all parties to the transaction to review the decision. The parties shall within thirty days of selection submit to the independent reviewer documentation

supporting their positions. The independent reviewer shall render advice regarding the validity of the disapproval within an additional thirty days.

Sec. 409. RCW 39.35C.050 and 1991 c 201 s 6 are each amended to read as follows:

In addition to any other authorities conferred by law:

(1) The ~~((energy office))~~ department, with the consent of the state agency or school district responsible for a facility, a state or regional university acting independently, and any other state agency acting through the department of general administration or as otherwise authorized by law, may:

(a) Develop and finance conservation at public facilities in accordance with express provisions of this chapter;

(b) Contract for energy services, including performance-based contracts;

(c) Contract to sell energy savings from a conservation project at public facilities to local utilities or the Bonneville power administration.

(2) A state or regional university acting independently, and any other state agency acting through the department of general administration or as otherwise authorized by law, may undertake procurements for third-party development of conservation at its facilities.

(3) A school district may:

(a) Develop and finance conservation at school district facilities;

(b) Contract for energy services, including performance-based contracts at school district facilities; and

(c) Contract to sell energy savings from energy conservation projects at school district facilities to local utilities or the Bonneville power administration directly or to local utilities or the Bonneville power administration through third parties.

(4) In exercising the authority granted by subsections (1), (2), and (3) of this section, a school district or state agency must comply with the provisions of RCW 39.35C.040.

Sec. 410. RCW 39.35C.060 and 1991 c 201 s 7 are each amended to read as follows:

~~(1) ((The energy office, in accordance with RCW 43.21F.060(2), may use appropriated moneys to make loans to school districts to provide all or part of the financing for conservation projects. The energy office shall determine the eligibility of such projects for conservation loans and the terms of such loans. If loans are from moneys appropriated from bond proceeds, the repayments of the loans shall be sufficient to pay, when due, the principal and interest on the bonds and shall be paid to the energy efficiency construction account established in RCW 39.35C.100. To the extent that a school district applies the proceeds of such loans to a modernization or new construction project, such proceeds shall be considered a portion of the school district's share of the costs of such project.~~

~~—(2))~~ State agencies may use financing contracts under chapter 39.94 RCW to provide all or part of the funding for conservation projects. The ~~((energy~~

~~office~~) department shall determine the eligibility of such projects for financing contracts. The repayments of the financing contracts shall be sufficient to pay, when due, the principal and interest on the contracts.

Sec. 411. RCW 39.35C.070 and 1991 c 201 s 8 are each amended to read as follows:

(1) Consistent with the region's need to develop cost-effective, high efficiency electric energy resources, the state shall investigate and, if appropriate, pursue development of cost-effective opportunities for cogeneration in existing or new state facilities.

(2) To assist state agencies in identifying, evaluating, and developing potential cogeneration projects at their facilities, the (~~energy office~~) department shall notify state agencies of their responsibilities under this chapter; apprise them of opportunities to develop and finance such projects; and provide technical and analytical support. The (~~energy office~~) department shall recover costs for such assistance through written agreements, including reimbursement from third parties participating in such projects, for any costs and expenses incurred in providing such assistance.

(3)(a) The (~~energy office~~) department shall identify priorities for cogeneration projects at state facilities, and, where such projects are initially deemed desirable by the (~~energy office~~) department and the appropriate state agency, the (~~energy office~~) department shall notify the local utility serving the state facility of its intent to conduct a feasibility study at such facility. The (~~energy office~~) department shall consult with the local utility and provide the local utility an opportunity to participate in the development of the feasibility study for the state facility it serves.

(b) If the local utility has an interest in participating in the feasibility study, it shall notify the (~~energy office~~) department and the state agency whose facility or facilities it serves within sixty days of receipt of notification pursuant to (a) of this subsection as to the nature and scope of its desired participation. The (~~energy office~~) department, state agency, and local utility shall negotiate the responsibilities, if any, of each in conducting the feasibility study, and these responsibilities shall be specified in a written agreement.

(c) If a local utility identifies a potential cogeneration project at a state facility for which it intends to conduct a feasibility study, it shall notify the (~~energy office~~) department and the appropriate state agency. The (~~energy office~~) department, state agency, and local utility shall negotiate the responsibilities, if any, of each in conducting the feasibility study, and these responsibilities shall be specified in a written agreement. Nothing in this section shall preclude a local utility from conducting an independent assessment of a potential cogeneration project at a state facility.

(d) Agreements written pursuant to (a) and (b) of this subsection shall include a provision for the recovery of costs incurred by a local utility in performing a feasibility study in the event such utility does not participate in the development of the cogeneration project. If the local utility does participate in

the cogeneration project through energy purchase, project development or ownership, recovery of the utility's costs may be deferred or provided for through negotiation on agreements for energy purchase, project development or ownership.

(e) If the local utility declines participation in the feasibility study, the ~~((energy-office))~~ department and the state agency may receive and solicit proposals to conduct the feasibility study from other parties. Participation of these other parties shall also be secured and defined by a written agreement which may include the provision for reimbursement of costs incurred in the formulation of the feasibility study.

(4) The feasibility study shall include consideration of regional and local utility needs for power, the consistency of the proposed cogeneration project with the state energy strategy, the cost and certainty of fuel supplies, the value of electricity produced, the capability of the state agency to own and/or operate such facilities, the capability of utilities or third parties to own and/or operate such facilities, requirements for and costs of standby sources of power, costs associated with interconnection with the local electric utility's transmission system, the capability of the local electric utility to wheel electricity generated by the facility, costs associated with obtaining wheeling services, potential financial risks and losses to the state and/or state agency, measures to mitigate the financial risk to the state and/or state agency, and benefits to the state and to the state agency from a range of design configurations, ownership, and operation options.

(5) Based upon the findings of the feasibility study, the ~~((energy-office))~~ department and the state agency shall determine whether a cogeneration project will be cost-effective and whether development of a cogeneration project should be pursued. This determination shall be made in consultation with the local utility or, if the local utility had not participated in the development of the feasibility study, with any third party that may have participated in the development of the feasibility study.

(a) Recognizing the local utility's expertise, knowledge, and ownership and operation of the local utility systems, the ~~((energy-office))~~ department and the state agency shall have the authority to negotiate directly with the local utility for the purpose of entering into a sole source contract to develop, own, and/or operate the cogeneration facility. The contract may also include provisions for the purchase of electricity or thermal energy from the cogeneration facility, the acquisition of a fuel source, and any financial considerations which may accrue to the state from ownership and/or operation of the cogeneration facility by the local utility.

(b) The ~~((energy-office))~~ department may enter into contracts through competitive negotiation under this subsection for the development, ownership, and/or operation of a cogeneration facility. In determining an acceptable bid, the ~~((energy-office))~~ department and the state agency may consider such factors as technical knowledge, experience, management, staff, or schedule, as may be

necessary to achieve economical construction or operation of the project. The selection of a developer or operator of a cogeneration facility shall be made in accordance with procedures for competitive bidding under chapter 43.19 RCW.

(c) The ~~((energy office))~~ department shall comply with the requirements of chapter 39.80 RCW when contracting for architectural or engineering services.

(6)(a) The state may own and/or operate a cogeneration project at a state facility. However, unless the cogeneration project is determined to be cost-effective, based on the findings of the feasibility study, the ~~((energy office))~~ department and state agency shall not pursue development of the project as a state-owned facility. If the project is found to be cost-effective, and the ~~((energy office))~~ department and the state agency agree development of the cogeneration project should be pursued as a state-owned and/or operated facility, the ~~((energy office))~~ department shall assist the state agency in the preparation of a finance and development plan for the cogeneration project. Any such plan shall fully account for and specify all costs to the state for developing and/or operating the cogeneration facility.

(b) It is the general intent of this chapter that cogeneration projects developed and owned by the state will be sized to the projected thermal energy load of the state facility over the useful life of the project. The principal purpose and use of such projects is to supply thermal energy to a state facility and not primarily to develop generating capacity for the sale of electricity. For state-owned projects with electricity production in excess of projected thermal requirements, the ~~((energy office))~~ department shall seek and obtain legislative appropriation and approval for development. Nothing in chapter 201, Laws of 1991 shall be construed to authorize any state agency to sell electricity or thermal energy on a retail basis.

(7) When a cogeneration facility will be developed, owned, and/or operated by a state agency or third party other than the local serving utility, the ~~((energy office))~~ department and the state agency shall negotiate a written agreement with the local utility. Elements of such an agreement shall include provisions to ensure system safety, provisions to ensure reliability of any interconnected operations equipment necessary for parallel operation and switching equipment capable of isolating the generation facility, the provision of and reimbursement for standby services, if required, and the provision of and reimbursement for wheeling electricity, if the provision of such has been agreed to by the local utility.

(8) The state may develop and own a thermal energy distribution system associated with a cogeneration project for the principal purpose of distributing thermal energy at the state facility. If thermal energy is to be sold outside the state facility, the state may only sell the thermal energy to a utility.

Sec. 412. RCW 39.35C.080 and 1991 c 201 s 9 are each amended to read as follows:

It is the intention of chapter 201, Laws of 1991 that the state and its agencies are compensated fairly for the energy provided to utilities from

cogeneration at state facilities. Such compensation may include revenues from sales of electricity or thermal energy to utilities, lease of state properties, and value of thermal energy provided to the facility. It is also the intent of chapter 201, Laws of 1991 that the state and its agencies be accorded the opportunity to compete on a fair and reasonable basis to fulfill a utility's new resource acquisition needs when selling the energy produced from cogeneration projects at state facilities through energy purchase agreements.

(1)(a) The ~~((energy office))~~ department and state agencies may participate in any utility request for resource proposal process, as either established under the rules and regulations of the utilities and transportation commission, or by the governing board of a public utility district, municipal utility, cooperative, or mutual.

(b) If a local utility does not have a request for resource proposal pending, the energy office or a state agency may negotiate an equitable and mutually beneficial energy purchase agreement with that utility.

(2) To ensure an equitable allocation of benefits to the state and its agencies, the following conditions shall apply to energy purchase agreements negotiated between utilities and state agencies:

(a) An energy purchase agreement shall be approved by both the ~~((energy office))~~ department and the affected state agency.

(b) The ~~((energy office))~~ department and the state agency shall work together throughout the planning and negotiation process for energy purchase agreements, unless the ~~((energy office))~~ department determines that its participation will not further the purposes of this section.

(c) Before approving an energy purchase agreement, the ~~((energy office))~~ department shall review the proposed agreement for its technical and economic feasibility, the degree of certainty of benefits, the degree of financial risk assumed by the state and/or the state agency, the benefits offered to the state and/or state agency, and other such factors as the ~~((energy office))~~ department deems prudent. The ~~((energy office))~~ department shall approve an energy purchase agreement unless it finds that such an agreement would not result in an equitable allocation of costs and benefits, in which case the transaction shall be disapproved.

(3)(a) The state or state agency shall comply with and shall be bound by applicable avoided cost schedules, electric power wheeling charges, interconnection requirements, utility tariffs, and regulatory provisions to the same extent it would be required to comply and would be bound if it were a private citizen. The state shall neither seek regulatory advantage, nor change regulations, regulatory policy, process, or decisions to its advantage as a seller of cogenerated energy. Nothing contained in chapter 201, Laws of 1991 shall be construed to mandate or require public or private utilities to wheel electric energy resources within or beyond their service territories. Nothing in chapter 201, Laws of 1991 authorizes any state agency or school district to make any sale of energy or waste heat as defined by RCW 80.62.020(9) beyond the explicit provisions of chapter

201, Laws of 1991. Nothing contained in chapter 201, Laws of 1991 requires a utility to purchase energy from the state or a state agency or enter into any agreement in connection with a cogeneration facility.

(b) The state shall neither construct, nor be party to an agreement for developing a cogeneration project at a state facility for the purpose of supplying its own electrical needs, unless it can show that such an arrangement would be in the economic interest of the state taking into account the cost of (i) interconnection requirements, as specified by the local electric utility, (ii) standby charges, as may be required by the local electric utility, and (iii) the current price of electricity offered by the local electric utility. If the local electric utility can demonstrate that the cogeneration project may place an undue burden on the electric utility, the ~~((energy office))~~ department or the state agency shall attempt to negotiate a mutually beneficial agreement that would minimize the burden upon the ratepayers of the local electric utility.

(4) Any party to an energy purchase agreement may, within thirty days of any decision made pursuant to subsection (2)(c) of this section to disapprove the agreement made pursuant to this section, request an independent reviewer who is mutually agreeable to all parties to review the decision. The parties shall within thirty days of selection submit to the independent reviewer documentation supporting their positions. The independent reviewer shall render advice regarding the validity of the disapproval within an additional thirty days.

Sec. 413. RCW 39.35C.090 and 1991 c 201 s 10 are each amended to read as follows:

In addition to any other authorities conferred by law:

(1) The ~~((energy office))~~ department, with the consent of the state agency responsible for a facility, a state or regional university acting independently, and any other state agency acting through the department of general administration or as otherwise authorized by law, may:

(a) Contract to sell electric energy generated at state facilities to a utility; and

(b) Contract to sell thermal energy produced at state facilities to a utility.

(2) A state or regional university acting independently, and any other state agency acting through the department of general administration or as otherwise authorized by law, may:

(a) Acquire, install, permit, construct, own, operate, and maintain cogeneration and facility heating and cooling measures or equipment, or both, at its facilities;

(b) Lease state property for the installation and operation of cogeneration and facility heating and cooling equipment at its facilities;

(c) Contract to purchase all or part of the electric or thermal output of cogeneration plants at its facilities;

(d) Contract to purchase or otherwise acquire fuel or other energy sources needed to operate cogeneration plants at its facilities; and

(e) Undertake procurements for third-party development of cogeneration projects at its facilities, with successful bidders to be selected based on the responsible bid, including nonprice elements listed in RCW 43.19.1911, that offers the greatest net achievable benefits to the state and its agencies.

(3) After July 28, 1991, a state agency shall consult with the ~~((energy office))~~ department prior to exercising any authority granted by this section.

(4) In exercising the authority granted by subsections (1) and (2) of this section, a state agency must comply with the provisions of RCW 39.35C.080.

Sec. 414. RCW 39.35C.100 and 1991 c 201 s 11 are each amended to read as follows:

(1) The energy efficiency construction account is hereby created in the state treasury. Moneys in the account may be spent only after appropriation and only for the following purposes:

(a) Construction of energy efficiency projects, including project evaluation and verification of benefits, project design, project development, project construction, and project administration.

(b) Payment of principal and interest and other costs required under bond covenant on bonds issued for the purpose of (a) of this subsection.

(2) Sources for this account may include:

(a) General obligation and revenue bond proceeds appropriated by the legislature;

(b) Loan repayments under RCW 39.35C.060 sufficient to pay principal and interest obligations; and

(c) Funding from federal, state, and local agencies.

~~((3) The energy office shall establish criteria for approving energy efficiency projects to be financed from moneys disbursed from this account. The criteria shall include cost effectiveness, reliability of energy systems, and environmental costs or benefits. The energy office shall ensure that the criteria are applied with professional standards for engineering and review.))~~

Sec. 415. RCW 39.35C.110 and 1991 c 201 s 12 are each amended to read as follows:

(1) The energy efficiency services account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only ~~((a))~~ for the ~~((energy office))~~ department to provide energy efficiency services to ~~((state agencies and school districts))~~ public agencies including review of life-cycle cost analyses ~~((and (b) for transfer by the legislature to the state general fund)).~~

(2) All receipts from the following source~~(s)~~ shall be deposited into the account:

~~((a))~~ Project fees charged under this section and RCW 39.35C.020, 39.35C.070, and 39.35.060~~((;~~

~~(b) After payment of any principal and interest obligations, moneys from repayments of loans under RCW 39.35C.060;~~

~~— (c) Revenue from sales of energy generated or saved at public facilities under this chapter, except those retained by state agencies and school districts under RCW 39.35C.120; and~~

~~— (d) Payments by utilities and federal power marketing agencies under this chapter, except those retained by state agencies and school districts under RCW 39.35C.120)).~~

(3) The ~~((energy office))~~ department may accept moneys and make deposits to the account from federal, state, or local government agencies.

~~((4) Within one hundred eighty days after July 28, 1991, the energy office shall adopt rules establishing criteria and procedures for setting a fee schedule, establishing working capital requirements, and receiving deposits for this account.))~~

Sec. 416. RCW 39.35C.130 and 1991 c 201 s 17 are each amended to read as follows:

The ~~((energy office))~~ department may adopt rules to implement RCW 39.35C.020 through 39.35C.040, 39.35C.070, 39.35C.080, ~~((39.35C.120,))~~ and 39.35.050.

PART V TECHNICAL CORRECTIONS

Sec. 501. RCW 19.27.190 and 1990 c 2 s 7 are each amended to read as follows:

(1)(a) Not later than January 1, 1991, the state building code council, in consultation with the ~~((state energy office))~~ department of community, trade, and economic development, shall establish interim requirements for the maintenance of indoor air quality in newly constructed residential buildings. In establishing the interim requirements, the council shall take into consideration differences in heating fuels and heating system types. These requirements shall be in effect July 1, 1991, through June 30, 1993.

(b) The interim requirements for new electrically space heated residential buildings shall include ventilation standards which provide for mechanical ventilation in areas of the residence where water vapor or cooking odors are produced. The ventilation shall be exhausted to the outside of the structure. The ventilation standards shall further provide for the capacity to supply outside air to each bedroom and the main living area through dedicated supply air inlet locations in walls, or in an equivalent manner. At least one exhaust fan in the home shall be controlled by a dehumidistat or clock timer to ensure that sufficient whole house ventilation is regularly provided as needed.

(c)(i) For new single family residences with electric space heating systems, zero lot line homes, each unit in a duplex, and each attached housing unit in a planned unit development, the ventilation standards shall include fifty cubic feet per minute of effective installed ventilation capacity in each bathroom and one hundred cubic feet per minute of effective installed ventilation capacity in each kitchen.

(ii) For other new residential units with electric space heating systems the ventilation standards may be satisfied by the installation of two exhaust fans with a combined effective installed ventilation capacity of two hundred cubic feet per minute.

(iii) Effective installed ventilation capacity means the capability to deliver the specified ventilation rates for the actual design of the ventilation system. Natural ventilation and infiltration shall not be considered acceptable substitutes for mechanical ventilation.

(d) For new residential buildings that are space heated with other than electric space heating systems, the interim standards shall be designed to result in indoor air quality equivalent to that achieved with the interim ventilation standards for electric space heated homes.

(e) The interim requirements for all newly constructed residential buildings shall include standards for indoor air quality pollutant source control, including the following requirements: All structural panel components of the residence shall comply with appropriate standards for the emission of formaldehyde; the back-drafting of combustion by-products from combustion appliances shall be minimized through the use of dampers, vents, outside combustion air sources, or other appropriate technologies; and, in areas of the state where monitored data indicate action is necessary to inhibit indoor radon gas concentrations from exceeding appropriate health standards, entry of radon gas into homes shall be minimized through appropriate foundation construction measures.

(2) No later than January 1, 1993, the state building code council, in consultation with the ~~((state energy office))~~ department of community, trade, and economic development, shall establish final requirements for the maintenance of indoor air quality in newly constructed residences to be in effect beginning July 1, 1993. For new electrically space heated residential buildings, these requirements shall maintain indoor air quality equivalent to that provided by the mechanical ventilation and indoor air pollutant source control requirements included in the February 7, 1989, Bonneville power administration record of decision for the environmental impact statement on new energy efficient homes programs (DOE/EIS-0127F) built with electric space heating. In residential units other than single family, zero lot line, duplexes, and attached housing units in planned unit developments, ventilation requirements may be satisfied by the installation of two exhaust fans with a combined effective installed ventilation capacity of two hundred cubic feet per minute. For new residential buildings that are space heated with other than electric space heating systems, the standards shall be designed to result in indoor air quality equivalent to that achieved with the ventilation and source control standards for electric space heated homes. In establishing the final requirements, the council shall take into consideration differences in heating fuels and heating system types.

Sec. 502. RCW 19.27A.020 and 1994 c 226 s 1 are each amended to read as follows:

(1) No later than January 1, 1991, the state building code council shall promulgate rules to be known as the Washington state energy code as part of the state building code.

(2) The council shall follow the legislature's standards set forth in this section to promulgate rules to be known as the Washington state energy code. The Washington state energy code shall be designed to require new buildings to meet a certain level of energy efficiency, but allow flexibility in building design, construction, and heating equipment efficiencies within that framework. The Washington state energy code shall be designed to allow space heating equipment efficiency to offset or substitute for building envelope thermal performance.

(3) The Washington state energy code shall take into account regional climatic conditions. Climate zone 1 shall include all counties not included in climate zone 2. Climate zone 2 includes: Adams, Chelan, Douglas, Ferry, Grant, Kittitas, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, and Whitman counties.

(4) The Washington state energy code for residential buildings shall require:

(a) New residential buildings that are space heated with electric resistance heating systems to achieve energy use equivalent to that used in typical buildings constructed with:

(i) Ceilings insulated to a level of R-38. The code shall contain an exception which permits single rafter or joist vaulted ceilings insulated to a level of R-30 (R value includes insulation only);

(ii) In zone 1, walls insulated to a level of R-19 (R value includes insulation only), or constructed with two by four members, R-13 insulation batts, R-3.2 insulated sheathing, and other normal assembly components; in zone 2 walls insulated to a level of R-24 (R value includes insulation only), or constructed with two by six members, R-22 insulation batts, R-3.2 insulated sheathing, and other normal construction assembly components; for the purpose of determining equivalent thermal performance, the wall U-value shall be 0.058 in zone 1 and 0.044 in zone 2;

(iii) Below grade walls, insulated on the interior side, to a level of R-19 or, if insulated on the exterior side, to a level of R-10 in zone 1 and R-12 in zone 2 (R value includes insulation only);

(iv) Floors over unheated spaces insulated to a level of R-30 (R value includes insulation only);

(v) Slab on grade floors insulated to a level of R-10 at the perimeter;

(vi) Double glazed windows with values not more than U-0.4;

(vii) In zone 1 the glazing area may be up to twenty-one percent of floor area and in zone 2 the glazing area may be up to seventeen percent of floor area where consideration of the thermal resistance values for other building components and solar heat gains through the glazing result in thermal performance equivalent to that achieved with thermal resistance values for other components determined in accordance with the equivalent thermal performance criteria of (a) of this subsection and glazing area equal to fifteen percent of the

floor area. Throughout the state for the purposes of determining equivalent thermal performance, the maximum glazing area shall be fifteen percent of the floor area; and

(viii) Exterior doors insulated to a level of R-5; or an exterior wood door with a thermal resistance value of less than R-5 and values for other components determined in accordance with the equivalent thermal performance criteria of (a) of this subsection.

(b) New residential buildings which are space-heated with all other forms of space heating to achieve energy use equivalent to that used in typical buildings constructed with:

(i) Ceilings insulated to a level of R-30 in zone 1 and R-38 in zone 2 the code shall contain an exception which permits single rafter or joist vaulted ceilings insulated to a level of R-30 (R value includes insulation only);

(ii) Walls insulated to a level of R-19 (R value includes insulation only), or constructed with two by four members, R-13 insulation batts, R-3.2 insulated sheathing, and other normal assembly components;

(iii) Below grade walls, insulated on the interior side, to a level of R-19 or, if insulated on the exterior side, to a level of R-10 in zone 1 and R-12 in zone 2 (R value includes insulation only);

(iv) Floors over unheated spaces insulated to a level of R-19 in zone 1 and R-30 in zone 2 (R value includes insulation only);

(v) Slab on grade floors insulated to a level of R-10 at the perimeter;

(vi) Heat pumps with a minimum heating season performance factor (HSPF) of 6.8 or with all other energy sources with a minimum annual fuel utilization efficiency (AFUE) of seventy-eight percent;

(vii) Double glazed windows with values not more than U-0.65 in zone 1 and U-0.60 in zone 2. The state building code council, in consultation with the ~~((state energy office))~~ department of community, trade, and economic development, shall review these U-values, and, if economically justified for consumers, shall amend the Washington state energy code to improve the U-values by December 1, 1993. The amendment shall not take effect until July 1, 1994; and

(viii) In zone 1, the maximum glazing area shall be twenty-one percent of the floor area. In zone 2 the maximum glazing area shall be seventeen percent of the floor area. Throughout the state for the purposes of determining equivalent thermal performance, the maximum glazing area shall be fifteen percent of the floor area.

(c) The requirements of (b)(ii) of this subsection do not apply to residences with log or solid timber walls with a minimum average thickness of three and one-half inches and with space heat other than electric resistance.

(d) The state building code council may approve an energy code for pilot projects of residential construction that use innovative energy efficiency technologies intended to result in savings that are greater than those realized in the levels specified in this section.

(5) U-values for glazing shall be determined using the area weighted average of all glazing in the building. U-values for vertical glazing shall be determined, certified, and labeled in accordance with the appropriate national fenestration rating council (NFRC) standard, as determined and adopted by the state building code council. Certification of U-values shall be conducted by a certified, independent agency licensed by the NFRC. The state building code council may develop and adopt alternative methods of determining, certifying, and labeling U-values for vertical glazing that may be used by fenestration manufacturers if determined to be appropriate by the council. The state building code council shall review and consider the adoption of the NFRC standards for determining, certifying, and labeling U-values for doors and skylights when developed and published by the NFRC. The state building code council may develop and adopt appropriate alternative methods for determining, certifying, and labeling U-values for doors and skylights. U-values for doors and skylights determined, certified, and labeled in accordance with the appropriate NFRC standard shall be acceptable for compliance with the state energy code. Sealed insulation glass, where used, shall conform to, or be in the process of being tested for, ASTM E-774-81 class A or better.

(6) The minimum state energy code for new nonresidential buildings shall be the Washington state energy code, 1986 edition, as amended.

(7)(a) Except as provided in (b) of this subsection, the Washington state energy code for residential structures shall preempt the residential energy code of each city, town, and county in the state of Washington.

(b) The state energy code for residential structures does not preempt a city, town, or county's energy code for residential structures which exceeds the requirements of the state energy code and which was adopted by the city, town, or county prior to March 1, 1990. Such cities, towns, or counties may not subsequently amend their energy code for residential structures to exceed the requirements adopted prior to March 1, 1990.

(8) The state building code council shall consult with the ~~((state energy office))~~ department of community, trade, and economic development as provided in RCW 34.05.310 prior to publication of proposed rules. The ~~((state energy office))~~ department of community, trade, and economic development shall review the proposed rules for consistency with the guidelines adopted in subsection (4) of this section. The director of the ~~((state energy office))~~ department of community, trade, and economic development shall recommend to the state building code council any changes necessary to conform the proposed rules to the requirements of this section.

(9) The state building code council shall conduct a study of county and city enforcement of energy codes in the state. In conducting the study, the council shall conduct public hearings at designated council meetings to seek input from interested individuals and organizations, and to the extent possible, hold these meetings in conjunction with adopting rules under this section. The study shall include recommendations as to how code enforcement may be improved. The

findings of the study shall be submitted in a report to the legislature no later than January 1, 1991.

(10) If any electric utility providing electric service to customers in the state of Washington purchases at least one percent of its firm energy load from a federal agency, pursuant to section 5.(b)(1) of the Pacific Northwest electric power planning and conservation act (P.L. 96-501), and such utility is unable to obtain from that agency at least fifty percent of the funds for payments required by RCW 19.27A.035, the amendments to this section by chapter 2, Laws of 1990 shall be null and void, and the 1986 state energy code shall be in effect, except that a city, town, or county may enforce a local energy code with more stringent energy requirements adopted prior to March 1, 1990. This subsection shall expire June 30, 1995.

Sec. 503. RCW 28A.515.320 and 1991 sp.s. c 13 s 58 are each amended to read as follows:

The common school construction fund is to be used exclusively for the purpose of financing the construction of facilities for the common schools. The sources of said fund shall be: (1) Those proceeds derived from sale or appropriation of timber and other crops from school and state land other than those granted for specific purposes; (2) the interest accruing on the permanent common school fund less the allocations to the state treasurer's service account [fund] pursuant to RCW 43.08.190 and the state investment board expense account pursuant to RCW 43.33A.160 together with all rentals and other revenue derived therefrom and from land and other property devoted to the permanent common school fund; (3) all moneys received by the state from the United States under the provisions of section 191, Title 30, United States Code, Annotated, and under section 810, chapter 12, Title 16, (Conservation), United States Code, Annotated, except moneys received before June 30, 2001, and when thirty megawatts of geothermal power is certified as commercially available by the receiving utilities and the ~~((state energy office))~~ department of community, trade, and economic development, eighty percent of such moneys, under the Geothermal Steam Act of 1970 pursuant to RCW 43.140.030; and (4) such other sources as the legislature may direct. That portion of the common school construction fund derived from interest on the permanent common school fund may be used to retire such bonds as may be authorized by law for the purpose of financing the construction of facilities for the common schools.

The interest accruing on the permanent common school fund less the allocations to the state treasurer's service ~~((account-[fund]))~~ fund pursuant to RCW 43.08.190 and the state investment board expense account pursuant to RCW 43.33A.160 together with all rentals and other revenues accruing thereto pursuant to subsection (2) of this section prior to July 1, 1967, shall be exclusively applied to the current use of the common schools.

To the extent that the moneys in the common school construction fund are in excess of the amount necessary to allow fulfillment of the purpose of said fund, the excess shall be available for deposit to the credit of the permanent

common school fund or available for the current use of the common schools, as the legislature may direct. Any money from the common school construction fund which is made available for the current use of the common schools shall be restored to the fund by appropriation, including interest income foregone, before the end of the next fiscal biennium following such use.

Sec. 504. RCW 42.17.2401 and 1995 c 399 s 60 and 1995 c 397 s 10 are each reenacted and amended to read as follows:

For the purposes of RCW 42.17.240, the term "executive state officer" includes:

(1) The chief administrative law judge, the director of agriculture, the administrator of the office of marine safety, the administrator of the Washington basic health plan, the director of the department of services for the blind, the director of the state system of community and technical colleges, the director of community, trade, and economic development, the secretary of corrections, the director of ecology, the commissioner of employment security, the chairman of the energy facility site evaluation council, (~~the director of the energy office,~~) the secretary of the state finance committee, the director of financial management, the director of fish and wildlife, the executive secretary of the forest practices appeals board, the director of the gambling commission, the director of general administration, the secretary of health, the administrator of the Washington state health care authority, the executive secretary of the health care facilities authority, the executive secretary of the higher education facilities authority, the executive secretary of the horse racing commission, the executive secretary of the human rights commission, the executive secretary of the indeterminate sentence review board, the director of the department of information services, the director of the interagency committee for outdoor recreation, the executive director of the state investment board, the director of labor and industries, the director of licensing, the director of the lottery commission, the director of the office of minority and women's business enterprises, the director of parks and recreation, the director of personnel, the executive director of the public disclosure commission, the director of retirement systems, the director of revenue, the secretary of social and health services, the chief of the Washington state patrol, the executive secretary of the board of tax appeals, the secretary of transportation, the secretary of the utilities and transportation commission, the director of veterans affairs, the president of each of the regional and state universities and the president of The Evergreen State College, each district and each campus president of each state community college;

(2) Each professional staff member of the office of the governor;

(3) Each professional staff member of the legislature; and

(4) Central Washington University board of trustees, board of trustees of each community college, each member of the state board for community and technical colleges, state convention and trade center board of directors, committee for deferred compensation, Eastern Washington University board of

trustees, Washington economic development finance authority, The Evergreen State College board of trustees, executive ethics board, forest practices appeals board, forest practices board, gambling commission, Washington health care facilities authority, each member of the Washington health services commission, higher education coordinating board, higher education facilities authority, horse racing commission, state housing finance commission, human rights commission, indeterminate sentence review board, board of industrial insurance appeals, information services board, interagency committee for outdoor recreation, state investment board, commission on judicial conduct, legislative ethics board, liquor control board, lottery commission, marine oversight board, Pacific Northwest electric power and conservation planning council, parks and recreation commission, personnel appeals board, board of pilotage commissioners, pollution control hearings board, public disclosure commission, public pension commission, shorelines hearing board, public employees' benefits board, board of tax appeals, transportation commission, University of Washington board of regents, utilities and transportation commission, Washington state maritime commission, Washington personnel resources board, Washington public power supply system executive board, Washington State University board of regents, Western Washington University board of trustees, and fish and wildlife commission.

Sec. 505. RCW 43.06.115 and 1995 c 399 s 61 are each amended to read as follows:

(1) The governor may, by executive order, after consultation with or notification of the executive-legislative committee on economic development created by chapter . . . (Senate Bill No. 5300), Laws of 1993, declare a community to be a "military impacted area." A "military impacted area" means a community or communities, as identified in the executive order, that experience serious social and economic hardships because of a change in defense spending by the federal government in that community or communities.

(2) If the governor executes an order under subsection (1) of this section, the governor shall establish a response team to coordinate state efforts to assist the military impacted community. The response team may include, but not be limited to, one member from each of the following agencies: (a) The department of community, trade, and economic development; (b) the department of social and health services; (c) the employment security department; (d) the state board for community and technical colleges; (e) the higher education coordinating board; and (f) the department of transportation(~~;~~ and ~~(g) the Washington energy office~~). The governor may appoint a response team coordinator. The governor shall seek to actively involve the impacted community or communities in planning and implementing a response to the crisis. The governor may seek input or assistance from the community diversification advisory committee, and the governor may establish task forces in the community or communities to assist in the coordination and delivery of services to the local community. The state

and community response shall consider economic development, human service, and training needs of the community or communities impacted.

(3) The governor shall report at the beginning of the next legislative session to the legislature and the executive-legislative committee on economic development created by chapter . . . (Senate Bill No. 5300), Laws of 1993, as to the designation of a military impacted area. The report shall include recommendations regarding whether a military impacted area should become eligible for (a) funding provided by the community economic revitalization board, public facilities construction loan revolving account, Washington state development loan fund, basic health plan, the public works assistance account, department of community, trade, and economic development, employment security department, and department of transportation; (b) training for dislocated defense workers; or (c) services for dislocated defense workers.

Sec. 506. RCW 43.19.680 and 1986 c 325 s 2 are each amended to read as follows:

(1) Upon completion of each walk-through survey required by RCW 43.19.675, the director of general administration or the agency responsible for the facility if other than the department of general administration shall implement energy conservation maintenance and operation procedures that may be identified for any state-owned facility. These procedures shall be implemented as soon as possible but not later than twelve months after the walk-through survey.

(2) By December 31, 1981, for the capitol campus the director of general administration (~~(, in cooperation with the director of the state energy office,)~~) shall prepare and transmit to the governor and the legislature an implementation plan.

(3) By December 31, 1983, for all other state-owned facilities, the director of general administration (~~(in cooperation with the director of the state energy office))~~) shall prepare and transmit to the governor and the legislature the results of the energy consumption and walk-through surveys and a schedule for the conduct of technical assistance studies. This submission shall contain the energy conservation measures planned for installation during the ensuing biennium. Priority considerations for scheduling technical assistance studies shall include but not be limited to a facility's energy efficiency, responsible agency participation, comparative cost and type of fuels, possibility of outside funding, logistical considerations such as possible need to vacate the facility for installation of energy conservation measures, coordination with other planned facility modifications, and the total cost of a facility modification, including other work which would have to be done as a result of installing energy conservation measures. Energy conservation measure acquisitions and installations shall be scheduled to be twenty-five percent complete by June 30, 1985, or at the end of the capital budget biennium which includes that date, whichever is later, fifty-five percent complete by June 30, 1989, or at the end of the capital budget biennium which includes that date, whichever is later, eighty-five percent complete by June 30, 1993, or at the end of the capital budget biennium which

includes that date, whichever is later, and fully complete by June 30, 1995, or at the end of the capital budget biennium which includes that date, whichever is later. Each state agency shall implement energy conservation measures with a payback period of twenty-four months or less that have a positive cash flow in the same biennium.

For each biennium until all measures are installed, the director of general administration shall report to the governor and legislature installation progress, measures planned for installation during the ensuing biennium, and changes, if any, to the technical assistance study schedule. This report shall be submitted by December 31, 1984, or at the end of the following year whichever immediately precedes the capital budget adoption, and every two years thereafter until all measures are installed.

(4) The director of general administration shall adopt rules to facilitate private investment in energy conservation measures for state-owned buildings consistent with state law.

Sec. 507. RCW 43.21G.010 and 1981 c 295 s 11 are each amended to read as follows:

The legislature finds that energy in various forms is increasingly subject to possible shortages and supply disruptions, to the point that there may be foreseen an emergency situation, and that without the ability to institute appropriate emergency measures to regulate the production, distribution, and use of energy, a severe impact on the public health, safety, and general welfare of our state's citizens may occur. The prevention or mitigation of such energy shortages or disruptions and their effects is necessary for preservation of the public health, safety, and general welfare of the citizens of this state.

It is the intent of this chapter to:

- (1) Establish necessary emergency powers for the governor and define the situations under which such powers are to be exercised;
- (2) Provide penalties for violations of this chapter.

It is further the intent of the legislature that in developing proposed orders under the powers granted in RCW 43.21G.040 as now or hereafter amended the governor may utilize, on a temporary or ad hoc basis, the knowledge and expertise of persons experienced in the technical aspects of energy supply, distribution, or use. Such utilization shall be in addition to support received by the governor from the ~~((state energy office))~~ department of community, trade, and economic development under RCW 43.21F.045 and 43.21F.065 and from other state agencies.

Sec. 508. RCW 43.31.621 and 1995 c 226 s 3 are each amended to read as follows:

(1) There is established the agency rural community assistance task force. The task force shall be chaired by the rural community assistance coordinator. It shall be the responsibility of the coordinator that all directives of chapter 314, Laws of 1991 are carried out expeditiously by the agencies represented in the

task force. The task force shall consist of the directors, or representatives of the directors, of the following agencies: The department of community, trade, and economic development, employment security department, department of social and health services, state board for community and technical colleges, work force training and education coordinating board, department of natural resources, department of transportation, ~~((state energy office,))~~ department of fish and wildlife, University of Washington center for international trade in forest products, department of agriculture, and department of ecology. The task force shall solicit and consider input from the rural development council in coordinating agency programs targeted to rural natural resources impacted communities. The task force may consult and enlist the assistance of the following: The higher education coordinating board, University of Washington college of forest resources, University of Washington school of fisheries, Washington State University school of forestry, Northwest policy center, state superintendent of public instruction, Washington state labor council, the Evergreen partnership, Washington state association of counties, and others as needed.

(2) The task force, in conjunction with the rural development council, shall undertake a study to determine whether additional communities and industries are impacted, or are likely to be impacted, by salmon preservation and recovery efforts. The task force shall consider possible impacts in the following industries and associated communities: Barge transportation, irrigation dependent agriculture, food processing, aluminum, charter recreational fishing, boatbuilding, and other sectors suggested by the task force. The task force shall report its findings and recommendations to the legislature by January 1996.

(3) This section shall expire June 30, 1997.

Sec. 509. RCW 43.88.195 and 1993 c 500 s 8 are each amended to read as follows:

After August 11, 1969, no state agency, state institution, state institution of higher education, which shall include all state universities, regional universities, The Evergreen State College, and community colleges, shall establish any new accounts or funds which are to be located outside of the state treasury: PROVIDED, That the office of financial management shall be authorized to grant permission for the establishment of such an account or fund outside of the state treasury only when the requesting agency presents compelling reasons of economy and efficiency which could not be achieved by placing such funds in the state treasury. When the director of financial management authorizes the creation of such fund or account, the director shall forthwith give written notice of the fact to the standing committees on ways and means of the house and senate: PROVIDED FURTHER, That ~~((the office of financial management may grant permission for the establishment of accounts outside of the state treasury for the purposes of RCW 39.35C.120.))~~ agencies authorized to create local accounts will utilize the services of the state treasurer's office to ensure that new or ongoing relationships with financial institutions are in concert with state-wide policies and procedures pursuant to RCW 43.88.160(1).

Sec. 510. RCW 43.140.040 and 1981 c 158 s 4 are each amended to read as follows:

Distribution of funds from the geothermal account of the general fund shall be subject to the following limitations:

(1) Thirty percent to the department of natural resources for geothermal exploration and assessment;

(2) Thirty percent to ~~((the Washington state energy office))~~ Washington State University or its statutory successor for the purpose of encouraging the development of geothermal energy; and

(3) Forty percent to the county of origin for mitigating impacts caused by geothermal energy exploration, assessment, and development.

Sec. 511. RCW 43.140.050 and 1981 c 158 s 5 are each amended to read as follows:

The state treasurer shall be responsible for distribution of funds to the county of origin. Each county's share of rentals and royalties from a lease including lands in more than one county shall be computed on the basis of the ratio that the acreage within each county has to the total acreage in the lease. ~~((The Washington state energy office))~~ Washington State University or its statutory successor shall obtain the necessary information to make the distribution of funds on such a basis.

Sec. 512. RCW 47.06.110 and 1995 c 399 s 120 are each amended to read as follows:

The state-interest component of the state-wide multimodal transportation plan shall include a state public transportation plan that:

(1) Articulates the state vision of an interest in public transportation and provides quantifiable objectives, including benefits indicators;

(2) Identifies the goals for public transit and the roles of federal, state, regional, and local entities in achieving those goals;

(3) Recommends mechanisms for coordinating state, regional, and local planning for public transportation;

(4) Recommends mechanisms for coordinating public transportation with other transportation services and modes;

(5) Recommends criteria, consistent with the goals identified in subsection (2) of this section and with RCW 82.44.180 (2) and (3), for existing federal authorizations administered by the department to transit agencies; and

(6) Recommends a state-wide public transportation facilities and equipment management system as required by federal law.

In developing the state public transportation plan, the department shall involve local jurisdictions, public and private providers of transportation services, nonmotorized interests, and state agencies with an interest in public transportation, including but not limited to the departments of community, trade, and economic development, social and health services, and ecology, ~~((the state~~

~~energy office,))~~ the office of the superintendent of public instruction, the office of the governor, and the office of financial management.

The department shall submit an initial report to the legislative transportation committee by December 1, 1993, and shall provide annual reports summarizing the plan's progress each year thereafter.

Sec. 513. RCW 70.94.527 and 1991 c 202 s 12 are each amended to read as follows:

(1) Each county with a population over one hundred fifty thousand, and each city or town within those counties containing a major employer shall, by October 1, 1992, adopt by ordinance and implement a commute trip reduction plan for all major employers. The plan shall be developed in cooperation with local transit agencies, regional transportation planning organizations as established in RCW 47.80.020, major employers, and the owners of and employers at major worksites. The plan shall be designed to achieve reductions in the proportion of single-occupant vehicle commute trips and the commute trip vehicle miles traveled per employee by employees of major public and private sector employers in the jurisdiction.

(2) All other counties, and cities and towns in those counties, may adopt and implement a commute trip reduction plan.

(3) The department of ecology may, after consultation with the ~~((state energy office))~~ department of transportation, as part of the state implementation plan for areas that do not attain the national ambient air quality standards for carbon monoxide or ozone, require municipalities other than those identified in subsection (1) of this section to adopt and implement commute trip reduction plans if the department determines that such plans are necessary for attainment of said standards.

(4) A commute trip reduction plan shall be consistent with the guidelines established under RCW 70.94.537 and shall include but is not limited to (a) goals for reductions in the proportion of single-occupant vehicle commute trips and the commute trip vehicle miles traveled per employee; (b) designation of commute trip reduction zones; (c) requirements for major public and private sector employers to implement commute trip reduction programs; (d) a commute trip reduction program for employees of the county, city, or town; (e) a review of local parking policies and ordinances as they relate to employers and major worksites and any revisions necessary to comply with commute trip reduction goals and guidelines; (f) an appeals process by which major employers, who as a result of special characteristics of their business or its locations would be unable to meet the requirements of a commute trip reduction plan, may obtain waiver or modification of those requirements; and (g) means for determining base year values of the proportion of single-occupant vehicle commute trips and the commute trip vehicle miles traveled per employee and progress toward meeting commute trip reduction plan goals on an annual basis. Goals which are established shall take into account existing transportation demand management efforts which are made by major employers. Each jurisdiction shall ensure that

employers shall receive full credit for the results of transportation demand management efforts and commute trip reduction programs which have been implemented by major employers prior to the base year. The goals for miles traveled per employee for all major employers shall not be less than a fifteen percent reduction from the base year value of the commute trip reduction zone in which their worksite is located by January 1, 1995, twenty-five percent reduction from the base year values by January 1, 1997, and thirty-five percent reduction from the base year values by January 1, 1999.

(5) A county, city, or town may, as part of its commute trip reduction plan, require commute trip reduction programs for employers with ten or more full time employees at major worksites in federally designated nonattainment areas for carbon monoxide and ozone. The county, city or town shall develop the programs in cooperation with affected employers and provide technical assistance to the employers in implementing such programs.

(6) The commute trip reduction plans adopted by counties, cities, and towns under this chapter shall be consistent with and may be incorporated in applicable state or regional transportation plans and local comprehensive plans and shall be coordinated, and consistent with, the commute trip reduction plans of counties, cities, or towns with which the county, city, or town has, in part, common borders or related regional issues. Such regional issues shall include assuring consistency in the treatment of employers who have worksites subject to the requirements of this chapter in more than one jurisdiction. Counties, cities, or towns adopting commute trip reduction plans may enter into agreements through the interlocal cooperation act or by resolution or ordinance as appropriate with other jurisdictions, local transit agencies, or regional transportation planning organizations to coordinate the development and implementation of such plans. Counties, cities, or towns adopting a commute trip reduction plan shall review it annually and revise it as necessary to be consistent with applicable plans developed under RCW 36.70A.070.

(7) Each county, city, or town implementing a commute trip reduction program shall, within thirty days submit a summary of its plan along with certification of adoption to the commute trip reduction task force established under RCW 70.94.537.

(8) Each county, city, or town implementing a commute trip reduction program shall submit an annual progress report to the commute trip reduction task force established under RCW 70.94.537. The report shall be due July 1, 1994, and each July 1 thereafter through July 1, 2000. The report shall describe progress in attaining the applicable commute trip reduction goals for each commute trip reduction zone and shall highlight any problems being encountered in achieving the goals. The information shall be reported in a form established by the commute trip reduction task force.

(9) Any waivers or modifications of the requirements of a commute trip reduction plan granted by a jurisdiction shall be submitted for review to the commute trip reduction task force established under RCW 70.94.537. The

commute trip reduction task force may not deny the granting of a waiver or modification of the requirements of a commute trip reduction plan by a jurisdiction but they may notify the jurisdiction of any comments or objections.

(10) Each county, city, or town implementing a commute trip reduction program shall count commute trips eliminated through work-at-home options or alternate work schedules as one and two-tenths vehicle trips eliminated for the purpose of meeting trip reduction goals.

(11) Plans implemented under this section shall not apply to commute trips for seasonal agricultural employees.

(12) Plans implemented under this section shall not apply to construction worksites when the expected duration of the construction project is less than two years.

Sec. 514. RCW 70.94.537 and 1995 c 399 s 188 are each amended to read as follows:

(1) A ~~((twenty-three))~~ twenty-two member state commute trip reduction task force shall be established as follows:

(a) The ~~((director of the state energy office or the director's designee who shall serve as chair;~~

~~—(b) The))~~ secretary of the department of transportation or the secretary's designee who shall serve as chair;

~~((c))~~ (b) The director of the department of ecology or the director's designee;

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

~~((e))~~ (d) The director of the department of general administration or the director's designee;

~~((f))~~ (e) Three representatives from counties appointed by the governor from a list of at least six recommended by the Washington state association of counties;

~~((g))~~ (f) Three representatives from cities and towns appointed by the governor from a list of at least six recommended by the association of Washington cities;

~~((h))~~ (g) Three representatives from transit agencies appointed by the governor from a list of at least six recommended by the Washington state transit association;

~~((i))~~ (h) Six representatives of employers at or owners of major worksites in Washington appointed by the governor from a list of at least twelve recommended by the association of Washington business; and

~~((j))~~ (i) Three citizens appointed by the governor.

Members of the commute trip reduction task force shall serve without compensation but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Members appointed by the governor shall be compensated in accordance with RCW 43.03.220. The task force has all powers

necessary to carry out its duties as prescribed by this chapter. The task force shall be dissolved on July 1, 2000.

(2) By March 1, 1992, the commute trip reduction task force shall establish guidelines for commute trip reduction plans. The guidelines are intended to ensure consistency in commute trip reduction plans and goals among jurisdictions while fairly taking into account differences in employment and housing density, employer size, existing and anticipated levels of transit service, special employer circumstances, and other factors the task force determines to be relevant. The guidelines shall include:

(a) Criteria for establishing commute trip reduction zones;

(b) Methods and information requirements for determining base year values of the proportion of single-occupant vehicle commute trips and the commute trip vehicle miles traveled per employee and progress toward meeting commute trip reduction plan goals;

(c) Model commute trip reduction ordinances;

(d) Methods for assuring consistency in the treatment of employers who have worksites subject to the requirements of this chapter in more than one jurisdiction;

(e) An appeals process by which major employers, who as a result of special characteristics of their business or its locations would be unable to meet the requirements of a commute trip reduction plan, may obtain a waiver or modification of those requirements and criteria for determining eligibility for waiver or modification;

(f) Methods to ensure that employers shall receive full credit for the results of transportation demand management efforts and commute trip reduction programs which have been implemented by major employers prior to the base year;

(g) Alternative commute trip reduction goals for major employers which cannot meet the goals of this chapter because of the unique nature of their business; and

(h) Alternative commute trip reduction goals for major employers whose worksites change and who contribute substantially to traffic congestion in a trip reduction zone.

(3) The task force shall assess the commute trip reduction options available to employers other than major employers and make recommendations to the legislature by October 1, 1992. The recommendations shall include the minimum size of employer who shall be required to implement trip reduction programs and the appropriate methods those employers can use to accomplish trip reduction goals.

(4) The task force shall review progress toward implementing commute trip reduction plans and programs and the costs and benefits of commute trip reduction plans and programs and shall make recommendations to the legislature by December 1, 1995, and December 1, 1999. In assessing the costs and benefits, the task force shall consider the costs of not having implemented

commute trip reduction plans and programs. The task force shall examine other transportation demand management programs nationally and incorporate its findings into its recommendations to the legislature. The recommendations shall address the need for continuation, modification, or termination or any or all requirements of this chapter. The recommendations made December 1, 1995, shall include recommendations regarding extension of the requirements of this chapter to employers with fifty or more full-time employees at a single worksite who begin their regular work day between 6:00 a.m. and 9:00 a.m. on weekdays for more than twelve continuous months.

Sec. 515. RCW 70.94.541 and 1991 c 202 s 16 are each amended to read as follows:

(1) A technical assistance team shall be established under the direction of the ~~((state energy office))~~ department of transportation and include representatives of the department~~((s))~~ of ~~((transportation and))~~ ecology. The team shall provide staff support to the commute trip reduction task force in carrying out the requirements of RCW 70.94.537 and to the department of general administration in carrying out the requirements of RCW 70.94.551.

(2) The team shall provide technical assistance to counties, cities, and towns, the department of general administration, other state agencies, and other employers in developing and implementing commute trip reduction plans and programs. The technical assistance shall include: (a) Guidance in determining base and subsequent year values of single-occupant vehicle commuting proportion and commute trip reduction vehicle miles traveled to be used in determining progress in attaining plan goals; (b) developing model plans and programs appropriate to different situations; and (c) providing consistent training and informational materials for the implementation of commute trip reduction programs. Model plans and programs, training and informational materials shall be developed in cooperation with representatives of local governments, transit agencies, and employers.

(3) In carrying out this section the ~~((state energy office and))~~ department of transportation may contract with state-wide associations representing cities, towns, and counties to assist cities, towns, and counties in implementing commute trip reduction plans and programs.

Sec. 516. RCW 70.94.551 and 1991 c 202 s 19 are each amended to read as follows:

(1) The director of general administration, with the concurrence of an interagency task force established for the purposes of this section, shall coordinate a commute trip reduction plan for state agencies which are phase 1 major employers by January 1, 1993. The task force shall include representatives of the ~~((state energy office, the))~~ departments of transportation and ecology and such other departments as the director of general administration determines to be necessary to be generally representative of state agencies. The state agency plan shall be consistent with the requirements of RCW 70.94.527 and 70.94.531 and

shall be developed in consultation with state employees, local and regional governments, local transit agencies, the business community, and other interested groups. The plan shall consider and recommend policies applicable to all state agencies including but not limited to policies regarding parking and parking charges, employee incentives for commuting by other than single-occupant automobiles, flexible and alternative work schedules, alternative worksites, and the use of state-owned vehicles for car and van pools. The plan shall also consider the costs and benefits to state agencies of achieving commute trip reductions and consider mechanisms for funding state agency commute trip reduction programs. The department shall, within thirty days, submit a summary of its plan along with certification of adoption to the commute trip reduction task force established under RCW 70.94.537.

(2) Not more than three months after the adoption of the commute trip reduction plan, each state agency shall, for each facility which is a major employer, develop a commute trip reduction program. The program shall be designed to meet the goals of the commute trip reduction plan of the county, city, or town or, if there is no local commute trip reduction plan, the state. The program shall be consistent with the policies of the state commute trip reduction plan and RCW 70.94.531. The agency shall submit a description of that program to the local jurisdiction implementing a commute trip reduction plan or, if there is no local commute trip reduction plan, to the department of general administration. The program shall be implemented not more than three months after submission to the department. Annual reports required in RCW 70.94.531(2)(c) shall be submitted to the local jurisdiction implementing a commute trip reduction plan and to the department of general administration. An agency which is not meeting the applicable commute trip reduction goals shall, to the extent possible, modify its program to comply with the recommendations of the local jurisdiction or the department of general administration.

(3) State agencies sharing a common location may develop and implement a joint commute trip reduction program or may delegate the development and implementation of the commute trip reduction program to the department of general administration.

(4) The department of general administration in consultation with the state technical assistance team shall review the initial commute trip reduction program of each state agency subject to the commute trip reduction plan for state agencies to determine if the program is likely to meet the applicable commute trip reduction goals and notify the agency of any deficiencies. If it is found that the program is not likely to meet the applicable commute trip reduction goals, the team will work with the agency to modify the program as necessary.

(5) For each agency subject to the state agency commute trip reduction plan, the department of general administration in consultation with the technical assistance team shall annually review progress toward meeting the applicable commute trip reduction goals. If it appears an agency is not meeting or is not

likely to meet the applicable commute trip reduction goals, the team shall work with the agency to make modifications to the commute trip reduction program.

(6) The department of general administration shall submit an annual progress report for state agencies subject to the state agency commute trip reduction plan to the commute trip reduction task force established under RCW 70.94.537. The report shall be due April 1, 1993, and each April 1 through 2000. The report shall report progress in attaining the applicable commute trip reduction goals for each commute trip reduction zone and shall highlight any problems being encountered in achieving the goals. The information shall be reported in a form established by the commute trip reduction task force.

Sec. 517. RCW 70.94.960 and 1991 c 199 s 218 are each amended to read as follows:

The department may disburse matching grants from funds provided by the legislature from the air pollution control account, created in RCW 70.94.015, to units of local government to partially offset the additional cost of purchasing "clean fuel" and/or operating "clean-fuel vehicles" provided that such vehicles are used for public transit. Publicly owned school buses are considered public transit for the purposes of this section. The department may also disburse grants to vocational-technical institutes for the purpose of establishing programs to certify clean-fuel vehicle mechanics. The department may also distribute grants to ~~((the state energy office))~~ Washington State University for the purpose of furthering the establishment of clean fuel refueling infrastructure.

Sec. 518. RCW 70.120.210 and 1991 c 199 s 212 are each amended to read as follows:

By July 1, 1992, the department shall develop, in cooperation with the departments of general administration and transportation, and ~~((the state energy office))~~ Washington State University, aggressive clean-fuel performance and clean-fuel vehicle emissions specifications including clean-fuel vehicle conversion equipment. To the extent possible, such specifications shall be equivalent for all fuel types. In developing such specifications the department shall consider the requirements of the clean air act and the findings of the environmental protection agency, other states, the American petroleum institute, the gas research institute, and the motor vehicles manufacturers association.

Sec. 519. RCW 70.120.220 and 1991 c 199 s 215 are each amended to read as follows:

The department, in cooperation with the departments of general administration and transportation, the utilities and transportation commission, and ~~((the state energy office))~~ Washington State University, shall biennially prepare a report to the legislature starting July 1, 1992, on:

- (1) Progress of clean fuel and clean-fuel vehicle programs in reducing automotive emissions;
- (2) Recommendations for enhancing clean-fuel distribution systems;

(3) Efforts of the state, units of local government, and the private sector to evaluate and utilize "clean fuel" or "clean-fuel vehicles"; and

(4) Recommendations for changes in the existing program to make it more effective and, if warranted, for expansion of the program.

Sec. 520. RCW 80.28.260 and 1990 c 2 s 9 are each amended to read as follows:

(1) The commission shall adopt a policy allowing an incentive rate of return on investment (a) for payments made under RCW 19.27A.035 and (b) for programs that improve the efficiency of energy end use if priority is given to senior citizens and low-income citizens in the course of carrying out such programs. The incentive rate of return on investments set forth in this subsection is established by adding an increment of two percent to the rate of return on common equity permitted on the company's other investments.

(2) The commission shall consider and may adopt a policy allowing an incentive rate of return on investment in additional programs to improve the efficiency of energy end use or other incentive policies to encourage utility investment in such programs.

(3) The commission shall consider and may adopt other policies to protect a company from a reduction of short-term earnings that may be a direct result of utility programs to increase the efficiency of energy use. These policies may include allowing a periodic rate adjustment for investments in end use efficiency or allowing changes in price structure designed to produce additional new revenue.

~~((4) The commission may adopt a policy allowing the recovery of a utility's expenses incurred under RCW 19.27A.055.))~~

Sec. 521. RCW 82.35.020 and 1979 ex.s. c 191 s 2 are each amended to read as follows:

As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Cogeneration" means the sequential generation of electrical or mechanical power and useful heat from the same primary energy source or fuel.

(2) "Cogeneration facility" means any machinery, equipment, structure, process, or property, or any part thereof, installed or acquired for the primary purpose of cogeneration by a person or corporation other than an electric utility.

(3) "Certificate" means a cogeneration tax credit certificate granted by the department.

(4) "Cost" means only the cost of a cogeneration facility which is in addition to the cost that the applicant otherwise would incur to meet the applicant's demands for useful heat. "Cost" does not include expenditures which are offset by cost savings, including but not limited to savings resulting from early retirement of existing equipment.

(5) "Department" means the department of revenue.

(6) "Electric utility" means any person, corporation, or governmental subdivision authorized and operating under the Constitution and laws of the state of Washington which is primarily engaged in the generation or sale of electric energy.

~~((7) "Office" means the state energy office.))~~

Sec. 522. RCW 82.35.080 and 1979 ex.s. c 191 s 8 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the department shall revoke any certificate issued under this chapter if it finds that any of the following have occurred with respect to the certificate:

- (a) The certificate was obtained by fraud or deliberate misrepresentation;
- (b) The certificate was obtained through the use of inaccurate data but without any intention to commit fraud or misrepresentation;
- (c) The facility was constructed or operated in violation of any provision of this chapter or provision imposed by the department as a condition of certification; or
- (d) The cogeneration facility is no longer capable of being operated for the primary purpose of cogeneration.

(2) If the department finds that there are few inaccuracies under subsection (1)(b) of this section and that cumulatively they are insignificant in terms of the cost or operation of the facility or that the inaccurate data is not attributable to carelessness or negligence and its inclusion was reasonable under the circumstances, then the department may provide for the continuance of the certificate and whatever modification it considers in the public interest.

(3) Any person, firm, corporation, or organization that obtains a certificate revoked under this section shall be liable for the total amount of money saved by claiming the credits and exemptions provided under this chapter and RCW 84.36.485. The total amount of the credits shall be collected as delinquent business and occupation taxes, and the total of the exemptions shall be collected and distributed as delinquent property taxes. Interest shall accrue on the amounts of the credits and exemptions from the date the taxes were otherwise due.

(4) The ~~((office))~~ department of community, trade, and economic development shall provide technical assistance to the department in carrying out its responsibilities under this section.

Sec. 523. RCW 90.03.247 and 1994 c 264 s 82 are each amended to read as follows:

Whenever an application for a permit to make beneficial use of public waters is approved relating to a stream or other water body for which minimum flows or levels have been adopted and are in effect at the time of approval, the permit shall be conditioned to protect the levels or flows. No agency may establish minimum flows and levels or similar water flow or level restrictions for any stream or lake of the state other than the department of ecology whose authority to establish is exclusive, as provided in chapter 90.03 RCW and RCW

90.22.010 and 90.54.040. The provisions of other statutes, including but not limited to RCW 75.20.100 and chapter 43.21C RCW, may not be interpreted in a manner that is inconsistent with this section. In establishing such minimum flows, levels, or similar restrictions, the department shall, during all stages of development by the department of ecology of minimum flow proposals, consult with, and carefully consider the recommendations of, the department of fish and wildlife, the ~~((state energy office))~~ department of community, trade, and economic development, the department of agriculture, and representatives of the affected Indian tribes. Nothing herein shall preclude the department of fish and wildlife, the ~~((energy office))~~ department of community, trade, and economic development, or the department of agriculture from presenting its views on minimum flow needs at any public hearing or to any person or agency, and the department of fish and wildlife, the ~~((energy office))~~ department of community, trade, and economic development, and the department of agriculture are each empowered to participate in proceedings of the federal energy regulatory commission and other agencies to present its views on minimum flow needs.

NEW SECTION. Sec. 524. The following acts or parts of acts are each repealed:

- (1) RCW 43.21F.035 and 1990 c 12 s 1 & 1981 c 295 s 3;
- (2) RCW 43.21F.065 and 1987 c 330 s 502 & 1981 c 295 s 8;
- (3) RCW 39.35C.120 and 1991 c 201 s 13;
- (4) RCW 41.06.081 and 1981 c 295 s 10;
- (5) RCW 43.41.175 and 1986 c 325 s 4; and
- (6) RCW 19.27A.055 and 1990 c 2 s 6.

PART VI MISCELLANEOUS

NEW SECTION. Sec. 601. The state shall offer the following services to state employees affected by the elimination of the Washington state energy office:

- (1) Placement in the reduction in force transition pool;
 - (2) Payment of one hundred fifty dollars per month per employee for health benefits purchased under the federal consolidated omnibus budget reconciliation act (COBRA) for a period not to exceed one year;
 - (3) Placement in the Washington management services clearinghouse register for employees in the Washington management service;
 - (4) Career transition services through the department of personnel;
 - (5) Up to thirty weeks of unemployment benefits for qualifying employees;
- and
- (6) Dislocated worker training for employees in positions unique to the energy industry.

NEW SECTION. Sec. 602. Part headings used in this act do not constitute part of the law.

NEW SECTION. Sec. 603. This act shall take effect July 1, 1996.

Passed the House February 10, 1996.
Passed the Senate February 29, 1996.
Approved by the Governor March 28, 1996.
Filed in Office of Secretary of State March 28, 1996.

CHAPTER 187

[House Bill 2126]

DENTISTS—INACTIVE LICENSES

AN ACT Relating to inactive licenses for dentists; and adding a new section to chapter 18.32 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 18.32 RCW to read as follows:

The commission may adopt rules under this section authorizing an inactive license status.

(1) An individual licensed under chapter 18.32 RCW may place his or her license on inactive status. The holder of an inactive license must not practice dentistry in this state without first activating the license.

(2) The inactive renewal fee must be established by the secretary under RCW 43.70.250. Failure to renew an inactive license shall result in cancellation of the inactive license in the same manner as an active license.

(3) An inactive license may be placed in an active status upon compliance with rules established by the commission.

(4) Provisions relating to disciplinary action against a person with a license are applicable to a person with an inactive license, except that when disciplinary proceedings against a person with an inactive license have been initiated, the license will remain inactive until the proceedings have been completed.

Passed the House March 4, 1996.
Passed the Senate March 1, 1996.
Approved by the Governor March 28, 1996.
Filed in Office of Secretary of State March 28, 1996.

CHAPTER 188

[Engrossed House Bill 2132]

**DEPARTMENT OF AGRICULTURE GRANTS OF RULE-MAKING
AUTHORITY—REVISIONS**

AN ACT Relating to the department of agriculture grants of rule-making authority; amending RCW 15.17.020, 15.36.021, 15.58.040, and 16.70.040; adding a new section to chapter 15.17 RCW; and adding a new section to chapter 42.17 RCW.

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

Sec. 1. RCW 15.17.020 and 1963 c 122 s 2 are each amended to read as follows:

For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly authorized representative.

(3) "Person" means a natural person, individual, or firm, partnership, corporation, company, society, and association, and every officer, agent, or employee thereof. This term shall import either the singular or plural, as the case may be.

(4) "Horticultural plant or product" includes, but is not limited to, any horticultural, floricultural, viticultural, and olericultural plant, growing or otherwise, and their products whether grown above or below the ground's surface.

(5) "Horticultural facilities" means, but is not limited to, the premises where horticultural plants and products are grown, stored, handled, or delivered for sale or transportation, records required by rule under this chapter, and all vehicles and equipment, whether aerial or surface, used to transport such horticultural plants or products.

(6) "Deceptive pack" means the pack of any container which has in the outer layer or any exposed surface, horticultural plants or products which are in quality, size, condition, or any other respect so superior to those in the interior of the container in the unexposed portion as to materially misrepresent the contents. Such pack is deceptive when the outer or exposed surface is composed of horticultural plants or products whose size is not an accurate representation of the variation of the size of such horticultural plants or products in the entire container, even though such horticultural plants or products in the container are virtually uniform in size or comply with the specific horticultural plant or product for which the director in prescribing standards for grading and classifying has prescribed size variations or if such size variations are prescribed by law.

(7) "Deceptive arrangement or display" of any horticultural plants or products, means any bulk lot or load, arrangement or display of such horticultural plants or products which has in the exposed surface, horticultural plants or products which are so superior in quality, size, condition, or any other respect to those which are concealed, or the unexposed portion, as to materially misrepresent any part of such bulk lot or load, arrangement, or display.

(8) "Mislabel" means the placing or presence of any false or misleading statement, design, or device upon any container, or upon the label or lining of any such container, or upon the wrapper of any horticultural plants or products, or upon any such horticultural plants or products, or any placard used in connection therewith and having reference to such horticultural plants or products. A statement, design, or device is false or misleading when the horticultural plant or product or container to which it refers does not conform to such statement.

(9) "Container" means any container, subcontainer used within a container, or any type of a container used to prepackage any horticultural plants or products: PROVIDED, That this does not include containers used by a retailer to package such horticultural plants or products sold from a bulk display to a consumer.

(10) "Agent" means broker, commission merchant, auctioneer, solicitor, seller, or consignor, and any other person acting upon the actual or implied authority of another.

(11) "Inspection and certification" means, but is not limited to, the inspection of any horticultural plant or product at any time prior to, during, or subsequent to harvest, by the director, and the issuance by him of a written permit to move or sell or a written certificate stating the grade, classification, and if such horticultural plants or products are free of plant pests and/or other defects.

(12) "Plant pests" means, but is not limited to, any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substance, which can directly or indirectly injure or cause disease or damage in any plant or parts thereof, or any processed, manufactured, or other products of plants.

NEW SECTION. Sec. 2. A new section is added to chapter 15.17 RCW to read as follows:

The director shall, by rule, establish either grades or classifications, or both, for American ginseng (*Panax quinquefolius* L.). In establishing grades or classifications, the director shall take into account the factors of place of origin, whether the ginseng is wild or cultivated, weight, and date of harvest.

The director shall, by rule, require the registration of ginseng dealers who purchase and/or sell American ginseng for the purpose of foreign export. After determining that an applicant or registered ginseng dealer has violated this chapter and complying with the notice and hearing requirements and all other provisions of chapter 34.05 RCW concerning adjudicative proceedings, the director may deny, suspend, or revoke any dealer registration or application for registration issued under this chapter.

The director shall adopt rules requiring that records be maintained by dealers who purchase or sell American ginseng for the purpose of foreign export.

The director may adopt any other rules necessary to comply with the requirements of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, (27 U.S.T. 108); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.); and 50 C.F.R., Part 23 (1995), as they existed on the effective date of this act, or such subsequent date as may be provided by rule, consistent with the purposes of this section.

It is unlawful for a person to sell, offer for sale, hold for sale, or ship or transport American ginseng for foreign export in violation of this chapter or rules adopted under this chapter.

The department shall not disclose information obtained under this section regarding the purchases, sales, or production of an individual American ginseng 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.

Sec. 3. RCW 15.36.021 and 1994 c 143 s 103 are each amended to read as follows:

The director of agriculture (~~may~~) is authorized to:

(1) Adopt rules necessary to carry out the purposes of chapters 15.36 and 15.38 RCW, which includes rules governing the farm storage tank and bulk milk tanker requirements, however the rules may not restrict the display or promotion of products covered under this section.

(2) By rule, establish, amend, or both, definitions and standards for milk and milk products. Such definitions and standards established by the director shall conform, insofar as practicable, with the definitions and standards for milk and milk products adopted by the federal food and drug administration. The director of agriculture, by rule, may likewise establish, amend, or both, definitions and standards for products whether fluid, powdered or frozen, compounded or manufactured to resemble or in semblance or imitation of genuine dairy products as defined under the provisions of this chapter. Such products made to resemble or in semblance or imitation of genuine dairy products shall conform with all the provisions of chapter 15.38 RCW and be made wholly of nondairy products.

All such products compounded or manufactured to resemble or in semblance or imitation of a genuine dairy product shall set forth on the container or labels the specific generic name of each ingredient used.

In the event any product compounded or manufactured to resemble or in semblance or imitation of a genuine dairy product contains vegetable fat or oil, the generic name of such fat or oil shall be set forth on the label. If a blend or variety of oils is used, the ingredient statement shall contain the term "vegetable oil" in the appropriate place in the ingredient statement, with the qualifying phrase following the ingredient statement, such as "vegetable oils are soybean, cottonseed and coconut oils" or "vegetable oil, may be cottonseed, coconut or soybean oil."

The labels or containers of such products compounded or manufactured to resemble or in semblance or imitation of genuine dairy products shall not use dairy terms or words or designs commonly associated with dairying or genuine dairy products, except as to the extent that such words or terms are necessary to meet legal requirements for labeling. The term "nondairy" may be used as an informative statement.

(3) By rule adopt the PMO, DMO, and supplemental documents by reference to establish requirements for grade A pasteurized and grade A raw milk.

(4) Adopt rules establishing standards for grade A pasteurized and grade A raw milk that are more stringent than the PMO based upon current industry or public health information for the enforcement of this chapter whenever he or she determines that any such rules are necessary to carry out the purposes of this section and RCW 15.36.481. The adoption of rules under this chapter, or the holding of a hearing in regard to a license issued or that may be issued under this chapter are subject to the applicable provisions of chapter 34.05 RCW, the administrative procedure act.

(5) By rule, certify an officially designated laboratory to analyze milk for standard of quality, adulteration, contamination, and unwholesomeness.

Sec. 4. RCW 15.58.040 and 1991 c 264 s 2 are each amended to read as follows:

(1) The director shall administer and enforce the provisions of this chapter and rules adopted under this chapter. All the authority and requirements provided for in chapter 34.05 RCW (Administrative Procedure Act) and chapter 42.30 RCW shall apply to this chapter in the adoption of rules including those requiring due notice and a hearing for the adoption of permanent rules.

(2) The director is authorized to adopt appropriate rules for carrying out the purpose and provisions of this chapter, including but not limited to rules providing for:

(a) Declaring as a pest any form of plant or animal life or virus which is injurious to plants, people, animals (domestic or otherwise), land, articles, or substances;

(b) Determining that certain pesticides are highly toxic to people. For the purpose of this chapter, highly toxic pesticide means any pesticide that conforms to the criteria in 40 C.F.R. Sec. 162.10 for toxicity category 1 due to oral inhalation or dermal toxicity. The director shall publish a list of all pesticides, determined to be highly toxic, by their common or generic name and their trade or brand name if practical. Such list shall be kept current and shall, upon request, be made available to any interested party;

(c) Determining standards for denaturing pesticides by color, taste, odor, or form;

(d) The collection and examination of samples of pesticides or devices;

(e) The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers;

(f) Restricting or prohibiting the use of certain types of containers or packages for specific pesticides. These restrictions may apply to type of construction, strength, and/or size to alleviate danger of spillage, breakage, misuse, or any other hazard to the public. The director shall be guided by federal regulations concerning pesticide containers;

(g) Procedures in making of pesticide recommendations;

(h) Adopting a list of restricted use pesticides for the state or for designated areas within the state if the director determines that such pesticides may require rules restricting or prohibiting their distribution or use. The director may include in the rule the time and conditions of distribution or use of such restricted use pesticides and may, if it is found necessary to carry out the purpose and provisions of this chapter, require that any or all restricted use pesticides shall be purchased, possessed, or used only under permit of the director and under the director's direct supervision in certain areas and/or under certain conditions or in certain quantities or concentrations. The director may require all persons issued such permits to maintain records as to the use of all the restricted use pesticides;

(i) Label requirements of all pesticides required to be registered under provisions of this chapter;

(j) Regulating the labeling of devices; ~~((and))~~

(k) The establishment of criteria governing the conduct of a structural pest control inspection; and

(l) Declaring crops, when grown to produce seed specifically for crop reproduction purposes, to be nonfood and/or nonfeed sites of pesticide application. The director may include in the rule any restrictions or conditions regarding: (i) The application of pesticides to the designated crops; and (ii) the disposition of any portion of the treated crop.

(3) For the purpose of uniformity and to avoid confusion endangering the public health and welfare the director may adopt rules in conformity with the primary pesticide standards, particularly as to labeling, established by the United States environmental protection agency or any other federal agency.

Sec. 5. RCW 16.70.040 and 1971 c 72 s 4 are each amended to read as follows:

(1) The secretary, with the advice and concurrence of the director of the department of agriculture, shall be authorized to develop rules ~~((and regulations))~~ for proposed adoption by the board relating to the importation, movement, sale, transfer, or possession of pet animals as defined ~~((herein))~~ in RCW 16.70.020 which are reasonably necessary for the protection and welfare of the people of this state.

(2) The director of the department of agriculture shall also be authorized to adopt rules to allow administration of permits for those pet animals under subsection (1) of this section by the state veterinarian.

NEW SECTION. Sec. 6. A new section is added to chapter 42.17 RCW to read as follows:

Except under section 3 of this act, information obtained regarding the purchases, sales, or production of an individual American ginseng dealer is exempt from disclosure under this chapter.

Passed the House March 4, 1996.
 Passed the Senate March 1, 1996.
 Approved by the Governor March 28, 1996.
 Filed in Office of Secretary of State March 28, 1996.

CHAPTER 189

[House Bill 2134]

DAIRY FARM OR MILK PROCESSING PLANT LICENSES—DEGRADING

AN ACT Relating to the degrade of dairy farm or milk processing plant licenses; amending RCW 15.36.111 and 15.36.451; and declaring an emergency.

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

Sec. 1. RCW 15.36.111 and 1994 c 143 s 209 are each amended to read as follows:

The director shall inspect all dairy farms and all milk processing plants prior to issuance of a license under this chapter and at a frequency determined by the director by rule: PROVIDED, That the director may accept the results of periodic industry inspections of producer dairies if such inspections have been officially checked periodically and found satisfactory. In case the director discovers the violation of any item of grade requirement, he or she shall make a second inspection after a lapse of such time as he or she deems necessary for the defect to be remedied, but not before the lapse of three days, and the second inspection shall be used in determining compliance with the grade requirements of this chapter. Any violation of the same requirement of this chapter on such reinspection shall call for ~~((immediate))~~ degrading or summary suspension of the license in accordance with the requirements of chapter 34.05 RCW.

One copy of the inspection report detailing the grade requirement violations shall be posted by the director in a conspicuous place upon an inside wall of one of the dairy farm or milk processing plant buildings, and said inspection report shall not be defaced or removed by any person except the director. Another copy of the inspection report shall be filed with the records of the director.

Every milk producer and distributor shall permit the director access to all parts of the establishment during the working hours of the producer or distributor, which shall at a minimum include the hours from 8 a.m. to 5 p.m., and every distributor shall furnish the director, upon his or her request, for official use only, samples of any milk product for laboratory analysis, a true statement of the actual quantities of milk and milk products of each grade purchased and sold, together with a list of all sources, records of inspections and tests, and recording thermometer charts.

Sec. 2. RCW 15.36.451 and 1994 c 143 s 506 are each amended to read as follows:

~~((If at any time between the regular announcements of the grades of milk or milk products, a lower grade shall become justified, in accordance with the~~

~~provisions of this chapter, the director shall immediately lower the grade of such milk or milk products, and shall enforce proper labeling thereof.)~~

Any producer or distributor of milk or milk products the grade of which has been lowered by the director, or whose permit has been suspended may at any time make application for the regrading of his or her products or the reinstatement of his or her permit.

Upon receipt of a satisfactory application, in case the lowered grade or the permit suspension was the result of violation of the bacteriological or cooling temperature standards, the director shall take further samples of the applicant's output, at a rate of not more than two samples per week. The director shall regrade the milk or milk products upward or reinstate the permit on compliance with grade requirements as determined in accordance with the provisions of RCW 15.36.201.

In case the lowered grade of the applicant's product or the permit suspension was due to a violation of an item other than bacteriological standard or cooling temperature, the said application must be accompanied by a statement signed by the applicant to the effect that the violated item of the specifications had been conformed with. Within one week of the receipt of such an application and statement the director shall make a reinspection of the applicant's establishment and thereafter as many additional reinspections as he or she may deem necessary to assure himself or herself that the applicant is again complying with the higher grade requirements, and in case the findings justify, shall regrade the milk or milk products upward or reinstate the permit.

NEW SECTION. See. 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 shall take effect immediately.

Passed the House March 2, 1996.

Passed the Senate February 27, 1996.

Approved by the Governor March 28, 1996.

Filed in Office of Secretary of State March 28, 1996.

CHAPTER 190

[House Bill 2136]

HYDRILLA ERADICATION

AN ACT Relating to funding hydrilla eradication; and amending RCW 43.21A.660.

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

Sec. 1. RCW 43.21A.660 and 1991 c 302 s 4 are each amended to read as follows:

Funds in the freshwater aquatic weeds account may be appropriated to the department of ecology to develop a freshwater aquatic weeds management program to:

(1) Issue grants to cities, counties, and state agencies to prevent, remove, reduce, or manage excessive freshwater aquatic weeds. Such grants shall only be issued for lakes, rivers, or streams with a public boat launching ramp. The department shall give preference to projects having matching funds or in-kind services;

(2) Develop public education programs relating to preventing the propagation and spread of freshwater aquatic weeds;

(3) Provide technical assistance to local governments and citizen groups;
 ((and))

(4) Fund demonstration or pilot projects consistent with the purposes of this section; and

(5) Fund hydrilla eradication activities in waters of the state.

Passed the House February 5, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 28, 1996.

Filed in Office of Secretary of State March 28, 1996.

CHAPTER 191

[Substitute House Bill 2151]

CREDENTIALING HEALTH PROFESSIONALS—UNIFORM PROCEDURES

AN ACT Relating to department of health responsibility for uniform administrative procedures for credentialing health professionals; amending RCW 43.70.250, 43.70.280, 18.06.120, 18.19.070, 18.19.100, 18.19.170, 18.22.120, 18.25.020, 18.25.070, 18.29.021, 18.29.071, 18.30.120, 18.30.130, 18.32.110, 18.32.170, 18.32.180, 18.32.220, 18.34.120, 18.35.060, 18.35.080, 18.35.090, 18.36A.130, 18.36A.140, 18.50.050, 18.50.102, 18.52.110, 18.52.130, 18.52C.030, 18.53.050, 18.53.070, 18.55.030, 18.55.040, 18.55.050, 18.57.035, 18.57.045, 18.57.050, 18.57.080, 18.57A.020, 18.71A.040, 18.59.110, 18.64.040, 18.64.043, 18.64.045, 18.64.046, 18.64.047, 18.64.140, 18.64.205, 18.64.310, 18.64A.030, 18.64A.060, 18.71.080, 18.71.085, 18.71.095, 18.71.205, 18.71.400, 18.71A.020, 18.71A.040, 18.74.050, 18.74.060, 18.74.070, 18.79.200, 18.79.210, 18.83.060, 18.83.072, 18.83.080, 18.83.082, 18.83.090, 18.83.105, 18.83.170, 18.84.100, 18.84.110, 18.84.120, 18.88A.120, 18.88A.130, 18.89.110, 18.89.120, 18.89.140, 18.92.140, 18.92.145, 18.108.060, 18.135.050, 18.135.055, 18.138.040, 18.138.060, 18.155.040, 18.155.080, and 42.17.310; reenacting and amending RCW 18.57.130; adding a new section to chapter 43.70 RCW; creating a new section; and repealing RCW 18.30.110, 18.32.120, 18.53.055, 18.64A.065, 18.79.220, and 18.83.100.

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

Sec. I. RCW 43.70.250 and 1989 1st ex.s. c 9 s 319 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. 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.

~~((2) Notwithstanding subsection (1) of this section, no fee for midwives, as licensed in chapter 18.50 RCW may be increased by more than one hundred dollars or fifty percent, whichever is greater during any biennium.))~~

Sec. 2. RCW 43.70.280 and 1989 1st ex.s. c 9 s 322 are each amended to read as follows:

(1) The secretary, in consultation with health profession boards and commissions, shall establish by rule the administrative procedures, administrative requirements, and fees for initial issue, renewal, and reissue of a credential for professions under RCW 18.130.040, including procedures and requirements for late renewals and uniform application of late renewal penalties. Failure to renew invalidates the credential and all privileges granted by the credential. Administrative procedures and administrative requirements do not include establishing, monitoring, and enforcing qualifications for licensure, scope or standards of practice, continuing competency mechanisms, and discipline when such authority is authorized in statute to a health profession board or commission. For the purposes of this section, "in consultation with" means providing an opportunity for meaningful participation in development of rules consistent with processes set forth in RCW 34.05.310.

(2) Notwithstanding any provision of law to the contrary which provides for a licensing period for any type of license subject to this chapter including those under RCW 18.130.040, the secretary of health may, from time to time, extend or otherwise modify the duration of any licensing, certification, or registration period, whether an initial or renewal period, if the secretary determines that it would result in a more economical or efficient operation of state government and that the public health, safety, or welfare would not be substantially adversely affected thereby. However, no license, certification, or registration may be issued or approved for a period in excess of four years, without renewal. Such extension, reduction, or other modification of a licensing, certification, or registration period shall be by rule or regulation of the department of health adopted in accordance with the provisions of chapter 34.05 RCW. Such rules and regulations may provide a method for imposing and collecting such additional proportional fee as may be required for the extended or modified period.

(3) Unless extended by the legislature, effective July 1, 1998, the authority of the secretary to establish administrative procedures and administrative requirements for initial issue, renewal, and reissue of a credential, including procedures and requirements for late renewals and uniform application of late renewal penalties, shall cease to apply to those health professions otherwise regulated by a board or commission with statutory rule-making authority. If not extended by the legislature, such authority shall transfer to the respective board or commission. Rules adopted by the secretary under this section shall remain

in effect after July 1, 1998, until modified or repealed in accordance with the provisions of chapter 34.05 RCW.

Sec. 3. RCW 18.06.120 and 1995 c 323 s 10 are each amended to read as follows:

(1) Every person licensed in acupuncture shall ~~((register with the secretary annually and pay an annual renewal fee determined by the secretary as provided in RCW 43.70.250 on or before the license holder's birth anniversary date. The license of the person shall be renewed for a period of one year or longer in the discretion of the secretary. A person whose practice is exclusively out of state or who is on sabbatical shall be granted an inactive licensure status and pay a reduced fee. The reduced fee shall be set by the secretary under RCW 43.70.250))~~ comply with the administrative procedures and administrative requirements for registration and renewal set by the secretary under RCW 43.70.250 and 43.70.280.

(2) ~~((Any failure to register and pay the annual renewal fee shall render the license invalid. The license shall be reinstated upon: (a) Written application to the secretary; (b) payment to the state of a penalty fee determined by the secretary as provided in RCW 43.70.250; and (c) payment to the state of all delinquent annual license renewal fees.~~

~~—(3) Any person who fails to renew his or her license for a period of three years shall not be entitled to renew the licensure under this section. Such person, in order to obtain a licensure in acupuncture in this state, shall file a new application under this chapter, along with the required fee, and shall meet examination or continuing education requirements as the secretary, by rule, provides.~~

~~—(4)) All fees collected under this section and RCW 18.06.070 shall be credited to the health professions account as required under RCW 43.70.320.~~

Sec. 4. RCW 18.19.070 and 1994 sp.s. c 9 s 501 are each amended to read as follows:

(1) The Washington state mental health quality assurance council is created, consisting of ~~((nine))~~ seven members appointed by the secretary. All appointments shall be for a term of four years. No person may serve as a member of the council for more than two consecutive full terms.

Voting members of the council must include one social worker certified under RCW 18.19.110, one mental health counselor certified under RCW 18.19.120, one marriage and family therapist certified under RCW 18.19.130, one counselor registered under RCW 18.19.090, one hypnotherapist registered under RCW 18.19.090, and two public members. Each member of the council must be a citizen of the United States and a resident of this state. Public members of the council 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 council, or have a material or financial interest in the rendering of health services regulated by the council.

The secretary may appoint the initial members of the council to staggered terms of from one to four years. Thereafter, all members shall be appointed to full four-year terms. Members of the council hold office until their successors are appointed.

The secretary may remove any member of the council for cause as specified by rule. In the case of a vacancy, the secretary shall appoint a person to serve for the remainder of the unexpired term.

(2) The council shall meet at the times and places designated by the secretary and shall hold meetings during the year as necessary to provide advice to the secretary.

Each member of the council shall be reimbursed for travel expenses as authorized in RCW 43.03.050 and 43.03.060. In addition, members of the council shall be compensated in accordance with RCW 43.03.240 when engaged in the authorized business of the council. The members of the council are immune from suit in an action, civil or criminal, based on their official acts performed in good faith as members of the council.

Sec. 5. RCW 18.19.100 and 1991 c 3 s 25 are each amended to read as follows:

The secretary shall establish ~~((by rule the procedural))~~ administrative procedures, administrative requirements, and fees for renewal of registrations~~((Failure to renew shall invalidate the registration and all privileges granted by the registration. Subsequent registration will require application and payment of a fee as determined by the secretary under RCW 43.70.250))~~ as provided in RCW 43.70.250 and 43.70.280.

Sec. 6. RCW 18.19.170 and 1991 c 3 s 32 are each amended to read as follows:

A certificate issued under this chapter shall be renewed as ~~((determined by))~~ provided in RCW 43.70.250 and 43.70.280. The secretary ~~((who))~~ may establish ~~((rules governing))~~ continuing competence requirements. ~~((An additional fee may be set by the secretary as a renewal requirement when certification has lapsed due to failure to renew prior to the expiration date.))~~

Sec. 7. RCW 18.22.120 and 1990 c 147 s 13 are each amended to read as follows:

The board shall establish by rule the requirements for renewal of licenses and relicensing. ~~((The secretary shall establish a renewal and late renewal penalty fee as provided in RCW 43.70.250, and the term for renewal of a license under RCW 43.70.280. Failure to renew invalidates the license and all privileges granted by it. The board shall determine by rule when a license shall be canceled for failure to renew and shall establish prerequisites for relicensing.))~~ Administrative procedures, administrative requirements, and fees shall be established as provided in RCW 43.70.250 and 43.70.280.

Sec. 8. RCW 18.25.020 and 1994 sp.s. c 9 s 109 are each amended to read as follows:

(1) Any person not now licensed to practice chiropractic in this state and who desires to practice chiropractic in this state, before it shall be lawful for him or her to do so, shall make application therefor to the secretary, upon such form and in such manner as may be adopted and directed by the secretary. Each applicant who matriculates to a chiropractic college after January 1, 1975, shall have completed not less than one-half of the requirements for a baccalaureate degree at an accredited and approved college or university and shall be a graduate of a chiropractic school or college accredited and approved by the commission and shall show satisfactory evidence of completion by each applicant of a resident course of study of not less than four thousand classroom hours of instruction in such school or college. Applications shall be in writing and shall be signed by the applicant in his or her own handwriting and shall be sworn to before some officer authorized to administer oaths, and shall recite the history of the applicant as to his or her educational advantages, his or her experience in matters pertaining to a knowledge of the care of the sick, how long he or she has studied chiropractic, under what teachers, what collateral branches, if any, he or she has studied, the length of time he or she has engaged in clinical practice; accompanying the same by reference therein, with any proof thereof in the shape of diplomas, certificates, and shall accompany said application with satisfactory evidence of good character and reputation.

(2) ~~((There shall be paid to the secretary by each applicant for a license, a fee determined by the secretary as provided in RCW 43.70.250 which shall accompany application and a fee determined by the secretary as provided in RCW 43.70.250, which shall be paid upon issuance of license. Like fees shall be paid for any subsequent examination and application))~~ Applicants shall follow administrative procedures and administrative requirements and pay fees as provided in RCW 43.70.250 and 43.70.280.

Sec. 9. RCW 18.25.070 and 1994 sp.s. c 9 s 114 are each amended to read as follows:

~~((+))~~ Every person practicing chiropractic shall, as a prerequisite to ~~((annual))~~ renewal of license, submit to the secretary at the time of application therefor, satisfactory proof showing attendance of at least twenty-five hours per year during the preceding ~~((twelve-month))~~ credential period, at one or more chiropractic symposiums which are recognized and approved by the commission. The commission may, for good cause shown, waive said attendance. The following guidelines for such symposiums shall apply:

~~((a))~~ (1) The commission shall set criteria for the course content of educational symposia concerning matters which are recognized by the state of Washington chiropractic licensing laws; it shall be the licensee's responsibility to determine whether the course content meets these criteria;

~~((b))~~ (2) The commission shall adopt standards for distribution of annual continuing education credit requirements;

~~((c))~~ (3) Rules shall be adopted by the commission for licensees practicing and residing outside the state who shall meet all requirements established by rule of the commission.

~~((2))~~ Every person practicing chiropractic within this state shall pay on or before his or her birth anniversary date, after a license is issued to him or her as provided in this chapter, to the secretary a renewal license fee to be determined by the secretary as provided in RCW 43.70.250. The secretary shall, thirty days or more before the birth anniversary date of each chiropractor in the state, mail to that chiropractor a notice of the fact that the renewal fee will be due on or before his or her birth anniversary date. Nothing in this chapter shall be construed so as to require that the receipts shall be recorded as original licenses are required to be recorded.

~~—The failure of any licensed chiropractor to pay his or her annual license renewal fee within thirty days of license expiration shall work a forfeiture of his or her license. It shall not be reinstated except upon evidence that continuing educational requirements have been fulfilled and the payment of a penalty to be determined by the secretary as provided in RCW 43.70.250, together with all annual license renewal fees delinquent at the time of the forfeiture, and those for each year thereafter up to the time of reinstatement. If the licensee allows his or her license to lapse for more than three years, he or she may be reexamined as provided for in RCW 18.25.040 at the discretion of the commission.)~~

Sec. 10. RCW 18.29.021 and 1995 c 198 s 4 are each amended to read as follows:

(1) The department shall issue a license to any applicant who, as determined by the secretary:

(a) Has successfully completed an educational program approved by the secretary. This educational program shall include course work encompassing the subject areas within the scope of the license to practice dental hygiene in the state of Washington;

(b) Has successfully completed an examination administered or approved by the dental hygiene examining committee; and

(c) Has not engaged in unprofessional conduct or is not unable to practice with reasonable skill and safety as a result of a physical or mental impairment.

(2) Applications for licensure ~~((shall be submitted on forms provided by the department. The department may require any information and documentation necessary to determine if the applicant meets the criteria for licensure as provided in this chapter and chapter 18.130 RCW. Each applicant shall pay a fee determined by the secretary as provided in RCW 43.70.250. The fee shall be submitted with the application))~~ must comply with administrative procedures, administrative requirements, and fees established according to RCW 43.70.250 and 43.70.280.

Sec. 11. RCW 18.29.071 and 1991 c 3 s 49 are each amended to read as follows:

The secretary shall establish ~~((by rule))~~ the administrative procedures, administrative requirements, and fees for renewal of licenses as provided in this chapter and in RCW 43.70.250 and 43.70.280. ~~((The secretary shall establish a renewal and late renewal penalty fee as provided in RCW 43.70.250. Failure to renew invalidates the license and all privileges granted by the license. The secretary shall determine by rule whether a license shall be canceled for failure to renew and shall establish procedures and requirements for relicensure.))~~

Sec. 12. RCW 18.30.120 and 1995 c 1 s 13 (Initiative Measure No. 607) are each amended to read as follows:

(1) ~~((A license issued under RCW 18.30.080 is valid for two years. A license may be renewed by paying the renewal fee))~~ The licensing period, administrative procedures, administrative requirements, and fees shall be determined by the secretary as provided in RCW 43.70.250 and 43.70.280.

(2) ~~((If a license issued is effective on a date other than July 1, it shall be valid until the following June 30.~~

~~—(3))~~ The license shall contain, on its face, the address or addresses where the license holder will perform the denturist services.

Sec. 13. RCW 18.30.130 and 1995 c 198 s 23 are each amended to read as follows:

The secretary shall establish by rule the ~~((administrative))~~ requirements for renewal of licenses to practice denturism, but shall not increase the licensure requirements provided in this chapter. The secretary shall establish ~~((a renewal and late renewal penalty in accordance with RCW 43.70.250. Failure to renew shall invalidate the license and all privileges granted by the license. The secretary shall determine by rule whether a license shall be canceled for failure to renew and shall establish procedures and prerequisites for relicensure))~~ administrative procedures, administrative requirements, and fees for license periods and renewals as provided in RCW 43.70.250 and 43.70.280.

Sec. 14. RCW 18.32.110 and 1991 c 3 s 63 are each amended to read as follows:

Each applicant shall pay a fee determined by the secretary as provided in RCW 43.70.250~~(, which shall accompany the application))~~ and 43.70.280.

Sec. 15. RCW 18.32.170 and 1991 c 3 s 66 are each amended to read as follows:

A fee determined by the secretary as provided in RCW 43.70.250 and 43.70.280 shall be charged for every duplicate license issued by the secretary.

Sec. 16. RCW 18.32.180 and 1994 sp.s. c 9 s 216 are each amended to read as follows:

~~((+))~~ Every person licensed to practice dentistry in this state shall ~~((register with the secretary, and pay a renewal registration fee determined by the secretary as provided in RCW 43.70.250. Any failure to register and pay the renewal registration fee renders the license invalid, and the practice of dentistry shall not~~

~~be permitted. The license shall be reinstated upon written application to the secretary and payment to the state of a penalty fee determined by the secretary as provided in RCW 43.70.250, together with all delinquent license renewal fees.~~

~~(2) A person who fails to renew the license for a period of three years may not renew the license under subsection (1) of this section. In order to obtain a license to practice dentistry in this state, such a person shall file an original application as provided for in this chapter, along with the requisite fees.)~~ renew his or her license and comply with administrative procedures, administrative requirements, and fees as provided in RCW 43.70.250 and 43.70.280. The commission, in its sole discretion, may permit the applicant to be licensed without examination, and with or without conditions, if it is satisfied that the applicant meets all the requirements for licensure in this state and is competent to engage in the practice of dentistry.

Sec. 17. RCW 18.32.220 and 1991 c 3 s 70 are each amended to read as follows:

Anyone who is a licensed dentist in the state of Washington who desires to change residence to another state or territory, shall, upon application to the secretary and payment of a fee as determined by the secretary under RCW 43.70.250 and 43.70.280, receive a certificate over the signature of the secretary or his or her designee, which shall attest to the facts mentioned in this section, and giving the date upon which the dentist was licensed.

Sec. 18. RCW 18.34.120 and 1991 c 3 s 79 are each amended to read as follows:

Each licensee hereunder shall pay ~~((an annual))~~ a renewal registration fee determined by the secretary as provided in RCW 43.70.250 ~~((, on or before the first day of July of each year, and thereupon the license of such person shall be renewed for a period of one year. Any failure to pay the annual renewal registration fee shall render the license invalid, but such license shall be reinstated upon written application therefor to the secretary and payment of a penalty determined by the secretary as provided in RCW 43.70.250, together with all delinquent annual license renewal fees. In addition,))~~ and 43.70.280. The secretary may adopt rules establishing mandatory continuing education requirements to be met by persons applying for license renewal.

Sec. 19. RCW 18.35.060 and 1993 c 313 s 3 are each amended to read as follows:

(1) The department shall issue a trainee license to any applicant who has shown to the satisfaction of the department that the applicant:

(a) ~~((The applicant))~~ Is at least eighteen years of age;

(b) If issued a trainee license, would be employed and directly supervised in the fitting and dispensing of hearing aids by a person licensed in good standing as a fitter-dispenser for at least one year unless otherwise approved by the board; and

(c) Has ~~((paid an application fee))~~ complied with administrative procedures, administrative requirements, and fees determined ((by the secretary)) as provided in RCW 43.70.250((, to the department)) and 43.70.280.

The provisions of RCW 18.35.030, 18.35.110, and 18.35.120 shall apply to any person issued a trainee license. Pursuant to the provisions of this section, a person issued a trainee license may engage in the fitting and dispensing of hearing aids without having first passed the examination provided under this chapter.

(2) The trainee license shall contain the name of the person licensed under this chapter who is employing and supervising the trainee and that person shall execute an acknowledgment of responsibility for all acts of the trainee in connection with the fitting and dispensing of hearing aids.

(3) A trainee may fit and dispense hearing aids, but only if the trainee is under the direct supervision of a person licensed under this chapter in a capacity other than as a trainee. Direct supervision by a licensed fitter-dispenser shall be required whenever the trainee is engaged in the fitting or dispensing of hearing aids during the trainee's first three months of full-time employment. The board shall develop and adopt guidelines on any additional supervision or training it deems necessary.

(4) ~~((The trainee license shall expire one year from the date of its issuance except that on recommendation of the board the license may be reissued for one additional year only))~~ No individual may hold a trainee license for more than two years.

(5) No person licensed under this chapter may assume the responsibility for more than two trainees at any one time, except that the department may approve one additional trainee if none of the trainees is within the initial ninety-day period of direct supervision and the licensee demonstrates to the department's satisfaction that adequate supervision will be provided for all trainees.

Sec. 20. RCW 18.35.080 and 1991 c 3 s 83 are each amended to read as follows:

The department shall license each applicant ~~((, without discrimination,))~~ who satisfactorily completes the required examination and ~~((, upon payment of a fee determined by the secretary as provided in RCW 43.70.250 to the department, shall issue to the applicant a license. If a person does not apply for a license within three years of the successful completion of the license examination, reexamination is required for licensure. The license shall be effective until the licensee's next birthday at which time it is subject to renewal. Subsequent renewal dates shall coincide with the licensee's birthday))~~ complies with administrative procedures and administrative requirements established pursuant to RCW 43.70.250 and 43.70.280.

Sec. 21. RCW 18.35.090 and 1991 c 3 s 84 are each amended to read as follows:

Each person who engages in the fitting and dispensing of hearing aids shall ~~((as the department prescribes by rule, pay to the department a fee established by the secretary under RCW 43.70.250 for a renewal of the license))~~ comply with administrative procedures and administrative requirements established under RCW 43.70.250 and 43.70.280 and shall keep the license conspicuously posted in the place of business at all times. ~~((Any person who fails to renew his or her license prior to the expiration date must pay a penalty fee in addition to the renewal fee and satisfy the requirements that may be set forth by rule promulgated by the secretary for reinstatement.))~~ The secretary may ~~((by rule))~~ establish mandatory continuing education requirements and/or continued competency standards to be met by licensees as a condition for license renewal.

Sec. 22. RCW 18.36A.130 and 1991 c 3 s 98 are each amended to read as follows:

~~((Applications for licensure shall be submitted on forms provided by the department. The department may require any information and documentation needed to determine if the applicant meets the criteria for licensure as provided in this chapter and chapter 18.130 RCW. Each applicant shall pay a fee determined by the secretary as provided in RCW 43.70.250. The fee shall be submitted with the application))~~ Applicants shall comply with administrative procedures, administrative requirements, and fees determined by the secretary as provided in RCW 43.70.250 and 43.70.280.

Sec. 23. RCW 18.36A.140 and 1991 c 3 s 99 are each amended to read as follows:

The secretary shall establish ~~((by rule))~~ the administrative procedures, administrative requirements, and fees for renewal and late renewal of licenses as provided in RCW 43.70.250 and 43.70.280. ~~((The secretary shall establish a renewal and late renewal penalty fee as provided in RCW 43.70.250. Failure to renew shall invalidate the license and all privileges granted by the license. The secretary shall determine by rule whether a license shall be canceled for failure to renew and shall establish procedures and prerequisites for relicensure.))~~

Sec. 24. RCW 18.50.050 and 1991 c 3 s 108 are each amended to read as follows:

~~((If the application is approved and the candidate shall have deposited an examination fee determined by the secretary as provided in RCW 43.70.250 with the secretary, the candidate shall be admitted to the examination, and in case of failure to pass the examination, may be reexamined at any regular examination within one year without the payment of an additional fee, said fee to be retained by the secretary after failure to pass the second examination))~~ Applicants shall comply with administrative procedures, administrative requirements, and fees determined by the secretary as provided by RCW 43.70.250 and 43.70.280.

Sec. 25. RCW 18.50.102 and 1991 c 3 s 110 are each amended to read as follows:

Every person licensed to practice midwifery shall register with the secretary ~~((annually))~~ and pay ~~((an annual))~~ a renewal ~~((registration))~~ fee determined by the secretary as provided in RCW 43.70.250 ~~((on or before the licensee's birth anniversary date. The license of the person shall be renewed for a period of one year. Any failure to register and pay the annual renewal registration fee shall render the license invalid. The license shall be reinstated upon written application to the secretary, payment to the state of a penalty fee determined by the secretary as provided in RCW 43.70.250, and payment to the state of all delinquent annual license renewal fees. Any person who fails to renew his or her license for a period of three years shall not be entitled to renew such license under this section. Such person, in order to obtain a license to practice midwifery in this state, shall file a new application under this chapter, along with the required fee. The secretary, in the secretary's discretion, may permit the applicant to be licensed without examination if satisfied that the applicant meets all the requirements for licensure in this state and is competent to engage in the practice of midwifery))~~ and 43.70.280.

Sec. 26. RCW 18.52.110 and 1992 c 53 s 8 are each amended to read as follows:

(1) Every holder of a nursing home administrator's license shall ~~((reregister on dates specified by the secretary. Such relicensure shall be granted upon receipt of a fee determined by the secretary as provided in RCW 43.70.250, and upon))~~ renew that license by fulfilling the continuing competency requirement and by complying with administrative procedures, administrative requirements, and fees as determined according to RCW 43.70.250 and 43.70.280. ~~((In the event that any license is not reregistered, the secretary may charge up to double the relicensure fee. In the event that the license of an individual is not relicensed within two years from the most recent date for relicensure it shall lapse and such individual must again apply for licensing and meet all requirements of this chapter for a new applicant.))~~ The board may prescribe rules for maintenance of a license ~~((at a reduced fee))~~ for temporary or permanent withdrawal or retirement from the active practice of nursing home administration.

(2) A condition of ~~((relicensure))~~ renewal shall be the presentation of proof by the applicant that the board requirement for continuing competency related to the administration of nursing homes has been met.

Sec. 27. RCW 18.52.130 and 1992 c 53 s 9 are each amended to read as follows:

The secretary may issue a nursing home administrator's license to anyone who holds a current administrator's license from another jurisdiction upon receipt of an application ~~((fee and an annual license fee, as provided in RCW 43.70.250))~~ and complying with administrative procedures, administrative requirements, and fees determined according to RCW 43.70.250 and 43.70.280, if the standards for licensing in such other jurisdiction are substantially

equivalent to those prevailing in this state, and that the applicant is otherwise qualified as determined by the board.

Sec. 28. RCW 18.52C.030 and 1991 c 3 s 131 are each amended to read as follows:

A person who operates a nursing pool shall register the pool with the secretary. Each separate location of the business of a nursing pool shall have a separate registration.

The secretary(~~(, by rule,)~~) shall establish (~~(forms and procedures for the processing of nursing pool registration applications, including the payment of registration fees pursuant to RCW 43.70.250. An application for a nursing pool registration shall include at least the following information:~~

~~(1) The names and addresses of the owner or owners of the nursing pool; and~~

~~(2) If the owner is a corporation, copies of its articles of incorporation and current bylaws, together with the names and addresses of its officers and directors.~~

~~A registration issued by the secretary in accordance with this section shall remain effective for a period of one year from the date of its issuance unless the registration is revoked or suspended pursuant to RCW 18.52C.040(4), or unless the nursing pool is sold or ownership or management is transferred, in which case the registration of the nursing pool shall be voided and the new owner or operator shall apply for a new registration)) administrative procedures, administrative requirements, and fees as provided in RCW 43.70.250 and 43.70.280.~~

Sec. 29. RCW 18.53.050 and 1991 c 3 s 134 are each amended to read as follows:

Every (~~(registered)~~) licensed optometrist shall (~~(annually or on the date specified by the secretary pay to the state treasurer a renewal fee, to be determined by the secretary as provided in RCW 43.70.250, and failure to pay such fee within the prescribed time shall cause the suspension of his or her certificate)) renew his or her license by complying with administrative procedures, administrative requirements, and fees determined according to RCW 43.70.250 and 43.70.280.~~

Sec. 30. RCW 18.53.070 and 1991 c 3 s 136 are each amended to read as follows:

~~(The fees for application for examination and)) Administrative procedures, administrative requirements, and fees for issuing a (~~(certificate of registration)) license shall be determined ((by the secretary)) as provided in RCW 43.70.250(~~(, which shall be paid to the secretary as he or she shall prescribe)) and 43.70.280.~~~~~~

Sec. 31. RCW 18.55.030 and 1991 c 3 s 143 are each amended to read as follows:

~~(Upon receipt of an application for a license and the license fee as determined by the secretary, the secretary shall issue a license if the applicant~~

~~meets the requirements established under this chapter. The license, unless suspended or revoked, shall be renewed annually. All licenses issued under the provisions of this chapter shall expire on the 1st day of July))~~ The secretary shall determine administrative procedures, administrative requirements, and fees for licenses and renewals as provided in RCW 43.70.250 and 43.70.280.

Sec. 32. RCW 18.55.040 and 1991 c 180 s 4 are each amended to read as follows:

No applicant shall be licensed under this chapter until the applicant (~~pays an examination fee determined by the secretary, as provided in RCW 43.70.250, and certifies under oath after furnishing satisfactory documentation,)) complies with administrative procedures, administrative requirements, and fees determined by the secretary according to RCW 43.70.250 and 43.70.280. Qualifications must require that the applicant:~~

- (1) Is eighteen years or more of age;
- (2) Has graduated from high school or has received a general equivalency degree;
- (3) Is of good moral character; and
- (4)(a) Had at least ten thousand hours of apprenticeship training under the direct supervision of a licensed ocularist; or
 - (b) Successfully completed a prescribed course in ocularist training programs approved by the secretary; or
 - (c) Has had at least ten thousand hours of apprenticeship training under the direct supervision of a practicing ocularist, or has the equivalent experience as a practicing ocularist, or any combination of training and supervision, not in the state of Washington; and
- (5) Successfully passes an examination conducted or approved by the secretary.

Sec. 33. RCW 18.55.050 and 1991 c 180 s 6 are each amended to read as follows:

Every individual licensed or registered under this chapter shall (~~pay an annual license or registration renewal fee~~) comply with administrative procedures, administrative requirements, and fees determined by the secretary, as provided by RCW 43.70.250(~~, on or before the expiration date established by the secretary. An application for renewal shall be on the form provided by the secretary and shall be filed with the department of health not less than ten days prior to its expiration. Each application for renewal shall be accompanied by a renewal fee in an amount to be determined by the secretary. Any license or registration not renewed as provided in this section shall be invalid.~~

~~The secretary may provide by rule the procedures that may allow for the reinstatement of a license or registration upon payment of the renewal fee and a late renewal penalty fee))~~ and 43.70.280 to renew his or her license.

Sec. 34. RCW 18.57.035 and 1991 c 160 s 9 are each amended to read as follows:

The board may grant approval to issue without examination a license to an osteopathic physician and surgeon in a board-approved postgraduate training program in this state if the applicant files an application and meets all the requirements for licensure set forth in RCW 18.57.020 except for completion of one year of postgraduate training. The secretary shall issue a postgraduate osteopathic medicine and surgery license that permits the physician in postgraduate training to practice osteopathic medicine and surgery only in connection with his or her duties as a physician in postgraduate training and does not authorize the physician to engage in any other form of practice. Each physician in postgraduate training shall practice osteopathic medicine and surgery only under the supervision of a physician licensed in this state under this chapter or chapter 18.71 RCW, but such supervision shall not be construed to necessarily require the personal presence of the supervising physician at the place where services are rendered.

All persons licensed under this section shall be subject to the jurisdiction of the board of osteopathic medicine and surgery as set forth in this chapter and chapter 18.130 RCW.

Persons applying for licensure pursuant to this section shall ~~((pay an application and renewal fee))~~ comply with administrative procedures, administrative requirements, and fees determined ~~((by the secretary))~~ as provided in RCW 43.70.250 ~~((Licenses issued hereunder may be renewed annually))~~ and 43.70.280. Any person who obtains a license pursuant to this section may, apply for licensure under this chapter, but shall submit a new application form and comply with all other licensing requirements of this chapter.

Sec. 35. RCW 18.57.045 and 1991 c 160 s 4 are each amended to read as follows:

A licensed osteopathic physician and surgeon who desires to leave the active practice of osteopathic medicine and surgery in this state may secure from the secretary an inactive license. The ~~((initial and renewal))~~ administrative procedures, administrative requirements, and fees for an inactive license shall be determined ~~((by the secretary))~~ as provided in RCW 43.70.250 and 43.70.280. The holder of an inactive license may reactivate his or her license to practice osteopathic medicine and surgery in accordance with rules adopted by the board.

Sec. 36. RCW 18.57.050 and 1991 c 160 s 6 are each amended to read as follows:

~~((Each applicant on making application shall pay the secretary a fee determined by the secretary as provided in RCW 43.70.250. Application fees are nonrefundable.))~~ The board may establish rules and regulations governing mandatory continuing education requirements which shall be met by physicians applying for renewal of licenses. ~~((The secretary shall establish a renewal and late renewal penalty fee as provided in RCW 43.70.250. Failure to renew the license invalidates all privileges granted by the license))~~ Administrative procedures, administrative requirements, and fees for applications and renewals

shall be established as provided in RCW 43.70.250 and 43.70.280. The board shall determine ~~((by rule when a license shall be canceled for failure to renew and shall establish))~~ prerequisites for relicensing.

Sec. 37. RCW 18.57.080 and 1991 c 160 s 7 are each amended to read as follows:

Applicants for a license to practice osteopathic medicine and surgery must successfully complete an examination prepared or approved by the board. The examination shall be conducted in the English language, shall determine the applicant's fitness to practice osteopathic medicine and surgery, and may be in whole or in part in writing or by practical application on those general subjects and topics of which knowledge is commonly and generally required of applicants who have obtained the doctor of osteopathic medicine and surgery conferred by accredited schools of osteopathic medicine and surgery approved by the board. If an examination does not encompass the subject of osteopathic principles and practice, the applicant shall be required to complete the board-administered examination. The board may prepare and administer or approve preparation and administration of examinations on such subjects as the board deems advisable. The examination papers of any examination administered by the board shall form a part of the applicant's records and shall be retained as determined by the secretary for a period of not less than one year. All applicants for examination or reexamination shall ~~((pay a fee))~~ comply with administrative procedures, administrative requirements, and fees determined ~~((by the secretary))~~ as provided in RCW 43.70.250 and 43.70.280.

Sec. 38. RCW 18.57.130 and 1991 c 160 s 10 and 1991 c 3 s 151 are each reenacted and amended to read as follows:

Any person who meets the requirements of RCW 18.57.020 as now or hereafter amended and has been examined and licensed to practice osteopathic medicine and surgery by a state board of examiners of another state or the duly constituted authorities of another state authorized to issue licenses to practice osteopathic medicine and surgery upon examination, shall upon approval of the board be entitled to receive a license to practice osteopathic medicine and surgery in this state upon ~~((the payment of))~~ complying with administrative procedures, administrative requirements, and paying a fee determined ~~((by the secretary))~~ as provided in RCW 43.70.250 ~~((to the state treasurer))~~ and 43.70.280 and filing a copy of his or her license in such other state, duly certified by the authorities granting the license to be a full, true, and correct copy thereof, and certifying also that the standard of requirements adopted by such authorities as provided by the law of such state is substantially equal to that provided for by the provisions of this chapter: PROVIDED, That no license shall issue without examination to any person who has previously failed in an examination held in this state: PROVIDED, FURTHER, That all licenses herein mentioned may be revoked for unprofessional conduct, in the same manner and upon the same grounds as if issued under this chapter: PROVIDED, FURTHER, That no one shall be

permitted to practice surgery under this chapter who has not a license to practice osteopathic medicine and surgery.

Sec. 39. RCW 18.57A.020 and 1993 c 28 s 1 are each amended to read as follows:

(1) The board shall adopt rules fixing the qualifications and the educational and training requirements for licensure as an osteopathic physician assistant or for those enrolled in any physician assistant training program. The requirements shall include completion of an accredited physician assistant training program approved by the board and eligibility to take an examination approved by the board, providing such examination tests subjects substantially equivalent to the curriculum of an accredited physician assistant training program.

(2)(a) The board shall adopt rules governing the extent to which:

(i) Physician assistant students may practice medicine during training; and
 (ii) Physician assistants may practice after successful completion of a training course.

(b) Such rules shall provide:

(i) That the practice of an osteopathic physician assistant shall be limited to the performance of those services for which he or she is trained; and

(ii) That each osteopathic physician assistant shall practice osteopathic medicine only under the supervision and control of an osteopathic physician licensed in this state, but such supervision and control shall not be construed to necessarily require the personal presence of the supervising physicians at the place where services are rendered. The board may authorize the use of alternative supervisors who are licensed either under chapter 18.57 or 18.71 RCW.

(3) Applicants for licensure shall file an application with the board on a form prepared by the secretary with the approval of the board, detailing the education, training, and experience of the physician assistant and such other information as the board may require. The application shall be accompanied by a fee determined by the secretary as provided in RCW 43.70.250 and 43.70.280. Each applicant shall furnish proof satisfactory to the board of the following:

(a) That the applicant has completed an accredited physician assistant program approved by the board and is eligible to take the examination approved by the board;

(b) That the applicant is of good moral character; and

(c) That the applicant is physically and mentally capable of practicing osteopathic medicine as an osteopathic physician assistant with reasonable skill and safety. The board may require any applicant to submit to such examination or examinations as it deems necessary to determine an applicant's physical and/or mental capability to safely practice as an osteopathic physician assistant.

(4) The board may approve, deny, or take other disciplinary action upon the application for a license as provided in the uniform disciplinary act, chapter 18.130 RCW. The license shall be renewed ~~((on a periodic basis as determined by the secretary under RCW 43.70.280, upon payment of a fee determined by the~~

~~secretary as provided in RCW 43.70.250 and submission of a completed renewal application, in addition to any late renewal penalty fees as determined by the secretary as provided in RCW 43.70.250)) as determined under RCW 43.70.250 and 43.70.280.~~

Sec. 40. RCW 18.71A.040 and 1994 sp.s. c 9 s 321 are each amended to read as follows:

(1) No physician assistant practicing in this state shall be employed or supervised by a physician or physician group without the approval of the commission.

(2) Prior to commencing practice, a physician assistant licensed in this state shall apply to the commission for permission to be employed or supervised by a physician or physician group. The practice arrangement plan shall be jointly submitted by the physician or physician group and physician assistant. ~~((The secretary may charge a fee as provided in RCW 43.70.250 to recover the cost for the plan review))~~ Administrative procedures, administrative requirements, and fees shall be established as provided in RCW 43.70.250 and 43.70.280. The practice arrangement plan shall delineate the manner and extent to which the physician assistant would practice and be supervised. Whenever a physician assistant is practicing in a manner inconsistent with the approved practice arrangement plan, the medical ~~((disciplinary board [commission]))~~ commission may take disciplinary action under chapter 18.130 RCW.

Sec. 41. RCW 18.59.110 and 1991 c 3 s 156 are each amended to read as follows:

~~((The secretary shall prescribe and publish fees in amounts determined by the secretary as provided in RCW 43.70.250 for the following purposes:~~

- ~~— (1) Application for examination;~~
- ~~— (2) Initial license fee;~~
- ~~— (3) Renewal of license fee;~~
- ~~— (4) Late renewal fee; and~~
- ~~— (5) Limited permit fee.~~

~~The fees shall be set in such an amount as to reimburse the state, to the extent feasible, for the cost of the services rendered))~~ Administrative procedures, administrative requirements, and fees shall be established as provided in RCW 43.70.250 and 43.70.280 for applications, initial and renewal licenses, and limited permits.

Sec. 42. RCW 18.64.040 and 1989 1st ex.s. c 9 s 413 are each amended to read as follows:

Every applicant for license examination under this chapter shall pay the sum determined by the secretary under RCW 43.70.250 and 43.70.280 before the examination is attempted.

Sec. 43. RCW 18.64.043 and 1991 c 229 s 3 are each amended to read as follows:

(1) The owner of each pharmacy shall pay an original license fee to be determined by the secretary, and annually thereafter, on or before a date to be determined by the secretary, a fee to be determined by the secretary, for which he or she shall receive a license of location, which shall entitle the owner to operate such pharmacy at the location specified, or such other temporary location as the secretary may approve, for the period ending on a date to be determined by the secretary as provided in RCW 43.70.250 and 43.70.280, and each such owner shall at the time of filing proof of payment of such fee as provided in RCW 18.64.045 as now or hereafter amended, file with the department on a blank therefor provided, a declaration of ownership and location, which declaration of ownership and location so filed as aforesaid shall be deemed presumptive evidence of ownership of the pharmacy mentioned therein.

(2) It shall be the duty of the owner to immediately notify the department of any change of location or ownership and to keep the license of location or the renewal thereof properly exhibited in said pharmacy.

(3) Failure to comply with this section shall be deemed a misdemeanor, and each day that said failure continues shall be deemed a separate offense.

(4) In the event such license fee remains unpaid on the date due, no renewal or new license shall be issued except upon ~~((payment of the license renewal fee and a penalty fee equal to the original license fee))~~ compliance with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280.

Sec. 44. RCW 18.64.045 and 1991 c 229 s 4 are each amended to read as follows:

The owner of each and every place of business which manufactures drugs shall pay a license fee to be determined by the secretary, and thereafter, on or before a date to be determined by the secretary, a fee to be determined by the secretary as provided in RCW 43.70.250 and 43.70.280, for which the owner shall receive a license of location from the department, which shall entitle the owner to manufacture drugs at the location specified for the period ending on a date to be determined by the ~~((board))~~ secretary, and each such owner shall at the time of payment of such fee file with the department, on a blank therefor provided, a declaration of ownership and location, which declaration of ownership and location so filed as aforesaid shall be deemed presumptive evidence of the ownership of such place of business mentioned therein. It shall be the duty of the owner to notify immediately the department of any change of location or ownership and to keep the license of location or the renewal thereof properly exhibited in such place of business. Failure to conform with this section shall be deemed a misdemeanor, and each day that said failure continues shall be deemed a separate offense. In event such license fee remains unpaid on the date due, no renewal or new license shall be issued except upon ~~((payment of the license renewal fee and a penalty fee equal to the license renewal fee))~~ compliance with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280.

Sec. 45. RCW 18.64.046 and 1991 c 229 s 5 are each amended to read as follows:

The owner of each place of business which sells legend drugs and nonprescription drugs, or nonprescription drugs at wholesale shall pay a license fee to be determined by the secretary, and thereafter, on or before a date to be determined by the secretary as provided in RCW 43.70.250 and 43.70.280, a like fee to be determined by the secretary, for which the owner shall receive a license of location from the department, which shall entitle such owner to either sell legend drugs and nonprescription drugs or nonprescription drugs at wholesale at the location specified for the period ending on a date to be determined by the ~~((board))~~ secretary, and each such owner shall at the time of payment of such fee file with the department, on a blank therefor provided, a declaration of ownership and location, which declaration of ownership and location so filed as aforesaid shall be deemed presumptive evidence of the ownership of such place of business mentioned therein. It shall be the duty of the owner to notify immediately the department of any change of location and ownership and to keep the license of location or the renewal thereof properly exhibited in such place of business. Failure to conform with this section shall be deemed a misdemeanor, and each day that said failure continues shall be deemed a separate offense. In event such license fee remains unpaid on the date due, no renewal or new license shall be issued except upon ~~((payment of the license renewal fee and a penalty fee equal to the license renewal fee))~~ compliance with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280.

Sec. 46. RCW 18.64.047 and 1991 c 229 s 6 are each amended to read as follows:

Any itinerant vendor or any peddler of any nonprescription drug or preparation for the treatment of disease or injury, shall pay a registration fee determined by the secretary on a date to be determined by the secretary as provided in RCW 43.70.250 and 43.70.280. The department may issue a registration to such vendor on an approved application made to the department. Any itinerant vendor or peddler who shall vend or sell, or offer to sell to the public any such nonprescription drug or preparation without having registered to do so as provided in this section, shall be guilty of a misdemeanor and each sale or offer to sell shall constitute a separate offense. In event such registration fee remains unpaid on the date due, no renewal or new registration shall be issued except upon ~~((payment of the registration renewal fee and a penalty fee equal to the renewal fee))~~ compliance with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280. This registration shall not authorize the sale of legend drugs or controlled substances.

Sec. 47. RCW 18.64.140 and 1991 c 229 s 7 are each amended to read as follows:

Every licensed pharmacist who desires to practice pharmacy shall secure from the department a license, the fee for which shall be determined by the secretary under RCW 43.70.250 and 43.70.280. The administrative procedures, administrative requirements, renewal fee, and late renewal fee shall also be determined ~~((by the secretary))~~ under RCW 43.70.250 and 43.70.280. ~~((The date of renewal may be established by the secretary by regulation and the department may by regulation extend the duration of a licensing period for the purpose of staggering renewal periods. Such regulation may provide a method for imposing and collecting such additional proportional fee as may be required for the extended period.))~~ Payment of this fee shall entitle the licensee to a pharmacy law book, subsequent current mailings of all additions, changes, or deletions in the pharmacy practice act, chapter 18.64 RCW, and all additions, changes, or deletions of pharmacy board and department regulations. ~~((Pharmacists shall pay the license renewal fee and a penalty equal to the license renewal fee for the late renewal of their license.))~~ The current license shall be conspicuously displayed to the public in the pharmacy to which it applies. Any licensed pharmacist who desires to leave the active practice of pharmacy in this state may secure from the department an inactive license. The initial license and renewal fees shall be determined by the secretary under RCW 43.70.250 and 43.70.280. The holder of an inactive license may reactivate his or her license to practice pharmacy in accordance with rules adopted by the board.

Sec. 48. RCW 18.64.205 and 1991 c 229 s 2 are each amended to read as follows:

The board may adopt rules pursuant to this section authorizing a retired active license status. An individual licensed pursuant to this chapter, who is practicing only in emergent or intermittent circumstances as defined by rule established by the board, may hold a retired active license at a reduced renewal fee established by the secretary under RCW 43.70.250 and 43.70.280. Such a license shall meet the continuing education requirements, if any, established by the board for renewals, and is subject to the provisions of the uniform disciplinary act, chapter 18.130 RCW. Individuals who have entered into retired status agreements with the disciplinary authority in any jurisdiction shall not qualify for a retired active license under this section.

Sec. 49. RCW 18.64.310 and 1989 1st ex.s. c 9 s 410 are each amended to read as follows:

The department shall:

(1) Establish reasonable license and examination fees and fees for services to other agencies in accordance with RCW 43.70.250 and 43.70.280. In cases where there are unanticipated demands for services, the department may request payment for services directly from the agencies for whom the services are performed, to the extent that revenues or other funds are available. Drug-related investigations regarding licensed health care practitioners shall be funded by an appropriation to the department from the health professions account. The

payment may be made on either an advance or a reimbursable basis as approved by the director of financial management;

(2) Employ, with confirmation by the board, an executive officer, who shall be exempt from the provisions of chapter 41.06 RCW and who shall be a pharmacist licensed in Washington, and employ inspectors, investigators, chemists, and other persons as necessary to assist it for any purpose which it may deem necessary;

(3) Investigate and prosecute, at the direction of the board, including use of subpoena powers, violations of law or regulations under its jurisdiction or the jurisdiction of the board of pharmacy;

(4) Make, at the direction of the board, inspections and investigations of pharmacies and other places, including dispensing machines, in which drugs or devices are stored, held, compounded, dispensed, sold, or administered to the ultimate consumer, to take and analyze any drugs or devices and to seize and condemn any drugs or devices which are adulterated, misbranded, stored, held, dispensed, distributed, administered, or compounded in violation of or contrary to law. The written operating agreement between the department and the board, as required by RCW 43.70.240 shall include provisions for the department to involve the board in carrying out its duties required by this section.

Sec. 50. RCW 18.64A.030 and 1989 1st ex.s. c 9 s 423 are each amended to read as follows:

The board shall adopt, in accordance with chapter 34.05 RCW, rules and regulations governing the extent to which pharmacy assistants may perform services associated with the practice of pharmacy during training and after successful completion of a training course. Such regulations shall provide for the certification of pharmacy assistants by the department at a fee determined by the secretary under RCW 43.70.250 and 43.70.280 according to the following levels of classification:

(1) "Level A pharmacy assistants" may assist in performing, under the immediate supervision and control of a licensed pharmacist, manipulative, nondiscretionary functions associated with the practice of pharmacy.

(2) "Level B pharmacy assistants" may perform, under the general supervision of a licensed pharmacist, duties including but not limited to, typing of prescription labels, filing, refiling, bookkeeping, pricing, stocking, delivery, nonprofessional phone inquiries, and documentation of third party reimbursements.

Sec. 51. RCW 18.64A.060 and 1989 1st ex.s. c 9 s 425 are each amended to read as follows:

No pharmacy licensed in this state shall utilize the services of pharmacy assistants without approval of the board.

Any pharmacy licensed in this state may apply to the board for permission to use the services of pharmacy assistants. The application shall be accompanied by a ~~((uniform))~~ fee ~~((to be determined by the secretary))~~ and shall comply with

administrative procedures and administrative requirements set pursuant to RCW 43.70.250 and 43.70.280, shall detail the manner and extent to which the pharmacy assistants would be used and supervised, and shall provide other information in such form as the secretary may require.

The board may approve or reject such applications. In addition, the board may modify the proposed utilization of pharmacy assistants and approve the application as modified. ~~((No such approval shall extend for more than one year, but approval once granted may be renewed annually upon payment of a uniform fee as determined by the secretary.))~~ Whenever it appears to the board that a pharmacy assistant is being utilized in a manner inconsistent with the approval granted, the board may withdraw such approval. In the event a hearing is requested upon the rejection of an application, or upon the withdrawal of approval, a hearing shall be conducted in accordance with chapter 18.64 RCW, as now or hereafter amended, and appeal may be taken in accordance with the Administrative Procedure Act, chapter 34.05 RCW.

Sec. 52. RCW 18.71.080 and 1994 sp.s. c 9 s 312 are each amended to read as follows:

Every person licensed to practice medicine in this state shall ~~((register with the secretary of health annually, and pay an annual renewal registration fee determined by the secretary as provided in RCW 43.70.250))~~ pay licensing fees and renew his or her license in accordance with administrative procedures and administrative requirements adopted as provided in RCW 43.70.250 and 43.70.280. The commission may establish rules governing mandatory continuing education requirements which shall be met by physicians applying for renewal of licenses. The rules shall provide that mandatory continuing education requirements may be met in part by physicians showing evidence of the completion of approved activities relating to professional liability risk management. ~~((Any failure to register and pay the annual renewal registration fee shall render the license invalid, but such license shall be reinstated upon written application therefor to the secretary, and payment to the state of a penalty fee determined by the secretary as provided in RCW 43.70.250, together with all delinquent annual license renewal fees: PROVIDED, HOWEVER, That any person who fails to renew the license for a period of three years, shall in no event be entitled to renew the license under this section. Such a person in order to obtain a license to practice medicine in this state, shall file an original application as provided for in this chapter, along with the requisite fee therefor.))~~ The commission, in its sole discretion, may permit ~~((such))~~ an applicant who has not renewed his or her license to be licensed without examination if it is satisfied that such applicant meets all the requirements for licensure in this state, and is competent to engage in the practice of medicine.

Sec. 53. RCW 18.71.085 and 1994 sp.s. c 9 s 313 are each amended to read as follows:

The commission may adopt rules pursuant to this section authorizing an inactive license status.

(1) An individual licensed pursuant to chapter 18.71 RCW may place his or her license on inactive status. The holder of an inactive license shall not practice medicine and surgery in this state without first activating the license.

(2) The administrative procedures, administrative requirements, and fee for inactive renewal ((fee)) shall be established ((by the secretary)) pursuant to RCW 43.70.250 and 43.70.280. ~~((Failure to renew an inactive license shall result in cancellation in the same manner as an active license.))~~

(3) An inactive license may be placed in an active status upon compliance with rules established by the commission.

(4) Provisions relating to disciplinary action against a person with a license shall be applicable to a person with an inactive license, except that when disciplinary proceedings against a person with an inactive license have been initiated, the license shall remain inactive until the proceedings have been completed.

Sec. 54. RCW 18.71.095 and 1994 sp.s. c 9 s 315 are each amended to read as follows:

The commission may, without examination, issue a limited license to persons who possess the qualifications set forth herein:

(1) The commission may, upon the written request of the secretary of the department of social and health services or the secretary of corrections, issue a limited license to practice medicine in this state to persons who have been accepted for employment by the department of social and health services or the department of corrections as physicians; who are licensed to practice medicine in another state of the United States or in the country of Canada or any province or territory thereof; and who meet all of the qualifications for licensure set forth in RCW 18.71.050.

Such license shall permit the holder thereof to practice medicine only in connection with patients, residents, or inmates of the state institutions under the control and supervision of the secretary of the department of social and health services or the department of corrections.

(2) The commission may issue a limited license to practice medicine in this state to persons who have been accepted for employment by a county or city health department as physicians; who are licensed to practice medicine in another state of the United States or in the country of Canada or any province or territory thereof; and who meet all of the qualifications for licensure set forth in RCW 18.71.050.

Such license shall permit the holder thereof to practice medicine only in connection with his or her duties in employment with the city or county health department.

(3) Upon receipt of a completed application showing that the applicant meets all of the requirements for licensure set forth in RCW 18.71.050 except for completion of two years of postgraduate medical training, and that the applicant

has been appointed as a resident physician in a program of postgraduate clinical training in this state approved by the commission, the commission may issue a limited license to a resident physician. Such license shall permit the resident physician to practice medicine only in connection with his or her duties as a resident physician and shall not authorize the physician to engage in any other form of practice. Each resident physician shall practice medicine only under the supervision and control of a physician licensed in this state, but such supervision and control shall not be construed to necessarily require the personal presence of the supervising physician at the place where services are rendered.

(4)(a) Upon nomination by the dean of the school of medicine at the University of Washington or the chief executive officer of a hospital or other appropriate health care facility licensed in the state of Washington, the commission may issue a limited license to a physician applicant invited to serve as a teaching-research member of the institution's instructional staff if the sponsoring institution and the applicant give evidence that he or she has graduated from a recognized medical school and has been licensed or otherwise privileged to practice medicine at his or her location of origin. Such license shall permit the recipient to practice medicine only within the confines of the instructional program specified in the application and shall terminate whenever the holder ceases to be involved in that program, or at the end of one year, whichever is earlier. Upon request of the applicant and the institutional authority, the license may be renewed for no more than a total of two years.

(b) Upon nomination by the dean of the school of medicine of the University of Washington or the chief executive officer of any hospital or appropriate health care facility licensed in the state of Washington, the commission may issue a limited license to an applicant selected by the sponsoring institution to be enrolled in one of its designated departmental or divisional fellowship programs provided that the applicant shall have graduated from a recognized medical school and has been granted a license or other appropriate certificate to practice medicine in the location of the applicant's origin. Such license shall permit the holder only to practice medicine within the confines of the fellowship program to which he or she has been appointed and, upon the request of the applicant and the sponsoring institution, the license may be renewed by the commission for no more than a total of two years.

All persons licensed under this section shall be subject to the jurisdiction of the commission to the same extent as other members of the medical profession, in accordance with this chapter and chapter 18.130 RCW.

Persons applying for licensure and renewing licenses pursuant to this section shall ~~((pay an application fee))~~ comply with administrative procedures, administrative requirements, and fees determined ~~((by the secretary))~~ as provided in RCW 43.70.250 ~~((and, in the event the license applied for is issued, a license fee at the rate provided for renewals of licenses generally. Licenses issued hereunder may be renewed annually pursuant to the provisions of RCW 18.71.080))~~ and 43.70.280. Any person who obtains a limited license pursuant

to this section may(~~(, without an additional application fee,)) apply for licensure under this chapter, but shall submit a new application form and comply with all other licensing requirements of this chapter.~~

Sec. 55. RCW 18.71.205 and 1995 c 65 s 3 are each amended to read as follows:

(1) The secretary of the department of health, in conjunction with the advice and assistance of the emergency medical services licensing and certification advisory committee as prescribed in RCW 18.73.050, and the commission, shall prescribe:

(a) Practice parameters, training standards for, and levels of, physician trained emergency medical service intermediate life support technicians and paramedics;

(b) Minimum standards and performance requirements for the certification and recertification of physician's trained emergency medical service intermediate life support technicians and paramedics; and

(c) Procedures for certification, recertification, and decertification of physician's trained emergency medical service intermediate life support technicians and paramedics.

(2) Initial certification shall be for a period (~~(of three years))~~ established by the secretary pursuant to RCW 43.70.250 and 43.70.280.

(3) Recertification shall be granted upon proof of continuing satisfactory performance and education, and shall be for a period (~~(of three years))~~ established by the secretary pursuant to RCW 43.70.250 and 43.70.280.

(4) As used in chapters 18.71 and 18.73 RCW, "approved medical program director" means a person who:

(a) Is licensed to practice medicine and surgery pursuant to chapter 18.71 RCW or osteopathy and surgery pursuant to chapter 18.57 RCW; and

(b) Is qualified and knowledgeable in the administration and management of emergency care and services; and

(c) Is so certified by the department of health for a county, group of counties, or cities with populations over four hundred thousand in coordination with the recommendations of the local medical community and local emergency medical services and trauma care council.

(5) The Uniform Disciplinary Act, chapter 18.130 RCW, governs uncertified practice, the issuance and denial of certificates, and the disciplining of certificate holders under this section. The secretary shall be the disciplining authority under this section. Disciplinary action shall be initiated against a person credentialed under this chapter in a manner consistent with the responsibilities and duties of the medical program director under whom such person is responsible.

(6) Such activities of (~~(physician's))~~ physician's trained emergency medical service intermediate life support technicians and paramedics shall be limited to actions taken under the express written or oral order of medical program directors and shall not be construed at any time to include free standing or

nondirected actions, for actions not presenting an emergency or life-threatening condition.

Sec. 56. RCW 18.71.400 and 1993 c 367 s 18 are each amended to read as follows:

There is hereby levied to be collected by the department of health from every physician and surgeon licensed pursuant to chapter 18.71 RCW and every physician assistant licensed pursuant to chapter 18.71A RCW (~~(an annual)~~) a medical disciplinary assessment equal to the license renewal fee established by the secretary under RCW 43.70.250 and 43.70.280. The assessment levied pursuant to this section is in addition to any license renewal fee (~~(established under RCW 43.70.250)~~).

Sec. 57. RCW 18.71A.020 and 1994 sp.s. c 9 s 319 are each amended to read as follows:

(1) The commission shall adopt rules fixing the qualifications and the educational and training requirements for licensure as a physician assistant or for those enrolled in any physician assistant training program. The requirements shall include completion of an accredited physician assistant training program approved by the commission and eligibility to take an examination approved by the commission, if the examination tests subjects substantially equivalent to the curriculum of an accredited physician assistant training program. Physician assistants licensed by the board of medical examiners as of June 7, 1990, shall continue to be licensed.

(2)(a) The commission shall adopt rules governing the extent to which:

(i) Physician assistant students may practice medicine during training; and
 (ii) Physician assistants may practice after successful completion of a physician assistant training course.

(b) Such rules shall provide:

(i) That the practice of a physician assistant shall be limited to the performance of those services for which he or she is trained; and

(ii) That each physician assistant shall practice medicine only under the supervision and control of a physician licensed in this state, but such supervision and control shall not be construed to necessarily require the personal presence of the supervising physician or physicians at the place where services are rendered.

(3) Applicants for licensure shall file an application with the commission on a form prepared by the secretary with the approval of the commission, detailing the education, training, and experience of the physician assistant and such other information as the commission may require. The application shall be accompanied by a fee determined by the secretary as provided in RCW 43.70.250 and 43.70.280. Each applicant shall furnish proof satisfactory to the commission of the following:

(a) That the applicant has completed an accredited physician assistant program approved by the commission and is eligible to take the examination approved by the commission;

(b) That the applicant is of good moral character; and

(c) That the applicant is physically and mentally capable of practicing medicine as a physician assistant with reasonable skill and safety. The commission may require an applicant to submit to such examination or examinations as it deems necessary to determine an applicant's physical or mental capability, or both, to safely practice as a physician assistant.

(4) The commission may approve, deny, or take other disciplinary action upon the application for license as provided in the Uniform Disciplinary Act, chapter 18.130 RCW. The license shall be renewed ~~((on a periodic basis as determined by the secretary under RCW 43.70.280, upon payment of a fee determined by the secretary as provided in RCW 43.70.250, and submission of a completed renewal application, in addition to any late renewal penalty fees as determined by the secretary as provided in RCW 43.70.250))~~ as determined under RCW 43.70.250 and 43.70.280. The commission may authorize the use of alternative supervisors who are licensed either under chapter 18.57 or 18.71 RCW.

Sec. 58. RCW 18.71A.040 and 1994 sp.s. c 9 s 321 are each amended to read as follows:

(1) No physician assistant practicing in this state shall be employed or supervised by a physician or physician group without the approval of the commission.

(2) Prior to commencing practice, a physician assistant licensed in this state shall apply to the commission for permission to be employed or supervised by a physician or physician group. The practice arrangement plan shall be jointly submitted by the physician or physician group and physician assistant. ~~((The secretary may charge a fee as provided in RCW 43.70.250 to recover the cost for the plan review))~~ Administrative procedures, administrative requirements, and fees shall be established as provided in RCW 43.70.250 and 43.70.280. The practice arrangement plan shall delineate the manner and extent to which the physician assistant would practice and be supervised. Whenever a physician assistant is practicing in a manner inconsistent with the approved practice arrangement plan, the ~~((medical disciplinary board [commission]))~~ commission may take disciplinary action under chapter 18.130 RCW.

Sec. 59. RCW 18.74.050 and 1991 c 3 s 178 are each amended to read as follows:

The secretary shall furnish a license upon the authority of the board to any person who applies and who has qualified under the provisions of this chapter. At the time of applying, the applicant shall ~~((pay to the state treasurer a fee determined by the secretary as provided in RCW 43.70.250))~~ comply with administrative procedures, administrative requirements, and fees established pursuant to RCW 43.70.250 and 43.70.280. No person registered or licensed on July 24, 1983, as a physical therapist shall be required to pay an additional fee for a license under this chapter.

Sec. 60. RCW 18.74.060 and 1991 c 3 s 179 are each amended to read as follows:

Upon the recommendation of the board, the secretary shall license as a physical therapist and shall furnish a license to any person who is a physical therapist registered or licensed under the laws of another state or territory, or the District of Columbia, if the qualifications for such registration or license required of the applicant were substantially equal to the requirements under this chapter. At the time of making application, the applicant shall ~~((pay to the state treasurer a fee determined by the secretary as provided in RCW 43.70.250))~~ comply with administrative procedures, administrative requirements, and fees established pursuant to RCW 43.70.250 and 43.70.280.

Sec. 61. RCW 18.74.070 and 1991 c 3 s 180 are each amended to read as follows:

Every licensed physical therapist shall apply to the secretary for a renewal of the license and pay to the state treasurer a fee determined by the secretary as provided in RCW 43.70.250 and 43.70.280. ~~((The license of a physical therapist who fails to renew the license within thirty days of the date set by the secretary for renewal shall automatically lapse. Within three years from the date of lapse and upon the recommendation of the board, the secretary may revive a lapsed license upon the payment of all past unpaid renewal fees and a penalty fee to be determined by the secretary. The board may require reexamination of an applicant whose license has lapsed for more than three years and who has not continuously engaged in lawful practice in another state or territory, or waive reexamination in favor of evidence of continuing education satisfactory to the board.))~~

Sec. 62. RCW 18.79.200 and 1994 sp.s. c 9 s 420 are each amended to read as follows:

An applicant for a license to practice as a registered nurse, advanced registered nurse practitioner, or licensed practical nurse shall comply with administrative procedures, administrative requirements, and ~~((pay a fee))~~ fees as determined ~~((by the secretary))~~ under RCW 43.70.250 ~~((to the state treasurer))~~ and 43.70.280.

Sec. 63. RCW 18.79.210 and 1994 sp.s. c 9 s 421 are each amended to read as follows:

A license issued under this chapter ~~((, whether in an active or inactive status,))~~ must be renewed, except as provided in this chapter. The licensee shall ~~((send the renewal form to the department with a renewal fee,))~~ comply with administrative procedures, administrative requirements, and fees as determined ~~((by the secretary))~~ under RCW 43.70.250 ~~((, before the expiration date. Upon receipt of the renewal form and the appropriate fee, the department shall issue the licensee a license, which declares the holder to be a legal practitioner of registered nursing, advanced registered nursing practice, or licensed practical~~

nursing, as appropriate, in either active or inactive status, for the period of time stated on the license)) and 43.70.280.

Sec. 64. RCW 18.83.060 and 1991 c 3 s 197 are each amended to read as follows:

~~((Each applicant for a license shall file with the secretary an application duly verified, in such form and setting forth such information as the board shall prescribe. An application fee determined by the secretary as provided in RCW 43.70.250 shall accompany each application))~~ Administrative procedures, administrative requirements, and fees for applications and examinations shall be established as provided in RCW 43.70.250 and 43.70.280.

Sec. 65. RCW 18.83.072 and 1995 c 198 s 12 are each amended to read as follows:

(1) Examination of applicants shall be held in Olympia, Washington, or at such other place as designated by the secretary, at least annually at such times as the board may determine.

(2) Any applicant shall have the right to discuss with the board his or her performance on the examination.

(3) Any applicant who fails to make a passing grade on the examination may be allowed to retake the examination. Any applicant who fails the examination a second time must obtain special permission from the board to take the examination again.

~~(4) ((The reexamination fee shall be the same as the application fee set forth in RCW 18.83.060.~~

~~—(5)))~~ The board may approve an examination prepared or administered by a private testing agency or association of licensing authorities.

Sec. 66. RCW 18.83.080 and 1991 c 3 s 199 are each amended to read as follows:

~~((Upon forwarding to the secretary by))~~ The board ((of)) shall forward to the secretary the name of each applicant entitled to a license under this chapter~~((s))~~. The secretary shall promptly issue to such applicant a license authorizing such applicant to use the title "psychologist" ((for a period of one year. Said license shall be in such form as the secretary shall determine)). Each licensed psychologist shall keep his or her license displayed in a conspicuous place in his or her principal place of business.

Sec. 67. RCW 18.83.082 and 1984 c 279 s 82 are each amended to read as follows:

~~((1) A valid receipt for an initial application for license hereunder, provided the applicant meets the requirements of RCW 18.83.070 (1), (2), and (3), shall constitute a temporary permit to practice psychology until the board completes action on the application. The board must complete action within one year of the date such receipt is issued.~~

~~—(2)))~~ A person, not licensed in this state, who wishes to perform practices under the provisions of this chapter for a period not to exceed ninety days within

a calendar year, must petition the board for a temporary permit to perform such practices. If the person is licensed or certified in another state deemed by the board to have standards equivalent to this chapter, a permit may be issued. No fee shall be charged for such temporary permit.

Sec. 68. RCW 18.83.090 and 1991 c 3 s 200 are each amended to read as follows:

The board shall establish rules governing mandatory continuing education requirements which shall be met by any psychologist applying for a license renewal. ~~((Each licensed psychologist shall pay to the health professions account, created in RCW 43.70.320, annually, at such time as determined by the board, an annual license renewal fee determined by the secretary under RCW 43.70.250. Upon receipt of the fee, the secretary shall issue a certificate of renewal in such form as the secretary shall determine))~~ Administrative procedures, administrative requirements, and fees for renewal and reissue of licenses shall be established as provided in RCW 43.70.250 and 43.70.280.

Sec. 69. RCW 18.83.105 and 1991 c 3 s 201 are each amended to read as follows:

The board may issue certificates of qualification with appropriate title to applicants who meet all the licensing requirements except the possession of the degree of Doctor of Philosophy or its equivalent in psychology from an accredited educational institution. These certificates of qualification certify that the holder has been examined by the board and is deemed competent to perform certain functions within the practice of psychology under the periodic direct supervision of a psychologist licensed by the board. Such functions will be specified on the certificate issued by the board. Such applicant shall ~~((pay to the board of examiners a fee determined by the secretary as provided in RCW 43.70.250 for certification in a single area of qualification and a fee for amendment of the certificate to include each additional area of qualification))~~ comply with administrative procedures, administrative requirements, and fees determined under RCW 43.70.250 and 43.70.280. Upon petition by a holder the board of examiners may grant authority to function without immediate supervision.

Sec. 70. RCW 18.83.170 and 1991 c 3 s 202 are each amended to read as follows:

Upon ~~((application accompanied by a fee determined by the secretary as provided in RCW 43.70.250))~~ compliance with administrative procedures, administrative requirements, and fees determined under RCW 43.70.250 and 43.70.280, the board may grant a license, without written examination, to any applicant who has not previously failed any examination held by the board of psychology of the state of Washington and furnishes evidence satisfactory to the board that the applicant:

(1) Holds a doctoral degree with primary emphasis on psychology from an accredited college or university; and

(2) Is licensed or certified to practice psychology in another state or country in which the requirements for such licensing or certification are, in the judgment of the board, essentially equivalent to those required by this chapter and the rules and regulations of the board. Such individuals must have been licensed or certified in another state for a period of at least two years; or

(3) Is a diplomate in good standing of the American Board of Examiners in Professional Psychology.

Sec. 71. RCW 18.84.100 and 1991 c 3 s 211 are each amended to read as follows:

Applications for certification must be submitted on forms provided by the secretary. The secretary may require any information and documentation that reasonably relates to the determination of whether the applicant meets the requirements for certification provided for in this chapter and chapter 18.130 RCW. Each applicant shall ~~((pay a fee))~~ comply with administrative procedures, administrative requirements, and fees determined by the secretary as provided in RCW 43.70.250 ~~((which shall accompany the application))~~ and 43.70.280.

Sec. 72. RCW 18.84.110 and 1994 sp.s. c 9 s 509 are each amended to read as follows:

The secretary shall establish ~~((by rule))~~ the administrative procedures, administrative requirements, and fees for renewal of certificates as provided in RCW 43.70.250 and 43.70.280. ~~((Failure to renew invalidates the certificate and all privileges granted by the certificate. In the event a certificate has lapsed for a period longer than three years, the certificant shall demonstrate competence to the satisfaction of the secretary by continuing education or under the other standards determined by the secretary.))~~

Sec. 73. RCW 18.84.120 and 1991 c 222 s 4 are each amended to read as follows:

The secretary may issue a registration to an applicant who submits, on forms provided by the department, the applicant's name, the address, occupational title, name and location of business where applicant performs his or her services, and other information as determined by the secretary, including information necessary to determine whether there are grounds for denial of registration under this chapter or chapter 18.130 RCW. Each applicant shall pay a fee as determined by the secretary as provided in RCW 43.70.250 and 43.70.280. The secretary shall establish ~~((by rule))~~ the ~~((procedural))~~ administrative procedures, administrative requirements, and fees for registration and for renewal of registrations as provided in RCW 43.70.250 and 43.70.280.

Sec. 74. RCW 18.88A.120 and 1991 c 16 s 14 are each amended to read as follows:

Applications for registration and certification shall be submitted on forms provided by the secretary. The secretary may require any information and documentation that reasonably relates to the need to determine whether the applicant meets the criteria for registration and certification credentialing

provided for in this chapter and chapter ~~((18.120))~~ 18.130 RCW. Each applicant shall ~~((pay a fee determined by the secretary under RCW 43.70.250. The fee shall accompany the application))~~ comply with administrative procedures, administrative requirements, and fees determined by the secretary under RCW 43.70.250 and 43.70.280.

Sec. 75. RCW 18.88A.130 and 1994 sp.s. c 9 s 715 are each amended to read as follows:

~~((The secretary shall establish by rule the procedural requirements and fees for renewal of a registration or certificate. Failure to renew shall invalidate the credential and all privileges granted by the credential. If a certificate has lapsed for a period longer than three years, the person shall demonstrate competence to the satisfaction of the commission by taking continuing education courses, or meeting other standards determined by the commission))~~ Registrations and certifications shall be renewed according to administrative procedures, administrative requirements, and fees determined by the secretary under RCW 43.70.250 and 43.70.280.

Sec. 76. RCW 18.89.110 and 1991 c 3 s 234 are each amended to read as follows:

(1) The date and location of the examination shall be established by the secretary. Applicants who have been found by the secretary to meet the other requirements for certification shall be scheduled for the next examination following the filing of the application. However, the applicant shall not be scheduled for any examination taking place sooner than sixty days after the application is filed.

(2) The secretary shall examine each applicant, by means determined most effective, on subjects appropriate to the scope of practice. Such examinations shall be limited to the purpose of determining whether the applicant possesses the minimum skill and knowledge necessary to practice competently, and shall meet generally accepted standards of fairness and validity for certification examinations.

(3) All examinations shall be conducted by the secretary, and all grading of the examinations shall be under fair and wholly impartial methods.

(4) Any applicant who fails to make the required grade in the first examination is entitled to take up to three subsequent examinations, upon ~~((the prepayment of a fee determined by the secretary as provided in RCW 43.70.250 for each subsequent examination. Upon failure of four examinations, the secretary may invalidate the original application))~~ compliance with administrative procedures, administrative requirements, and fees determined by the secretary under RCW 43.70.250 and 43.70.280 and ~~((require))~~ such remedial education as is deemed necessary.

(5) The secretary may approve an examination prepared and administered by a private testing agency or association of credentialing boards for use by an applicant in meeting the certification requirement.

Sec. 77. RCW 18.89.120 and 1991 c 3 s 235 are each amended to read as follows:

Applications for certification shall be submitted on forms provided by the secretary. The secretary may require any information and documentation which reasonably relates to the need to determine whether the applicant meets the criteria for certification provided in this chapter and chapter 18.130 RCW. All ~~((applications))~~ applicants shall ~~((be accompanied by a fee))~~ comply with administrative procedures, administrative requirements, and fees determined by the secretary under RCW 43.70.250 and 43.70.280.

Sec. 78. RCW 18.89.140 and 1991 c 3 s 237 are each amended to read as follows:

~~((The secretary shall establish by rule the requirements and fees for renewal of certificates. Failure to renew shall invalidate the certificate and all privileges granted by the certificate. In the event a certificate has lapsed for a period longer than three years, the certified respiratory care practitioner shall demonstrate competence to the satisfaction of the secretary by continuing education or under the other standards determined by the secretary))~~ Certificates shall be renewed according to administrative procedures, administrative requirements, and fees determined by the secretary under RCW 43.70.250 and 43.70.280.

Sec. 79. RCW 18.92.140 and 1993 c 78 s 6 are each amended to read as follows:

Each person now qualified to practice veterinary medicine, surgery, and dentistry, registered as an animal technician, or registered as a veterinary medication clerk in this state or who becomes licensed or registered to engage in practice shall ~~((register with the secretary of health annually or on the date prescribed by the secretary and pay the renewal registration fee set by the secretary as provided in RCW 43.70.250. A person who fails to renew a license or certificate before its expiration is subject to a late renewal fee equal to one-third of the regular renewal fee set by the secretary))~~ comply with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280.

Sec. 80. RCW 18.92.145 and 1993 c 78 s 7 are each amended to read as follows:

~~((The secretary shall determine the))~~ Administrative procedures, administrative requirements, and fees((;)) shall be established as provided in RCW 43.70.250~~((;))~~ and 43.70.280 for the issuance, renewal, or administration of the following licenses, certificates of registration, permits, duplicate licenses, renewals, or examination:

(1) For a license to practice veterinary medicine, surgery, and dentistry issued upon an examination given by the examining board;

(2) For a license to practice veterinary medicine, surgery, and dentistry issued upon the basis of a license issued in another state;

- (3) For a certificate of registration as an animal technician;
- (4) For a certificate of registration as a veterinary medication clerk;
- (5) For a temporary permit to practice veterinary medicine, surgery, and dentistry. The temporary permit fee shall be accompanied by the full amount of the examination fee; and
- (6) For a license to practice specialized veterinary medicine.

Sec. 81. RCW 18.108.060 and 1991 c 3 s 256 are each amended to read as follows:

~~((All licenses issued under the provisions of this chapter, unless otherwise provided shall expire on the annual anniversary date of the individual's date of birth.~~

~~—The secretary shall prorate the licensing fee for massage practitioner based on one twelfth of the annual license fee for each full calendar month between the issue date and the next anniversary of the applicant's birth date, a date used as the expiration date of such license.~~

~~—Every applicant for a license shall pay an examination fee determined by the secretary as provided in RCW 43.70.250, which fee shall accompany their application. Applications for licensure shall be submitted on forms provided by the secretary.~~

~~—Applicants granted a license under this chapter shall pay to the secretary a license fee determined by the secretary as provided in RCW 43.70.250, prior to the issuance of their license, and an annual renewal fee determined by the secretary as provided in RCW 43.70.250. Failure to renew shall invalidate the license and all privileges granted to the licensee, but such license may be reinstated upon written application to the secretary and payment to the state of all delinquent fees and penalties as determined by the secretary. In the event a license has lapsed for a period longer than three years, the licensee shall demonstrate competence to the satisfaction of the secretary by proof of continuing education or other standard determined by the secretary with the advice of the board)) Each applicant and license holder shall comply with administrative procedures, administrative requirements, and fees set by the secretary under RCW 43.70.250 and 43.70.280.~~

Sec. 82. RCW 18.135.050 and 1991 c 3 s 274 are each amended to read as follows:

(1) Any health care facility may certify a health care assistant to perform the functions authorized in this chapter in that health care facility; and any health care practitioner may certify a health care assistant capable of performing such services in any health care facility, or in his or her office, under a health care practitioner's supervision. Before certifying the health care assistant, the health care facility or health care practitioner shall verify that the health care assistant has met the minimum requirements established by the secretary under this chapter. These requirements shall not prevent the certifying entity from imposing such additional standards as the certifying entity considers appropriate.

The health care facility or health care practitioner shall provide the licensing authority with a certified roster of health care assistants who are certified.

(2) Certification and recertification of a health care assistant shall be effective for a period ((of two years. Recertification is required at the end of this period)) determined by the secretary under RCW 43.70.250 and 43.70.280. Requirements for recertification shall be ((established by rule)) determined by the secretary under RCW 43.70.250 and 43.70.280.

Sec. 83. RCW 18.135.055 and 1991 c 3 s 275 are each amended to read as follows:

The health care facility or health care practitioner registering an initial or continuing certification pursuant to the provisions of this chapter shall ((pay a)) comply with administrative procedures, administrative requirements, and fees determined by the secretary as provided in RCW 43.70.250 and 43.70.280.

All fees collected under this section shall be credited to the health professions account as required in RCW 43.70.320.

Sec. 84. RCW 18.138.040 and 1991 c 3 s 281 are each amended to read as follows:

(1) If the applicant meets the qualifications as outlined in RCW 18.138.030(2), the secretary shall confer on such candidates the title certified dietitian.

(2) If the applicant meets the qualifications as outlined in RCW 18.138.030(4), the secretary shall confer on such candidates the title certified nutritionist.

(3) ((The application fee in an amount determined by the secretary shall accompany the application)) Applicants for certification as a certified dietitian or certified nutritionist shall comply with administrative procedures, administrative requirements, and fees determined by the secretary under RCW 43.70.250 and 43.70.280.

Sec. 85. RCW 18.138.060 and 1991 c 3 s 283 are each amended to read as follows:

(1) Every person certified as a certified dietitian or certified nutritionist shall ((pay a renewal registration fee determined by the secretary as provided in RCW 43.70.250. The certificate of the person shall be renewed for a period of one year or longer at the discretion of the secretary)) renew the certification according to administrative procedures, administrative requirements, and fees determined by the secretary as provided in RCW 43.70.250 and 43.70.280.

(2) ((Any failure to register and pay the annual renewal registration fee shall render the certificate invalid. The certificate shall be reinstated upon: (a) Written application to the secretary; (b) payment to the state of a penalty fee determined by the secretary; and (c) payment to the state of all delinquent annual certificate renewal fees.

—(3) Any person who fails to renew his or her certification for a period of three years shall not be entitled to renew such certification under this section.

~~Such person, in order to obtain a certification as a certified dietitian or certified nutritionist in this state, shall file a new application under this chapter, along with the required fee, and shall meet all requirements as the secretary provides.~~
 —(4)) All fees collected under this section shall be credited to the health professions account as required.

Sec. 86. RCW 18.155.040 and 1990 c 3 s 804 are each amended to read as follows:

In addition to any other authority provided by law, the secretary shall have the following authority:

(1) To set ~~((all))~~ administrative procedures, administrative requirements, and fees ((required in this chapter)) in accordance with RCW 43.70.250 and 43.70.280;

(2) To establish forms necessary to administer this chapter;

(3) To issue a certificate to any applicant who has met the education, training, and examination requirements for certification and deny a certificate to applicants who do not meet the minimum qualifications for certification. Proceedings concerning the denial of certificates based on unprofessional conduct or impaired practice shall be governed by the uniform disciplinary act, chapter 18.130 RCW;

(4) To hire clerical, administrative, and investigative staff as needed to implement and administer this chapter and to hire individuals including those certified under this chapter to serve as examiners or consultants as necessary to implement and administer this chapter;

(5) To maintain the official department record of all applicants and certifications;

(6) To conduct a hearing on an appeal of a denial of a certificate on the applicant's failure to meet the minimum qualifications for certification. The hearing shall be conducted pursuant to chapter 34.05 RCW;

(7) To issue subpoenas, statements of charges, statements of intent to deny certificates, and orders and to delegate in writing to a designee the authority to issue subpoenas, statements of charges, and statements of intent to deny certificates;

(8) To determine the minimum education, work experience, and training requirements for certification, including but not limited to approval of educational programs;

(9) To prepare and administer or approve the preparation and administration of examinations for certification;

(10) To establish by rule the procedure for appeal of an examination failure;

(11) To adopt rules implementing a continuing competency program;

(12) To adopt rules in accordance with chapter 34.05 RCW as necessary to implement this chapter.

Sec. 87. RCW 18.155.080 and 1990 c 3 s 808 are each amended to read as follows:

The secretary shall establish (~~(by rule)~~) standards and procedures for approval of the following:

- (1) Educational programs and alternate training;
- (2) Examination procedures;
- (3) Certifying applicants who have a comparable certification in another jurisdiction;
- (4) Application method and forms;
- (5) Requirements for renewals of certificates;
- (6) Requirements of certified sex offender treatment providers who seek inactive status;
- (7) Other rules, policies, administrative procedures, and administrative requirements as appropriate to carry out the purposes of this chapter.

Sec. 88. RCW 42.17.310 and 1995 c 267 s 6 are each 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 82.32.330 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, 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.

(p) Financial disclosures filed by private vocational schools under chapter 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 and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(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.

(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 18.130.140 maintained in the files of the department shall automatically be withheld from public inspection and copying ~~((if the provider has provided the department with an accurate alternative or business address and telephone number))~~ 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, regardless of which agency is in possession of the information and documents.

(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.

NEW SECTION. Sec. 89. A new section is added to chapter 43.70 RCW to read as follows:

The legislature finds that domestic violence is the leading cause of injury among women and is linked to numerous health problems, including depression, abuse of alcohol and other drugs, and suicide. Despite the frequency of medical attention, few people are diagnosed as victims of spousal abuse. The department, in consultation with the disciplinary authorities as defined in RCW 18.130.040,

shall establish, within available department general funds, an ongoing domestic violence education program as an integral part of its health professions regulation. The purpose of the education program is to raise awareness and educate health care professionals regarding the identification, appropriate treatment, and appropriate referral of victims of domestic violence. The disciplinary authorities having the authority to offer continuing education may provide training in the dynamics of domestic violence. No funds from the health professions account may be utilized to fund activities under this section unless the disciplinary authority authorizes expenditures from its proportions of the account. A disciplinary authority may defray costs by authorizing a fee to be charged for participants or materials relating to any sponsored program.

NEW SECTION. Sec. 90. The following acts or parts of acts are each repealed:

(1) RCW 18.30.110 and 1995 c 198 s 22 & 1995 c 1 s 12 (Initiative Measure No. 607);

(2) RCW 18.32.120 and 1994 sp.s. c 9 s 214, 1991 c 3 s 64, 1989 c 202 s 20, 1985 c 7 s 24, 1975 1st ex.s. c 30 s 28, 1969 c 49 s 2, 1957 e 52 s 30, & 1953 c 93 s 5;

(3) RCW 18.53.055 and 1955 c 275 s 2;

(4) RCW 18.64A.065 and 1991 c 229 s 10;

(5) RCW 18.79.220 and 1994 sp.s. c 9 s 422; and

(6) RCW 18.83.100 and 1994 c 35 s 3, 1986 c 27 s 5, 1965 c 70 s 10, & 1955 c 305 s 10.

NEW SECTION. Sec. 91. By December 31, 1997, the secretary shall report to the appropriate standing committees of the legislature on the implementation of this act and, after consulting with board and commission members and representatives of health professional associations, shall make recommendations about the extent authority to establish administrative procedures and administrative requirements should continue to be vested with the secretary.

Passed the House March 2, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 28, 1996.

Filed in Office of Secretary of State March 28, 1996.

CHAPTER 192

[Substitute House Bill 2167]

MARINAS—EXEMPTION OF REGULAR MAINTENANCE FROM HYDRAULIC PROJECT REVIEW AND APPROVAL

AN ACT Relating to regular maintenance of marinas; adding a new section to chapter 75.20 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 initial construction of a marina and some maintenance activities change the natural flow or bed of the salt or fresh water body in which the marina is constructed. Because of this disturbance, it is appropriate that plans for initial marina construction as well as some maintenance activities undergo the hydraulic project review and approval process established in chapter 75.20 RCW.

It is the intent of the legislature that after a marina has received a hydraulic project approval and been constructed, a renewable, five-year hydraulic project approval be issued, upon request, for regular maintenance activities within the marina.

NEW SECTION. Sec. 2. A new section is added to chapter 75.20 RCW to read as follows:

(1) "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.

(2) For a marina in existence on the effective date of this act or a marina that has received a hydraulic project approval for its initial construction, a renewable, five-year hydraulic project approval shall be issued, upon request, for regular maintenance activities of the marina.

(3) Upon construction of a new marina that has received hydraulic project approval, a renewable, five-year hydraulic project approval shall be issued, upon request, for regular maintenance activities of the marina.

(4) For the purposes of this section, regular maintenance activities are only those activities necessary to restore the marina to the conditions approved in the initial hydraulic project approval. These activities may include, but are not limited to, dredging, piling replacement, and float replacement.

(5) The five-year permit must include a requirement that a fourteen-day notice be given to the department before regular maintenance activities begin.

Passed the House March 5, 1996.

Passed the Senate March 1, 1996.

Approved by the Governor March 28, 1996.

Filed in Office of Secretary of State March 28, 1996.

CHAPTER 193

[House Bill 2172]

ADULT RESIDENTIAL CARE SERVICES—ENFORCEMENT AUTHORITY OF DEPARTMENT OF SOCIAL AND HEALTH SERVICES

AN ACT Relating to adult residential care services; and amending RCW 74.39A.080.

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

Sec. 1. RCW 74.39A.080 and 1995 1st sp.s. c 18 s 17 are each amended to read as follows:

(1) The department is authorized to take one or more of the actions listed in subsection (2) of this section in any case in which the department finds that a provider of assisted living services, adult residential care services, or enhanced adult residential care services has:

(a) Failed or refused to comply with the requirements of this chapter or the rules adopted under this chapter;

(b) Operated without a license or under a revoked license;

(c) Knowingly, or with reason to know, made a false statement of material fact on his or her application for license or any data attached thereto, or in any matter under investigation by the department; or

(d) Willfully prevented or interfered with any inspection or investigation by the department.

(2) When authorized by subsection (1) of this section, the department may take one or more of the following actions:

(a) Refuse to issue a contract;

(b) Impose reasonable conditions on a contract, such as correction within a specified time, training, and limits on the type of clients the provider may admit or serve;

(c) Impose civil penalties of not more than one hundred dollars per day per violation;

(d) Suspend, revoke, or refuse to renew a contract; or

(e) Suspend admissions to the facility by imposing stop placement on contracted services.

(3) When the department orders stop placement, the facility shall not admit any person admitted by contract until the stop placement order is terminated. The department may approve readmission of a resident to the facility from a hospital or nursing home during the stop placement. The department shall terminate the stop placement when: (a) The violations necessitating the stop placement have been corrected; and (b) the provider exhibits the capacity to maintain adequate care and service.

(4) Chapter 34.05 RCW applies to department actions under this section, except that orders of the department imposing contracts suspension, stop placement, or conditions for continuation of a contract are effective immediately upon notice and shall continue pending any hearing.

Passed the House January 22, 1996.

Passed the Senate February 29, 1996.

Approved by the Governor March 28, 1996.

Filed in Office of Secretary of State March 28, 1996.

CHAPTER 194

[Substitute House Bill 2179]

MOTOR VEHICLE TRANSACTIONS INVOLVING BUYER'S AGENTS

AN ACT Relating to new motor vehicle transactions involving buyer's agents; and amending RCW 46.70.011, 46.70.070, and 46.70.180.

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

Sec. 1. RCW 46.70.011 and 1993 c 175 s 1 are each amended to read as follows:

As used in this chapter:

(1) "Vehicle" means and includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(2) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, and which is required to be registered and titled under Title 46 RCW, Motor Vehicles.

(3) "Vehicle dealer" means any person, firm, association, corporation, or trust, not excluded by subsection (4) of this section, engaged in the business of buying, selling, listing, exchanging, offering, brokering, leasing with an option to purchase, auctioning, soliciting, or advertising the sale of new or used vehicles, or arranging or offering or attempting to solicit or negotiate on behalf of others, a sale, purchase, or exchange of an interest in new or used motor vehicles, irrespective of whether the motor vehicles are owned by that person. Vehicle dealers shall be classified as follows:

(a) A "motor vehicle dealer" is a vehicle dealer that deals in new or used motor vehicles, or both;

(b) A "mobile home and travel trailer dealer" is a vehicle dealer that deals in mobile homes, park trailers, or travel trailers, or more than one type of these vehicles;

(c) A "miscellaneous vehicle dealer" is a vehicle dealer that deals in motorcycles or vehicles other than motor vehicles or mobile homes and travel trailers or any combination of such vehicles.

(4) The term "vehicle dealer" does not include, nor do the licensing requirements of RCW 46.70.021 apply to, the following persons, firms, associations, or corporations:

(a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by, or acting under a judgment or order of, any court; or

(b) Public officers while performing their official duties; or

(c) Employees of vehicle dealers who are engaged in the specific performance of their duties as such employees; or

(d) Any person engaged in an isolated sale of a vehicle in which he is the registered or legal owner, or both, thereof; or

(e) Any person, firm, association, corporation, or trust, engaged in the selling of equipment other than vehicles, subject to registration, used for agricultural or industrial purposes; or

(f) A real estate broker licensed under chapter 18.85 RCW, or his authorized representative, who, on behalf of the legal or registered owner of a used mobile

home negotiates the purchase, sale, or exchange of the used mobile home in conjunction with the purchase, sale, exchange, rental, or lease of the land upon which the used mobile home is located and the real estate broker is not acting as an agent, subagent, or representative of a vehicle dealer licensed under this chapter; or

(g) Owners who are also operators of the special highway construction equipment or of the highway construction equipment for which a vehicle license and display vehicle license number plate is required as defined in RCW 46.16.010; or

(h) Any bank, trust company, savings bank, mutual savings bank, savings and loan association, credit union, and any parent, subsidiary, or affiliate thereof, authorized to do business in this state under state or federal law with respect to the sale or other disposition of a motor vehicle owned and used in their business; or with respect to the acquisition and sale or other disposition of a motor vehicle in which the entity has acquired an interest as a lessor, lessee, or secured party.

(5) "Vehicle salesperson" means any person who for any form of compensation sells, auctions, leases with an option to purchase, or offers to sell or to so lease vehicles on behalf of a vehicle dealer.

(6) "Department" means the department of licensing, which shall administer and enforce the provisions of this chapter.

(7) "Director" means the director of licensing.

(8) "Manufacturer" means any person, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new and unused vehicles or remanufactures vehicles in whole or in part and further includes the terms:

(a) "Distributor," which means any person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes any new and unused vehicle to vehicle dealers or who maintains factory representatives.

(b) "Factory branch," which means a branch office maintained by a manufacturer for the purpose of selling or offering for sale, vehicles to a distributor, wholesaler, or vehicle dealer, or for directing or supervising in whole or in part factory or distributor representatives, and further includes any sales promotion organization, whether a person, firm, or corporation, which is engaged in promoting the sale of new and unused vehicles in this state of a particular brand or make to vehicle dealers.

(c) "Factory representative," which means a representative employed by a manufacturer, distributor, or factory branch for the purpose of making or promoting for the sale of their vehicles or for supervising or contracting with their dealers or prospective dealers.

(9) "Established place of business" means a location meeting the requirements of RCW 46.70.023(1) at which a vehicle dealer conducts business in this state.

(10) "Principal place of business" means that dealer firm's business location in the state, which place the dealer designates as their principal place of business.

(11) "Subagency" means any place of business of a vehicle dealer within the state, which place is physically and geographically separated from the principal place of business of the firm or any place of business of a vehicle dealer within the state, at which place the firm does business using a name other than the principal name of the firm, or both.

(12) "Temporary subagency" means a location other than the principal place of business or subagency within the state where a licensed vehicle dealer may secure a license to conduct the business and is licensed for a period of time not to exceed ten days for a specific purpose such as auto shows, shopping center promotions, tent sales, exhibitions, or similar merchandising ventures. No more than six temporary subagency licenses may be issued to a licensee in any twelve-month period.

(13) "Wholesale vehicle dealer" means a vehicle dealer who buys and sells other than at retail.

(14) "Retail vehicle dealer" means a vehicle dealer who may buy and sell at both wholesale and retail.

(15) "Listing dealer" means a used mobile home dealer who makes contracts with sellers who will compensate the dealer for obtaining a willing purchaser for the seller's mobile home.

(16) "Auction" means a transaction conducted by means of exchanges between an auctioneer and the members of the audience, constituting a series of oral invitations for offers for the purchase of vehicles made by the auctioneer, offers to purchase by members of the audience, and the acceptance of the highest or most favorable offer to purchase.

(17) "Auction company" means a sole proprietorship, partnership, corporation, or other legal or commercial entity licensed under chapter 18.11 RCW that only sells or offers to sell vehicles at auction or only arranges or sponsors auctions.

(18) "Buyer's agent" means any person, firm, partnership, association, limited liability company, limited liability partnership, or corporation retained or employed by a consumer to arrange for or to negotiate, or both, the purchase of a new motor vehicle on behalf of the consumer, and who is paid a fee or receives other compensation from the consumer for ~~((the))~~ its services.

(19) "New motor vehicle" means any motor vehicle that is self-propelled and is required to be registered and titled under Title 46 RCW, has not been previously titled to a retail purchaser or lessee, and is not a "used vehicle" as defined under RCW 46.04.660.

Sec. 2. RCW 46.70.070 and 1989 c 337 s 15 are each amended to read as follows:

(1) Before issuing a vehicle dealer's license, the department shall require the applicant to file with the department a surety bond in the amount of:

(a) Fifteen thousand dollars for motor vehicle dealers;

(b) Thirty thousand dollars for mobile home, park trailer, and travel trailer dealers: PROVIDED, That if such dealer does not deal in mobile homes or park trailers such bond shall be fifteen thousand dollars;

(c) Five thousand dollars for miscellaneous dealers, running to the state, and executed by a surety company authorized to do business in the state. Such bond shall be approved by the attorney general as to form and conditioned that the dealer shall conduct his business in conformity with the provisions of this chapter.

Any retail purchaser, consignor who is not a motor vehicle dealer, or a motor vehicle dealer who has purchased from, sold to, or otherwise transacted business with a wholesale dealer, who has suffered any loss or damage by reason of any act by a dealer which constitutes a violation of this chapter shall have the right to institute an action for recovery against such dealer and the surety upon such bond. However, under this section, motor vehicle dealers who have purchased from, sold to, or otherwise transacted business with wholesale dealers may only institute actions against wholesale dealers and their surety bonds. Successive recoveries against said bond shall be permitted, but the aggregate liability of the surety to all persons shall in no event exceed the amount of the bond. Upon exhaustion of the penalty of said bond or cancellation of the bond by the surety the vehicle dealer license shall automatically be deemed canceled.

(2) The bond for any vehicle dealer licensed or to be licensed under more than one classification shall be the highest bond required for any such classification.

(3) Vehicle dealers shall maintain a bond for each business location in this state and bond coverage for all temporary subagencies.

Sec. 3. RCW 46.70.180 and 1995 c 256 s 26 are each amended to read as follows:

Each of the following acts or practices is unlawful:

(1) To cause or permit to be advertised, printed, displayed, published, distributed, broadcasted, televised, or disseminated in any manner whatsoever, any statement or representation with regard to the sale or financing of a vehicle which is false, deceptive, or misleading, including but not limited to the following:

(a) That no down payment is required in connection with the sale of a vehicle when a down payment is in fact required, or that a vehicle may be purchased for a smaller down payment than is actually required;

(b) That a certain percentage of the sale price of a vehicle may be financed when such financing is not offered in a single document evidencing the entire security transaction;

(c) That a certain percentage is the amount of the service charge to be charged for financing, without stating whether this percentage charge is a monthly amount or an amount to be charged per year;

(d) That a new vehicle will be sold for a certain amount above or below cost without computing cost as the exact amount of the factory invoice on the specific vehicle to be sold;

(e) That a vehicle will be sold upon a monthly payment of a certain amount, without including in the statement the number of payments of that same amount which are required to liquidate the unpaid purchase price.

(2) To incorporate within the terms of any purchase and sale agreement any statement or representation with regard to the sale or financing of a vehicle which is false, deceptive, or misleading, including but not limited to terms that include as an added cost to the selling price of a vehicle an amount for licensing or transfer of title of that vehicle which is not actually due to the state, unless such amount has in fact been paid by the dealer prior to such sale.

(3) To set up, promote, or aid in the promotion of a plan by which vehicles are to be sold to a person for a consideration and upon further consideration that the purchaser agrees to secure one or more persons to participate in the plan by respectively making a similar purchase and in turn agreeing to secure one or more persons likewise to join in said plan, each purchaser being given the right to secure money, credits, goods, or something of value, depending upon the number of persons joining the plan.

(4) To commit, allow, or ratify any act of "bushing" which is defined as follows: Taking from a prospective buyer of a vehicle a written order or offer to purchase, or a contract document signed by the buyer, which:

(a) Is subject to the dealer's, or his or her authorized representative's future acceptance, and the dealer fails or refuses within forty-eight hours, exclusive of Saturday, Sunday, or legal holiday, and prior to any further negotiations with said buyer, to deliver to the buyer either the dealer's signed acceptance or all copies of the order, offer, or contract document together with any initial payment or security made or given by the buyer, including but not limited to money, check, promissory note, vehicle keys, a trade-in, or certificate of title to a trade-in; or

(b) Permits the dealer to renegotiate a dollar amount specified as trade-in allowance on a vehicle delivered or to be delivered by the buyer as part of the purchase price, for any reason except:

(i) Failure to disclose that the vehicle's certificate of ownership has been branded for any reason, including, but not limited to, status as a rebuilt vehicle as provided in RCW 46.12.050 and 46.12.075; and

(ii) Substantial physical damage or latent mechanical defect occurring before the dealer took possession of the vehicle and which could not have been reasonably discoverable at the time of the taking of the order, offer, or contract; or

(c) Fails to comply with the obligation of any written warranty or guarantee given by the dealer requiring the furnishing of services or repairs within a reasonable time.

(5) To commit any offense relating to odometers, as such offenses are defined in RCW 46.37.540, 46.37.550, 46.37.560, and 46.37.570. A violation of this subsection is a class C felony punishable under chapter 9A.20 RCW.

(6) For any vehicle dealer or vehicle salesman to refuse to furnish, upon request of a prospective purchaser, the name and address of the previous registered owner of any used vehicle offered for sale.

(7) To commit any other offense under RCW 46.37.423, 46.37.424, or 46.37.425.

(8) To commit any offense relating to a dealer's temporary license permit, including but not limited to failure to properly complete each such permit, or the issuance of more than one such permit on any one vehicle.

(9) For a dealer, salesman, or mobile home manufacturer, having taken an instrument or cash "on deposit" from a purchaser prior to the delivery of the bargained-for vehicle, to commingle the "on deposit" funds with assets of the dealer, salesman, or mobile home manufacturer instead of holding the "on deposit" funds as trustee in a separate trust account until the purchaser has taken delivery of the bargained-for vehicle. Delivery of a manufactured home shall be deemed to occur in accordance with RCW 46.70.135(5). Failure, immediately upon receipt, to endorse "on deposit" instruments to such a trust account, or to set aside "on deposit" cash for deposit in such trust account, and failure to deposit such instruments or cash in such trust account by the close of banking hours on the day following receipt thereof, shall be evidence of intent to commit this unlawful practice: PROVIDED, HOWEVER, That a motor vehicle dealer may keep a separate trust account which equals his or her customary total customer deposits for vehicles for future delivery. For purposes of this section, "on deposit" funds received from a purchaser of a manufactured home means those funds that a seller requires a purchaser to advance before ordering the manufactured home, but does not include any loan proceeds or moneys that might have been paid on an installment contract.

(10) For a dealer or manufacturer to fail to comply with the obligations of any written warranty or guarantee given by the dealer or manufacturer requiring the furnishing of goods and services or repairs within a reasonable period of time, or to fail to furnish to a purchaser, all parts which attach to the manufactured unit including but not limited to the undercarriage, and all items specified in the terms of a sales agreement signed by the seller and buyer.

(11) For a vehicle dealer to pay to or receive from any person, firm, partnership, association, or corporation acting, either directly or through a subsidiary, as a buyer's agent for consumers, any compensation, fee, purchase moneys or funds that have been deposited into or withdrawn out of any account controlled or used by any buyer's agent, gratuity, or reward in connection with the purchase or sale of a new motor vehicle.

(12) For a buyer's agent, acting directly or through a subsidiary, to pay to or to receive from any motor vehicle dealer any compensation, fee, gratuity, or reward in connection with the purchase or sale of a new motor vehicle. In

addition, it is unlawful for any buyer's agent to engage in any of the following acts on behalf of or in the name of the consumer:

(a) Receiving or paying any purchase moneys or funds into or out of any account controlled or used by any buyer's agent;

(b) Signing any vehicle purchase orders, sales contract, odometer statements, or title documents, or having the name of the buyer's agent appear on the vehicle purchase order, sales contract, or title; or

(c) Signing any other documentation relating to the purchase, sale, or transfer of any new motor vehicle.

It is unlawful for a buyer's agent to use a power of attorney obtained from the consumer to accomplish or effect the purchase, sale, or transfer of ownership documents of any new motor vehicle by any means which would otherwise be prohibited under (a) through (c) of this subsection. However, the buyer's agent may use a power of attorney for physical delivery of motor vehicle license plates to the consumer.

Further, it is unlawful for a buyer's agent to engage in any false, deceptive, or misleading advertising, disseminated in any manner whatsoever, including but not limited to making any claim or statement that the buyer's agent offers, obtains, or guarantees the lowest price on any motor vehicle or words to similar effect.

(13) For a buyer's agent to arrange for or to negotiate the purchase, or both, of a new motor vehicle through an out-of-state dealer without disclosing in writing to the customer that the new vehicle would not be subject to chapter 19.118 RCW. In addition, it is unlawful for any buyer's agent to fail to have a written agreement with the customer that: (a) Sets forth the terms of the parties' agreement; (b) discloses to the customer the total amount of any fees or other compensation being paid by the customer to the buyer's agent for the agent's services; and (c) further discloses whether the fee or any portion of the fee is refundable. The department of licensing shall by December 31, 1996, in rule, adopt standard disclosure language for buyer's agent agreements under RCW 46.70.011, 46.70.070, and this section.

(14) Being a manufacturer, other than a motorcycle manufacturer governed by chapter 46.94 RCW, to:

(a) Coerce or attempt to coerce any vehicle dealer to order or accept delivery of any vehicle or vehicles, parts or accessories, or any other commodities which have not been voluntarily ordered by the vehicle dealer: PROVIDED, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute coercion;

(b) Cancel or fail to renew the franchise or selling agreement of any vehicle dealer doing business in this state without fairly compensating the dealer at a fair going business value for his or her capital investment which shall include but not be limited to tools, equipment, and parts inventory possessed by the dealer on the day he or she is notified of such cancellation or termination and which are still within the dealer's possession on the day the cancellation or termination is

effective, if: (i) The capital investment has been entered into with reasonable and prudent business judgment for the purpose of fulfilling the franchise; and (ii) the cancellation or nonrenewal was not done in good faith. Good faith is defined as the duty of each party to any franchise to act in a fair and equitable manner towards each other, so as to guarantee one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: PROVIDED, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute a lack of good faith.

(c) Encourage, aid, abet, or teach a vehicle dealer to sell vehicles through any false, deceptive, or misleading sales or financing practices including but not limited to those practices declared unlawful in this section;

(d) Coerce or attempt to coerce a vehicle dealer to engage in any practice forbidden in this section by either threats of actual cancellation or failure to renew the dealer's franchise agreement;

(e) Refuse to deliver any vehicle publicly advertised for immediate delivery to any duly licensed vehicle dealer having a franchise or contractual agreement for the retail sale of new and unused vehicles sold or distributed by such manufacturer within sixty days after such dealer's order has been received in writing unless caused by inability to deliver because of shortage or curtailment of material, labor, transportation, or utility services, or by any labor or production difficulty, or by any cause beyond the reasonable control of the manufacturer;

(f) To provide under the terms of any warranty that a purchaser of any new or unused vehicle that has been sold, distributed for sale, or transferred into this state for resale by the vehicle manufacturer may only make any warranty claim on any item included as an integral part of the vehicle against the manufacturer of that item.

Nothing in this section may be construed to impair the obligations of a contract or to prevent a manufacturer, distributor, representative, or any other person, whether or not licensed under this chapter, from requiring performance of a written contract entered into with any licensee hereunder, nor does the requirement of such performance constitute a violation of any of the provisions of this section if any such contract or the terms thereof requiring performance, have been freely entered into and executed between the contracting parties. This paragraph and subsection (14)(b) of this section do not apply to new motor vehicle manufacturers governed by chapter 46.96 RCW.

(15) Unlawful transfer of an ownership interest in a motor vehicle as defined in RCW 19.116.050.

Passed the House February 6, 1996.

Passed the Senate February 29, 1996.

Approved by the Governor March 28, 1996.

Filed in Office of Secretary of State March 28, 1996.

CHAPTER 195

[Substitute House Bill 2188]

PHYSICIAN'S LICENSES—REVOCATION

AN ACT Relating to the revocation of a physician's license; and amending RCW 18.71.019.
Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 18.71.019 and 1994 sp.s. c 9 s 305 are each amended to read as follows:

The Uniform Disciplinary Act, chapter 18.130 RCW, governs unlicensed practice and the issuance and denial of licenses and discipline of licensees under this chapter. When a panel of the commission revokes a license, the respondent may request review of the revocation order of the panel by the remaining members of the commission not involved in the initial investigation. The respondent's request for review must be filed within twenty days of the effective date of the order revoking the respondent's license. The review shall be scheduled for hearing by the remaining members of the commission not involved in the initial investigation within sixty days. The commission shall adopt rules establishing review procedures.

Passed the House March 4, 1996.

Passed the Senate March 1, 1996.

Approved by the Governor March 28, 1996.

Filed in Office of Secretary of State March 28, 1996.

CHAPTER 196

[House Bill 2190]

FEES PAID BY RAILROAD ASSOCIATIONS THAT
ARE CHARITABLE ORGANIZATIONS—EXEMPTION

AN ACT Relating to fees paid by railroad associations that are charitable organizations; and amending RCW 81.24.010.

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

Sec. 1. RCW 81.24.010 and 1990 c 48 s 2 are each amended to read as follows:

(1) Every company subject to regulation by the commission, except auto transportation companies, steamboat companies, wharfingers or warehousemen, motor freight carriers, and storage warehousemen shall, on or before the date specified by the commission for filing annual reports under RCW 81.04.080, file with the commission a statement on oath showing its gross operating revenue from intrastate operations for the preceding calendar year, or portion thereof, and pay to the commission a fee equal to one-tenth of one percent of the first fifty thousand dollars of gross operating revenue, plus two-tenths of one percent of any gross operating revenue in excess of fifty thousand dollars, except railroad companies which shall each pay to the commission a fee equal to one and one-half percent of its intrastate gross operating revenue(~~(+PROVIDED, That)~~). However, the fee shall in no case be less than one dollar. Any railroad

association that qualifies as a not-for-profit charitable organization under the federal internal revenue code section 501(c)(3) is exempt from the fee required under this subsection.

(2) The percentage rates of gross operating revenue to be paid in any one year may be decreased by the commission for any class of companies subject to the payment of such fees, by general order entered before March 1st of such year, and for such purpose such companies shall be classified as follows: Railroad, express, sleeping car, and toll bridge companies shall constitute class two. Every other company subject to regulation by the commission, for which regulatory fees are not otherwise fixed by law shall pay fees as herein provided and shall constitute additional classes according to kinds of businesses engaged in.

Passed the House February 5, 1996.

Passed the Senate March 7, 1996.

Approved by the Governor March 28, 1996.

Filed in Office of Secretary of State March 28, 1996.

CHAPTER 197

[Substitute House Bill 2195]

MONITORED INMATE RECORDINGS—INTERCEPTION, RECORDING, OR DIVULGING AUTHORIZED

AN ACT Relating to intercepting, recording, or divulging monitored inmate conversations; amending RCW 9.73.095; creating a new section; repealing RCW 9.73.145; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 9.73.095 and 1989 c 271 s 210 are each amended to read as follows:

(1) RCW 9.73.030 through 9.73.080 shall not apply to employees of the department of corrections in the following instances: Intercepting, recording, or divulging any telephone calls from an inmate or resident of a state correctional facility; or intercepting, recording, or divulging any monitored nontelephonic conversations in inmate living units, cells, rooms, dormitories, and common spaces where inmates may be present. For the purposes of this section, "state correctional facility" means a facility that is under the control and authority of the department of corrections, and used for the incarceration, treatment, or rehabilitation of convicted felons.

(2) All personal calls made by inmates shall be collect calls only. The calls will be "operator announcement" type calls. The operator shall notify the receiver of the call that the call is coming from a prison inmate, and that it will be recorded and may be monitored.

(3) The department of corrections shall adhere to the following procedures and restrictions when intercepting, recording, or divulging any telephone calls from an inmate or resident of a state correctional facility as provided for by this

section. The department shall also adhere to the following procedures and restrictions when intercepting, recording, or divulging any monitored nontelephonic conversations in inmate living units, cells, rooms, dormitories, and common spaces where inmates may be present:

~~(a) ((Before the implementation of this section, all inmates or residents of a state correctional facility shall be notified in writing that, as of May 7, 1989, their telephone conversations may be intercepted, recorded, and/or divulged.~~

~~—(b)) Unless otherwise provided for in this section, after intercepting or recording ((a telephone)) any conversation, only the superintendent and his or her designee shall have access to that recording.~~

~~((e)) (b) The contents of ((an)) any intercepted and recorded ((telephone)) conversation shall be divulged only as is necessary to safeguard the orderly operation of the correctional facility, in response to a court order, or in the prosecution or investigation of any crime.~~

~~((d)) (c) All ((telephone)) conversations that are recorded under this section, unless being used in the ongoing investigation or prosecution of a crime, or as is necessary to assure the orderly operation of the correctional facility, shall be destroyed one year after the intercepting and recording.~~

(4) So as to safeguard the sanctity of the attorney-client privilege, the department of corrections shall not intercept, record, or divulge any conversation between an inmate or resident and an attorney. The department shall develop policies and procedures to implement this section. The department's policies and procedures implemented under this section shall also recognize the privileged nature of confessions made by an offender to a member of the clergy or a priest in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs as provided in RCW 5.60.060(3).

(5) The department shall notify in writing all inmates, residents, and personnel of state correctional facilities that their nontelephonic conversations may be intercepted, recorded, or divulged in accordance with the provisions of this section.

(6) The department shall notify all visitors to state correctional facilities who may enter inmate living units, cells, rooms, dormitories, or common spaces where inmates may be present, that their conversations may be intercepted, recorded, or divulged in accordance with the provisions of this section. The notice required under this subsection shall be accomplished through a means no less conspicuous than a general posting in a location likely to be seen by visitors entering the facility.

NEW SECTION. Sec. 2. The department shall provide the notification required under RCW 9.73.095(5) to all current inmates, residents, and personnel no later than May 1, 1996. Posting of the notification to visitors required under RCW 9.73.095(6) shall be in place no later than July 1, 1996.

NEW SECTION. Sec. 3. RCW 9.73.145 and 1989 c 31 s 1 are each repealed.

NEW SECTION. Sec. 4. (1) Sections 1 and 3 of this act shall take effect August 1, 1996.

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

Passed the House March 2, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 28, 1996.

Filed in Office of Secretary of State March 28, 1996.

CHAPTER 198

[Engrossed Substitute House Bill 1231]

RECYCLED CONTENT OF PRODUCTS AND BUILDINGS—PROMOTION

AN ACT Relating to promoting the recycled content of products and buildings; amending RCW 43.19A.020, 43.19A.050, 43.78.170, and 47.28.220; adding new sections to chapter 39.04 RCW; and repealing RCW 43.19A.090 and 43.19A.100.

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

Sec. 1. RCW 43.19A.020 and 1995 c 269 s 1406 are each amended to read as follows:

(1) ~~((The director shall adopt standards specifying the minimum content of recycled materials in products or product categories. The standards shall:~~

~~—(a) Be consistent with the USEPA product standards)) The USEPA product standards, as now or hereafter amended, are adopted as the minimum standards for the state of Washin ton. These standards shall be im lemented for at least the products listed in (a) and (b) of this subsection by the dates indicated, unless the director finds that a different standard would significantly increase recycled product availability or competition((;~~

~~—(b) Consider the standards of other states, to encourage consistency of manufacturing standards;~~

~~—(c) Consider regional product manufacturing capability;~~

~~—(d) Address specific products or classes of products; and~~

~~—(e) Consider postconsumer waste content and the recyclability of the product.~~

~~—(2) The director shall consult with the department of ecology prior to adopting the recycled content standards.~~

~~—(3) The director shall adopt recycled content standards for at least the following products by the dates indicated:)).~~

(a) By July 1, ~~((1992))~~ 1997:

(i) Paper and paper products;

(ii) Organic recovered materials; and

(iii) Latex paint products;

(b) By July 1, ~~((1993))~~ 1997:

(i) Products for lower value uses containing recycled plastics;

- (ii) Retread and remanufactured tires;
- (iii) Lubricating oils;
- (iv) Automotive batteries; ~~((and))~~
- (v) Building insulation;
- (vi) Panelboard; and
- (vii) Compost products.

~~((4))~~ (2) The standards required by this section shall be applied to recycled product purchasing by the department and other state agencies. The standards may be adopted or applied by any other local government in product procurement. The standards shall provide for exceptions under appropriate circumstances to allow purchases of recycled products that do not meet the minimum content requirements of the standards.

Sec. 2. RCW 43.19A.050 and 1991 c 297 s 7 are each amended to read as follows:

The department shall prepare a ~~((mandatory state plan))~~ strategy to increase purchases of recycled-content products by the department and all state agencies, including higher education institutions. The ~~((plan))~~ strategy shall include purchases from public works contracts. The ~~((plan))~~ strategy shall address the purchase of plastic products, retread and remanufactured tires, motor vehicle lubricants, latex paint, and lead acid batteries having recycled content. In addition, the ~~((plan))~~ strategy shall incorporate actions to achieve the following purchase level goals of recycled content paper and compost products:

(1) Paper products as a percentage of the total dollar amount purchased on an annual basis:

- (a) At least ~~((forty))~~ sixty percent by ~~((1993))~~ 1996;
- (b) At least ~~((fifty))~~ seventy percent by ~~((1994))~~ 1997;
- (c) At least ~~((sixty))~~ eighty percent by ~~((1995))~~ 1998.

(2) Compost products as a percentage of the total dollar amount on an annual basis:

- (a) At least ~~((twenty-five))~~ forty percent by ~~((1993))~~ 1996;
- (b) At least ~~((forty))~~ sixty percent by ~~((1995))~~ 1997;
- (c) At least ~~((sixty))~~ eighty percent by ~~((1997))~~ 1998.

Sec. 3. RCW 43.78.170 and 1991 c 297 s 10 are each amended to read as follows:

The public printer shall take all actions consistent with the plan under RCW 43.19A.050 to ensure that seventy-five percent or more of the total dollar amount of printing paper stock used by the printer is recycled content paper by January 1, ~~((1995))~~ 1997, and ninety percent or more of the total dollar amount of printing paper stock used by the printer is recycled content paper by January 1, 1999.

Sec. 4. RCW 47.28.220 and 1992 c 174 s 14 are each amended to read as follows:

(1) A contract awarded in whole or in part for the purchase of compost products as a soil cover or soil amendment to state highway rights of way shall specify that compost products be purchased in accordance with the following schedule:

(a) For the period July 1, (~~(1994)~~) 1996, through June 30, (~~(1993)~~) 1997, twenty-five percent of the total dollar amount purchased;

(b) For the period July 1, (~~(1993)~~) 1998, through June 30, (~~(1995)~~) 1999, fifty percent of the total dollar amount purchased. The percentages in this subsection apply (~~(only)~~) to the materials' value(~~(s)~~) and (~~(do not)~~) include services or other materials.

(2) In order to carry out the provisions of this section, the department of transportation shall develop and adopt bid specifications for compost products used in state highway construction projects.

(3)(a) For purposes of this section, "compost products" means mulch, soil amendmets, ground cover, or other landscaping material derived from the biological or mechanical conversion of biosolids or cellulose-containing waste materials.

(b) For purposes of this section, "biosolids" means municipal sewage sludge or septic tank septage sludge that meets the requirements of chapter 70.95J RCW.

NEW SECTION. Sec. 5. A new section is added to chapter 39.04 RCW to read as follows:

(1) The state's preferences for the purchase and use of recycled-content products shall be included as a factor in the design and development of state capital improvement projects.

(2) Specifications for materials in state construction projects shall include the use of recycled-content products and recyclable products whenever practicable.

(3) This section does not apply to contracts entered into by a municipality.

NEW SECTION. Sec. 6. A new section is added to chapter 39.04 RCW to read as follows:

Material from demolition projects shall be recycled or reused whenever practicable.

NEW SECTION. Sec. 7. The following acts or parts of acts are each repealed:

(1) RCW 43.19A.090 and 1991 c 297 s 12; and

(2) RCW 43.19A.100 and 1991 c 297 s 13.

Passed the House March 4, 1996.

Passed the Senate February 28, 1996.

Approved by the Governor March 28, 1996.

Filed in Office of Secretary of State March 28, 1996.

CHAPTER 199

[Engrossed Substitute House Bill 2227]

FELONY TRAFFIC OFFENSES—REVISIONS

AN ACT Relating to felony traffic offenses; amending RCW 9.94A.120, 9.94A.150, 9.94A.400, 46.01.260, 46.20.285, 46.61.520, and 46.61.522; creating a new section; and prescribing penalties.

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

Sec. 1. RCW 9.94A.120 and 1995 c 108 s 3 are each amended to read as follows:

When a person is convicted of a felony, the court shall impose punishment as provided in this section.

(1) Except as authorized in subsections (2), (4), (5), (6), and (8) of this section, the court shall impose a sentence within the sentence range for the offense.

(2) The court may impose a sentence outside the standard sentence range for that offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(3) Whenever a sentence outside the standard 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 range shall be a determinate sentence.

(4) A persistent offender shall be sentenced to a term of total confinement for life without the possibility of parole or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death, notwithstanding the maximum sentence under any other law. An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than twenty years. An offender convicted of the crime of assault in the first degree or assault of a child in the first degree where the offender used force or means likely to result in death or intended to kill the victim shall be sentenced to a term of total confinement not less than five years. An offender convicted of the crime of rape in the first degree shall be sentenced to a term of total confinement not less than five years. The foregoing minimum terms of total confinement are mandatory and shall not be varied or modified as provided in subsection (2) of this section. In addition, all offenders subject to the provisions of this subsection shall not be eligible for community custody, earned early release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8), or any other form of authorized leave of absence from the correctional facility while not in the direct custody of a corrections officer or officers during such minimum terms of total confinement except in the case of an offender in need of emergency medical treatment or for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree.

(5) In sentencing a first-time offender the court may waive the imposition of a sentence within the sentence range and impose a sentence which may include up to ninety days of confinement in a facility operated or utilized under contract by the county and a requirement that the offender refrain from committing new offenses. The sentence may also include up to two years of community supervision, which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:

- (a) Devote time to a specific employment or occupation;
- (b) Undergo available outpatient treatment for up to two years, or inpatient treatment not to exceed the standard range of confinement for that offense;
- (c) Pursue a prescribed, secular course of study or vocational training;
- (d) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (e) Report as directed to the court and a community corrections officer; or
- (f) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030 and/or perform community service work.

(6)(a) An offender is eligible for the special drug offender sentencing alternative if:

(i) The offender is convicted of the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in Schedule I or II that is a narcotic drug or a felony that is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes, and the violation does not involve a sentence enhancement under RCW 9.94A.310 (3) or (4);

(ii) The offender has no prior convictions for a felony in this state, another state, or the United States; and

(iii) 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.

(b) If the midpoint of the standard range is greater than one year and the sentencing judge determines that the offender is eligible for this option and that the offender and the community will benefit from the use of the special drug offender sentencing alternative, the judge may waive imposition of a sentence within the standard 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 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. If the midpoint of the standard range is twenty-four months or less, no more than three months of the sentence may be served in a work release status. The court shall also impose one year of

concurrent community custody and community supervision that must include appropriate outpatient substance abuse treatment, crime-related prohibitions including a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status. The court may require that the monitoring for controlled substances be conducted by the department or by a treatment alternative to ~~((a))~~ 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 service work;

(vi) Stay out of areas designated by the sentencing judge.

(c) If the offender violates any of the sentence conditions in (b) of this subsection, the department shall impose sanctions administratively, with notice to the prosecuting attorney and the sentencing court. Upon motion of the court or the prosecuting attorney, a violation hearing shall be held by the court. If the court finds that conditions have been willfully violated, the court may impose confinement consisting of up to the remaining one-half of the midpoint of the standard range. All total confinement served during the period of community custody shall be credited to the offender, regardless of whether the total confinement is served as a result of the original sentence, as a result of a sanction imposed by the department, or as a result of a violation found by the court. The term of community supervision shall be tolled by any period of time served in total confinement as a result of a violation found by the court.

(d) 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 the courts, the office of financial management, and the commission.

(7) If a sentence range has not been established for the defendant's crime, the court shall impose a determinate sentence which may include not more than one year of confinement, community service work, a term of community supervision not to exceed one year, and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement if the court finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(8)(a)(i) When an offender is convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent

offense and has no prior convictions for a sex offense or any other felony sex offenses in this or any other state, the sentencing court, on its own motion or the motion of the state or the defendant, may order an examination to determine whether the defendant is amenable to treatment.

The report of the examination shall include at a minimum the following: The defendant's version of the facts and the official version of the facts, the defendant's offense history, an assessment of problems in addition to alleged deviant behaviors, the offender's social and employment situation, and other evaluation measures used. The report shall set forth the sources of the evaluator's information.

The examiner shall assess and report regarding the defendant's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

- (A) Frequency and type of contact between offender and therapist;
- (B) Specific issues to be addressed in the treatment and description of planned treatment modalities;
- (C) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;
- (D) Anticipated length of treatment; and
- (E) Recommended crime-related prohibitions.

The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(ii) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this special sexual offender sentencing alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this subsection. If the court determines that this special sex offender sentencing alternative is appropriate, the court shall then impose a sentence within the sentence range. If this sentence is less than eight years of confinement, the court may suspend the execution of the sentence and impose the following conditions of suspension:

(A) The court shall place the defendant on community supervision for the length of the suspended sentence or three years, whichever is greater; and

(B) The court shall order treatment for any period up to three years in duration. The court in its discretion shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court, and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change. In addition, as conditions of the suspended

sentence, the court may impose other sentence conditions including up to six months of confinement, not to exceed the sentence range of confinement for that offense, crime-related prohibitions, and requirements that the offender perform any one or more of the following:

- (I) Devote time to a specific employment or occupation;
- (II) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (III) Report as directed to the court and a community corrections officer;
- (IV) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030, perform community service work, or any combination thereof; or
- (V) Make recoupment to the victim for the cost of any counseling required as a result of the offender's crime.

(iii) The sex offender therapist shall submit quarterly reports on the defendant's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, defendant's compliance with requirements, treatment activities, the defendant's relative progress in treatment, and any other material as specified by the court at sentencing.

(iv) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment. Prior to the treatment termination hearing, the treatment professional and community corrections officer shall submit written reports to the court and parties regarding the defendant's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community supervision conditions. Either party may request and the court may order another evaluation regarding the advisability of termination from treatment. The defendant shall pay the cost of any additional evaluation ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost. At the treatment termination hearing the court may: (A) Modify conditions of community supervision, and either (B) terminate treatment, or (C) extend treatment for up to the remaining period of community supervision.

(v) The court may revoke the suspended sentence at any time during the period of community supervision and order execution of the sentence if: (A) The defendant violates the conditions of the suspended sentence, or (B) the court finds that the defendant is failing to make satisfactory progress in treatment. All confinement time served during the period of community supervision shall be credited to the offender if the suspended sentence is revoked.

(vi) Except as provided in (a)(vii) of this subsection, after July 1, 1991, examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to chapter 18.155 RCW.

(vii) A sex offender therapist who examines or treats a sex offender pursuant to this subsection (8) does not have to be certified by the department of health pursuant to chapter 18.155 RCW if the court finds that: (A) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (B) no certified providers are available for treatment within a reasonable geographical distance of the offender's home; and (C) the evaluation and treatment plan comply with this subsection (8) and the rules adopted by the department of health.

For purposes of this subsection, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(b) When an offender commits any felony sex offense on or after July 1, 1987, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, request the department of corrections to evaluate whether the offender is amenable to treatment and the department may place the offender in a treatment program within a correctional facility operated by the department.

Except for an offender who has been convicted of a violation of RCW 9A.44.040 or 9A.44.050, if the offender completes the treatment program before the expiration of his or her term of confinement, the department of corrections may request the court to convert the balance of confinement to community supervision and to place conditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

- (i) Devote time to a specific employment or occupation;
- (ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (iii) Report as directed to the court and a community corrections officer;
- (iv) Undergo available outpatient treatment.

If the offender violates any of the terms of his or her community supervision, the court may order the offender to serve out the balance of his or her community supervision term in confinement in the custody of the department of corrections.

Nothing in this subsection (8)(b) shall confer eligibility for such programs for offenders convicted and sentenced for a sex offense committed prior to July 1, 1987. This subsection (8)(b) does not apply to any crime committed after July 1, 1990.

(c) Offenders convicted and sentenced for a sex offense committed prior to July 1, 1987, may, subject to available funds, request an evaluation by the department of corrections to determine whether they are amenable to treatment.

If the offender is determined to be amenable to treatment, the offender may request placement in a treatment program within a correctional facility operated by the department. Placement in such treatment program is subject to available funds.

(9)(a) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, assault of a child in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW not sentenced under subsection (6) of this section, committed on or after July 1, 1988, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of such community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(b) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense ~~((or)),~~ serious violent offense, vehicular homicide, or vehicular assault, committed on or after July 1, 1990, the court shall in addition to other terms of the sentence, sentence the offender to community placement for two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community placement shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence. Unless a condition is waived by the court, the terms of community placement for offenders sentenced pursuant to this section shall include the following conditions:

(i) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

(ii) The offender shall work at department of corrections-approved education, employment, and/or community service;

(iii) The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions;

(iv) An offender in community custody shall not unlawfully possess controlled substances;

(v) The offender shall pay supervision fees as determined by the department of corrections; and

(vi) The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

(c) The court may also order any of the following special conditions:

(i) The offender shall remain within, or outside of, a specified geographical boundary;

(ii) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(iii) The offender shall participate in crime-related treatment or counseling services;

(iv) The offender shall not consume alcohol; or

(v) The offender shall comply with any crime-related prohibitions.

(d) Prior to transfer to, or during, community placement, any conditions of community placement may be removed or modified so as not to be more restrictive by the sentencing court, upon recommendation of the department of corrections.

(10) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(11) If a sentence imposed includes payment of a legal financial obligation, the sentence shall specify the total amount of the legal financial obligation owed, and shall require the offender to pay a specified monthly sum toward that legal financial obligation. Restitution to victims shall be paid prior to any other payments of monetary obligations. Any legal financial obligation that is imposed by the court may be collected by the department, which shall deliver the amount paid to the county clerk for credit. The offender's compliance with payment of legal financial obligations shall be supervised by the department. All monetary payments ordered shall be paid no later than ten years after the last date of release from confinement pursuant to a felony conviction or the date the sentence was entered. Independent of the department, the party or entity to whom the legal financial obligation is owed shall have the authority to utilize any other remedies available to the party or entity to collect the legal financial obligation. Nothing in this section makes the department, the state, or any of its employees, agents, or other persons acting on their behalf liable under any circumstances for

the payment of these legal financial obligations. If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order.

(12) Except as provided under RCW 9.94A.140(1) and 9.94A.142(1), a court may not impose a sentence providing for a term of confinement or community supervision or community placement which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(13) All offenders sentenced to terms involving community supervision, community service, community placement, or legal financial obligation shall be under the supervision of the secretary of the department of corrections or such person as the secretary may designate and shall follow explicitly the instructions of the secretary including reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, notifying the community corrections officer of any change in the offender's address or employment, and paying the supervision fee assessment. The department may require offenders to pay for special services rendered on or after July 25, 1993, including electronic monitoring, day reporting, and telephone reporting, dependent upon the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

(14) All offenders sentenced to terms involving community supervision, community service, or community placement under the supervision of the department of corrections shall not own, use, or possess firearms or ammunition. Offenders who own, use, or are found to be in actual or constructive possession of firearms or ammunition shall be subject to the appropriate violation process and sanctions. "Constructive possession" as used in this subsection means the power and intent to control the firearm or ammunition. "Firearm" as used in this subsection means a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

(15) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

(16) A departure from the standards in RCW 9.94A.400 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in subsections (2) and (3) of this section, and may be appealed by the defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

(17) The court shall order restitution whenever the offender is convicted of a felony that results in injury to any person or damage to or loss of property, whether the offender is sentenced to confinement or placed under community supervision, unless extraordinary circumstances exist that make restitution inappropriate in the court's judgment. The court shall set forth the extraordinary circumstances in the record if it does not order restitution.

(18) As a part of any sentence, the court may impose and enforce an order that relates directly to the circumstances of the crime for which the offender has

been convicted, prohibiting the offender from having any contact with other specified individuals or a specific class of individuals for a period not to exceed the maximum allowable sentence for the crime, regardless of the expiration of the offender's term of community supervision or community placement.

(19) In any sentence of partial confinement, the court may require the defendant to serve the partial confinement in work release, in a program of home detention, on work crew, or in a combined program of work crew and home detention.

(20) All court-ordered legal financial obligations collected by the department and remitted to the county clerk shall be credited and paid where restitution is ordered. Restitution shall be paid prior to any other payments of monetary obligations.

Sec. 2. RCW 9.94A.150 and 1995 c 129 s 7 (Initiative Measure No. 159) are each amended to read as follows:

No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(1) Except as otherwise provided for in subsection (2) of this section, the term of the sentence of an offender committed to a correctional facility operated by the department, may be reduced by earned early release time in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction in which the offender is confined. The earned early release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned early release credits in advance of the offender actually earning the credits. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department of corrections, the county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned early release time. In the case of an offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements under RCW 9.94A.310 (3) or (4), or both, shall not receive any good time credits or earned early release time for that portion of his or her sentence that results from any deadly weapon enhancements. In the case of an offender convicted of a serious violent offense or a sex offense that is a class A felony committed on or after July 1, 1990, the aggregate earned early release time may not exceed fifteen percent of the sentence. In no other case shall the aggregate earned early release time exceed one-third of the total sentence;

(2) A person convicted of a sex offense or an offense categorized as a serious violent offense, assault in the second degree, vehicular homicide, vehicular assault, assault of a child in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the

defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned early release time pursuant to subsection (1) of this section;

(3) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

(4) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

(5) No more than the final six months of the sentence may be served in partial confinement designed to aid the offender in finding work and reestablishing himself or herself in the community;

(6) The governor may pardon any offender;

(7) The department of corrections may release an offender from confinement any time within ten days before a release date calculated under this section; and

(8) An offender may leave a correctional facility prior to completion of his sentence if the sentence has been reduced as provided in RCW 9.94A.160.

Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.120(4) as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.120(4).

Sec. 3. RCW 9.94A.400 and 1995 c 167 s 2 are each amended to read as follows:

(1)(a) Except as provided in (b) of this subsection, whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: PROVIDED, That if the court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.120 and 9.94A.390(2)(f) or any other provision of RCW 9.94A.390. "Same criminal conduct," as used in this subsection, means two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim. This definition ~~((does not apply))~~ applies in cases involving vehicular assault or vehicular homicide even if the victims occupied the same vehicle. ~~((However, the sentencing judge may consider multiple victims in such instances as an aggravating circumstance under RCW 9.94A.390.))~~

(b) Whenever a person is convicted of two or more serious violent offenses, as defined in RCW 9.94A.030, arising from separate and distinct criminal conduct, the sentence range for the offense with the highest seriousness level under RCW 9.94A.320 shall be determined using the offender's prior convictions and other current convictions that are not serious violent offenses in the offender score and the sentence range for other serious violent offenses shall be determined by using an offender score of zero. The sentence range for any offenses that are not serious violent offenses shall be determined according to (a) of this subsection. All sentences imposed under (b) of this subsection shall be served consecutively to each other and concurrently with sentences imposed under (a) of this subsection.

(2)(a) Except as provided in (b) of this subsection, whenever a person while under sentence of felony commits another felony and is sentenced to another term of confinement, the latter term shall not begin until expiration of all prior terms.

(b) Whenever a second or later felony conviction results in community supervision with conditions not currently in effect, under the prior sentence or sentences of community supervision the court may require that the conditions of community supervision contained in the second or later sentence begin during the immediate term of community supervision and continue throughout the duration of the consecutive term of community supervision.

(3) Subject to subsections (1) and (2) of this section, whenever a person is sentenced for a felony that was committed while the person was not under sentence of a felony, the sentence shall run concurrently with any felony sentence which has been imposed by any court in this or another state or by a federal court subsequent to the commission of the crime being sentenced unless the court pronouncing the current sentence expressly orders that they be served consecutively.

(4) Whenever any person granted probation under RCW 9.95.210 or 9.92.060, or both, has the probationary sentence revoked and a prison sentence imposed, that sentence shall run consecutively to any sentence imposed pursuant to this chapter, unless the court pronouncing the subsequent sentence expressly orders that they be served concurrently.

(5) However, in the case of consecutive sentences, all periods of total confinement shall be served before any partial confinement, community service, community supervision, or any other requirement or conditions of any of the sentences. Except for exceptional sentences as authorized under RCW 9.94A.120(2), if two or more sentences that run consecutively include periods of community supervision, the aggregate of the community supervision period shall not exceed twenty-four months.

Sec. 4. RCW 46.01.260 and 1994 c 275 s 14 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the director, in his or her discretion, may destroy applications for vehicle licenses, copies of vehicle

licenses issued, applications for drivers' licenses, copies of issued drivers' licenses, certificates of title and registration or other documents, records or supporting papers on file in his or her office which have been microfilmed or photographed or are more than five years old. If the applications for vehicle licenses are renewal applications, the director may destroy such applications when the computer record thereof has been updated.

(2)(a) The director shall not destroy records of convictions or adjudications of RCW 46.61.520 and 46.61.522 and shall maintain such records permanently on file.

(b) The director shall not, within ten years from the date of conviction, adjudication, or entry of deferred prosecution, destroy records of the following:

(i) Convictions or adjudications of the following offenses: RCW 46.61.502~~((,))~~ or 46.61.504~~((, 46.61.520(1)(a), or 46.61.522(1)(b)))~~;

(ii) If the offense was originally charged as one of the offenses designated in (a) or (b)(i) of this subsection, convictions or adjudications of the following offenses: RCW 46.61.500 or 46.61.525, or any other violation that was originally charged as one of the offenses designated in (a) or (b)(i) of this subsection; or

(iii) Deferred prosecutions granted under RCW 10.05.120.

~~((b))~~ (c) For purposes of RCW 46.52.100 and 46.52.130, offenses subject to this subsection shall be considered "alcohol-related" offenses.

Sec. 5. RCW 46.20.285 and 1990 c 250 s 43 are each amended to read as follows:

The department shall forthwith revoke the license of any driver for the period of one calendar year unless otherwise provided in this section, upon receiving a record of the driver's conviction of any of the following offenses, when the conviction has become final:

(1) For vehicular homicide the period of revocation shall be two years. The revocation period shall be tolled during any period of total confinement for the offense;

(2) Vehicular assault. The revocation period shall be tolled during any period of total confinement for the offense;

(3) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle, upon a showing by the department's records that the conviction is the second such conviction for the driver within a period of five years. Upon a showing that the conviction is the third such conviction for the driver within a period of five years, the period of revocation shall be two years;

(4) Any felony in the commission of which a motor vehicle is used;

(5) Failure to stop and give information or render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another or resulting in damage to a vehicle that is driven or attended by another;

(6) Perjury or the making of a false affidavit or statement under oath to the department under Title 46 RCW or under any other law relating to the ownership or operation of motor vehicles;

(7) Reckless driving upon a showing by the department's records that the conviction is the third such conviction for the driver within a period of two years.

NEW SECTION. Sec. 6. The department of licensing shall adopt procedures in cooperation with the office of the administrator for the courts and the department of corrections to implement section 5 of this act.

Sec. 7. RCW 46.61.520 and 1991 c 348 s 1 are each amended to read as follows:

(1) When the death of any person ensues within three years as a proximate result of injury proximately caused by the driving of any vehicle by any person, the driver is guilty of vehicular homicide if the driver was operating a motor vehicle:

(a) While under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502; or

(b) In a reckless manner; or

(c) With disregard for the safety of others.

(2) Vehicular homicide is a class ~~((B))~~ A felony punishable under chapter 9A.20 RCW.

Sec. 8. RCW 46.61.522 and 1983 c 164 s 2 are each amended to read as follows:

(1) A person is guilty of vehicular assault if he operates or drives any vehicle:

(a) In a reckless manner, and this conduct is the proximate cause of serious bodily injury to another; or

(b) While under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, and this conduct is the proximate cause of serious bodily injury to another.

(2) "Serious bodily injury" means bodily injury which involves a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body.

(3) Vehicular assault is a class ~~((C))~~ B felony punishable under chapter 9A.20 RCW.

NEW SECTION. Sec. 9. 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 the House February 2, 1996.

Passed the Senate March 1, 1996.

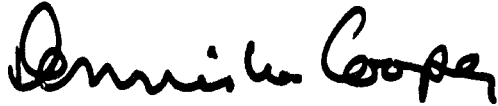
Approved by the Governor March 28, 1996.

Filed in Office of Secretary of State March 28, 1996.

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 1995 3rd special session and the 1996 session (54th Legislature), chapters 1 and 1 through 199, respectively, 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 5th day of April, 1996.

A handwritten signature in black ink that reads "Dennis W. Cooper". The signature is written in a cursive style with a large initial "D" and "C".

DENNIS W. COOPER
Code Reviser

